
INSANITY - A LEGAL DEFENSE AND PLAUSIBLE CONSEQUENCES

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ABSTRACT

The human brain is often considered to be one of the sources or the point of instigation of an illegal act. Acknowledging the state of mind of an individual the law extends the defense of insanity which makes it crucial to understand the concept of sanity in depth. This paper aims to delve into the available methods and techniques to understand the status of the mind of a human being and also comment upon the level of the authenticity of such methods. It also focuses upon studying the factors which can affect mental health and instigate madness in an individual, along with the important role of psychologists to capture the actual scenarios and differentiate between actual and made-up madness.

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Introduction

Insanity according to the law can be short-lived or permanent, but it must be present at the time when the act is done to exclude it from the purview of a Punishable Act.¹ If a person suffers from fits of insanity, to make the defense applicable, the fit must exist at the crime. The concept of insanity is not based on what a person believes, but rather a mental condition in which a person cannot distinguish the wrong and right. If owing to one's beliefs, a person commits a crime, but possesses the ability to reason and differentiate, he will not be entitled to take immunity under the defense of insanity.² Simply not making use of one's reasoning and cognitive abilities, does not make a person insane, a complete absence of these abilities is required for a person to be considered insane.

Indian Penal Code, 1960 also includes the defense of insanity under *Section 84*. According to the codified Indian law, a person who does not have a guilty intention shall not be punished for the acts done. This implies that a person who does not know the act's nature does not know that it is wrong and opposed by law, due to absence of reasoning ability, shall not be made punishable as such a person would lack the intention of committing a crime.

Research Questions

1. *How can the propounded techniques or theories assist in differentiating between true and faked madness and the role of psychologists?*
2. *What are the parameters available to define the sanity of a person in the legal sense?*

Introduction to Insanity

The concept of insanity is regarded as a disability in the field of society and of law. A person who is not capable of performing and assessing the social and legal responsibilities, and indulges in the commission of some acts which are not known to him to be wrong and legally or socially non-acceptable is categorized as an insane person. Insanity is a mental condition in which the person is not able to formulate the understanding with relation to the act which he is committing and the consequences which it will follow. This affects the capability of a person to distinguish between right and wrong. There can be two types of insanity, namely medical and legal. The latter once proved can exempt a person from punishment. The differentiating

¹ Amrit Bhushan Gupta v. Union of India, AIR 1977 SC 608.

² Lakshmi v. State, AIR 1959 All 534.

line between the two is the power and ability to reason one's actions. If a person cannot reason his actions at the time of acting and does an act that is not acceptable according to the law, he will be exempted by the court of law for any punishment on grounds of legal insanity.

The defense of insanity is based on humanitarian grounds and prevents the pronouncement of punishment onto those people who are not capable to comprehend the consequences and the nature of the act committed by them. They are to be distinguished from criminals as they lack any intent to do any act which is morally and legally wrong. Holding the people criminally liable and accountable even when they did not have cognitive and reasonability skills, would be contrary to the notion of justice which is best served if the person with a guilty mind gets punished.

Historical development of the concept of Insanity

The defense of insanity has been existing for a long time. The defense of insanity has been recognized even in the ancient Indian legal literary texts, such as Yajnavalkya, where it was believed that a person who is of an insane mind, should be punished as he does not know the actions being done. Similar was the belief of the Muhammadan law which exempted the people of insane minds from any legal consequences. The common law regarded insanity as a legal defense and followed the test of 'good and evil' according to which criminal liability must not be imposed on insane people who lacked the quality of differentiating between these two types of acts. This test of insanity was replaced by the test of 'idiot', which only exempted the persons who were idiots from the legal consequences of their acts. With time, this test became obsolete with the introduction of the 'wild beast test' for determining insanity, which states that a person would only be considered insane if he was not able to understand his actions in the same a wild beast does. However, all these tests were not appropriate and lacked the justifiable determination of insanity.

The concept of legal insanity developed after the recognition of McNaughton rules established by the House of Lords to make insanity a legal defense. It was ruled that,

“If a person cannot understand the fact that his actions are wrong and not acceptable according to the law, then he must not be punished for his acts.”

Secondly, such incapacity must occur at the time when the act was committed. It was considered to be a “disease of the mind” in legal terms as differentiated from mere medical

terms, making a person immune to punishment.

Another test which was developed by Columbia's Court was the "irresistible impulse test", according to which a person was considered to be insane if he suffered from an impulse which he could not resist and was insane as it impaired the mental ability of the person to distinguish between what is wrong and illegal and what is right. This test is based on the reaction of people in response to an impulse that they could not withhold by either reasoning or willpower. The act must be committed during the persistence of the impulse.

Another development in the field of insanity was done³, which is commonly called the '*Durham Test*' or the '*Product Test*', according to which the crimes which were a product of some kind of mental disease were exempted from being punished. This rule brought in the importance of the evidence and testimony of the experts in matters of insanity.

Application of Insanity in India-Judicial Approach

The defense of Insanity was available from the enactment of the Indian Penal Code, 1860 (Hereinafter referred to as IPC). The rule under section 84 IPC derives its source from the M'Naughton Rule. Since its enactment, there has been substantial development of the rule and application. The defense under *Section 84* takes into consideration the narrow meaning of the term 'insanity' and does not cover all the cases of insanity. It makes an unreasonable classification between legal insanity and medical insanity and covers only the former only. The additional condition which has been imposed to legal insanity is that it should be coupled with the absolute loss of reasoning as to render the accused incapable of forming the requisite mens rea and knowledge. Solely based on delusion, Irresistible impulse, or compulsive behavior, the accused cannot take shelter under *Section 84*.

Hence the insanity under the IPC is to some extent out of the scope of the medical field and takes into account the human factor for determining the culpability. Therefore, such insanity is unrelated to different medical and psychiatric diagnoses. In the case of *Surendra Mishra v. the State of Jharkhand*⁴, the Supreme court held that,

"The term 'unsoundness of mind' has not been defined under IPC and its meaning has to be taken at par with the term 'insanity'. The insanity term

³ Durham v U.S., 214 F. 2d 862.

⁴ Surendra Mishra v. State of Jharkhand 2011 (11) SCC 495.

connotes only legal insanity and carries a different meaning in different contexts. Merely because the accused was physically or mentally weak which rendered his intellect weak but was in sense to understand the nature and consequences of his act.”

The courts in India have always focused on the completeness of circumstances before giving the benefit to the accused. Like in the case of *Sudhakaran v. State of Kerala*⁵, the Supreme Court has refused to give the defense to the accused even though he had a record of insanity and his treatment was undergoing. Based on the facts, it was observed that the accused after the crime has concealed the weapon, shut the door to prevent the arrest, and even attempted to abscond. Based on these, the court held that this case although fulfills the medical insanity but fails to check all the essentials of legal insanity as the accused was knowing that the act done by him was wrong and contrary to law. If we see this case from the psychological perspective, had there been no proper medical examination of the accused, the fact about his state of mind at the time of the alleged crime would not be known and he could have successfully taken the defense of Insanity. Henceforth, in the Indian scenario, the legal field, and medical field co-work to ensure that there is no misuse of this general defense of insanity.

Developing Role of Psychology in Legal Defense of Insanity

Insanity as a defense has been widely misused in the legal field. There are a plethora of reasons leading to these consequences. The authors of this paper will analyze how this defense one of the most technical to prove and to what extent the development in the social study of human behavior aid the court in reaching the most suitable verdict.

Insanity or saneness is something which if not analyzed using the psychological parameters may lead to a false result and relying on the same, the justice system may get adversely impacted. The judges have tended to usurp upon the technical aspect of this medical condition and pass the judgment based on only looking at the patent side of this. The decisions of the court have been majorly on the common sense of the jurors and not on the established psychological study of human brain functioning. Hence it becomes a subject of utmost importance that the development of psychology and psychiatry be duly recognized and included before passing the judgments on prima facie considerations.

⁵ *Sudhakaran v. State of Kerala*. 2010 (10) SCC 582.

One of the main reasons leading to the miscarriage of justice because of the wrong application of insanity is that the defense of insanity is still considered as the legal concept and not the psychological or psychiatric one. Once the later field of study has been given prime responsibility in the determination, the whole question of whether a particular defendant lacked a reasonable understanding of the consequences of the actions will depend on the expert analysis of the accused himself and not based on basic human analysis. The primacy of this field in determining the question of insanity will help in detecting the real case of insanities from the made-up insanity to get the verdict of not guilty because of Insanity. Furthermore, the results will be based more on objective considerations, hence there will be less or no scope of challenging the same in subsequent proceedings.

If we analyze the current involvement of forensic psychologists in determining the question of whether the accused was able to appreciate or differentiate between right and wrong at the time of committing the crime, the method followed is the analysis and evaluation of the accused concerning his understanding of the surroundings. The final objective is to form a forensic opinion and send a report to the court stating the following:

1. Symptoms of the accused proving or disproving insanity.
2. If the insanity is in affirmative, the psychiatric diagnosis available if any,
3. A medical opinion establishing a relation between the current state of mind and the probability of the accused understanding the consequences of the act allegedly committed by him.
4. A certificate stating whether the accused is capable of standing the trial.
5. Whether or not the insanity proved to fulfil all the essential conditions of legal insanity required to absolve the accused of all the liabilities.

The above requirement is not a standard procedure followed by all the courts as it is not a legal requirement but a rule of prudence to follow. Apart from the help of the psychologist for the above Performa, the help of the psychiatric ought to be taken to obtain the following answers

1. In the cases, the accused claims insanity, a certificate of presence or absence of such illness at the time of the alleged offense.
2. In cases where the mental illness was present, a report stating whether such offense was a consequence of insanity or because of the free and evil will of the person.

3. In case of recurring insanity, a report specifying the frequency and magnitude of such temporal insanity and whether such insanity was present at the time of the offense.
4. In the situation, the alleged mental illness is of nature directly affecting the cognitive and emotional faculties of the accused, his fitness to stand on trial if required. Based on this particular assessment, the court can decide on dispensing the personal presence of the accused during the trial.

Differentiating between the real and faked insanity

With the development of the deceitful tendency of the accused to scot-free the trial, it becomes extremely important responsibility of the psychologist and psychiatrist to aid the court in distinguishing the genuine and the made-up cases of insanity to claim the defense. The role of the medical practitioners is to provide clear, honest, and objective opinions derived from the factual data and supported by sound reasoning to the court. In recent times, the Performa of Kumar⁶ et al is followed to get the objective information of the accused. This form includes the basic information of the accused, the date of examination, the reason for a referral if the person was sent from the prison, then the information about the behavioral nature of the accused in the prison, details of present illness, and information about the past medical illness. Once such information is complete, the study of the accused is completed by the psychiatrist and then a combined report is formed and forwarded to the court.

Apart from the objective analysis of the accused, there are multiple other ways by which the psychologist helps in scrutinizing the cases of insanity.

This includes the review of the accompanying document attached with the accused at the time of forwarding him. The documents can be the First Information Report, the medico-legal report of the victim, the photograph of the crime scene, and the statement of the witnesses and the family members. Such a document helps the psychologist to understand the nature of the act committed by the accused and analyze whether the accused was capable of forming the necessary mens rea required for the offense.

The next factor which helps the medical officer is the record of the accused if available. The absence of such records raises a strong presumption in negating the claim of insanity. In cases

⁶ Kumar D, Viswanath B, Sebastian A, Holla B, Konduru R, Chandrashekar CR, et al. Profile of male forensic psychiatric in patients in South India. *Int J Soc Psychiatry* 2014; 60:55-62.

where such records are available, the study of the previous medical report, the psychiatric treatment if any, and the past conduct of the accused may help the psychiatrist establish the mental condition of the accused.⁷

The next thing which helps determine the insanity is the mental condition of the accused at the time of the alleged offense. This is the place where the role of psychologist and psychiatrist come into the picture. Rather than understanding the crimes through the available documents and hearsay, the expert must attempt to gather the information from the accused himself through open-ended questions. The doctor should try to establish a conducive environment so that accused feel comfortable opening up. It will be a good procedure if the accused is encouraged to share not only about the incident but about the emotions he felt during such incident, the emotions he was having before, after, and during the incident.

The next thing which the psychiatrist can do is asking the accused by the knowledge of the law and the fact that whether he knows the difference between right and wrong. Lastly, the psychiatrist at the time of having the session must record the way the accused answers, take the questions, his behavioral nature at the time of answering, and his cognitive level at the time of the session. Based on the session, a comprehensive report comprising of the behavioral, emotional and psychological report of the accused must be prepared which can be given in the court as expert evidence.

Illustrative open-ended questions which can be asked to the accused

- 1. What were the things present at the place where he did the act?*
- 2. Are there any people around there? How did they react to the act?*
- 3. How did the victim react to the act?*
- 4. If he was in the place of the victim, how would he have reacted?*
- 5. Had he been the witness to act, what recourse he would have taken?*

Conclusion and Suggestions

From the inception of the defense of insanity, there has been a substantial change in its application. Absolute immunity has been given to the person who commits an offense in a state of unsoundness of mind. As this defense has a major bearing on the outcome of the case, it

⁷ Neville K. The Insanity Defense: A Comparative Analysis Senior Honors Theses. Paper 244; 2010. Available from: <http://www.commonsonline.org/cgi/viewcontent.cgi>.

becomes extremely important that courts be vigilant at the time of giving the accused the benefit of doubt. The consideration to apply the defense shall not be based on the personal whims and fancies of the judge but it should be objectively determined based on expert advice and determination. Hence the aid of psychologists and psychiatrists before passing the judge must be mandatorily sought howsoever minor case may be.

Another reason for reading psychology in the defense of insanity is the objective of both the field. The law is majorly concerned with punishing the accused on the determination of the guilt and the other personal factors of the accused has little or no bearing on the outcome of the case, whereas the objective of the psychology is to study the human behavior and determining best possible factor to enhance the standard of life via mental development. Hence, *when the psychology of the accused is read along with the defense of insanity, the judge will have a better idea of circumstances that lead to the accused committing a crime and factors which lead to the outcome.* Hence, this approach will be more justice-centric where punishment will be according to the holistic considerations rather than merely on the actus of the accused.

Even though in the last few years, the involvement of medicine and forensic with the law has helped in getting speedy trials and complete justice, but there are still some areas where this former needs to work upon. These suggestions are not based on critical analysis but based on coping up of future development. Firstly, at the academic level due to recognition must be given to this field of forensics and psychology as there are very few such centers that provide education on forensic psychology. Secondly, the Jail Manual of every state and jail must be amended to include the provision of regular psychological check-ups of the inmates. There must be regular seminars and other events imparting knowledge about mental health in all central and state prisons, the steps should be taken to make forensic psychology available to everyone. This can be done by training more and more psychologists in forensics and the insanity front. Lastly, in the Indian Evidence Act, 1872 there must be an amendment to **Section 45** and making the opinion of the medical practitioners in the matters of science to be more substantial. Additionally, it must be expressly provided under section 45 to include psychologists within the definition of experts. This is because it leaves room for the judge to discard the opinion of the doctor and give judgment in his understanding. This practice may prove fatal in fields requiring technical knowledge; hence the opinion of the expert must have substantial evidentiary value.