

## DETAILED ANALYSIS OF SECTION 84 OF INDIAN PENAL CODE, 1860

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### ABSTRACT

The criminal law has been of a dynamic nature since its inception in India. This dynamic nature has encouraged the authors to write a descriptive paper considering all the important aspects over the law of unsoundness of mind under the Indian criminal law. This paper traces the origin of section 84 of IPC which is based upon the McNaughton rule under the English law. Further this paper deals with the sub topics namely legal and medical insanity in connection with each other and also this paper tries to deal with various tests to determine insanity of an individual.

Further the authors have contributed with regard to the suggestive measures to improve the loopholes in the existing law, in the form of conclusion. Even if there is no requirement of change according to the law commission but still it is a well acknowledged fact that as we live in an ever-changing society there is always a room for improvement in the existing laws.

Using the qualitative method of research, the authors have tried their level best to deal with the holistic concept of insanity in the light of judicial pronouncements and the 42<sup>nd</sup> report of the law commission of India. The authors are eventually hopeful that this paper benefits the readers to the maximum limit possible.

## INTRODUCTION

This paper deals descriptively with the concept unsoundness of mind (as in Indian law). Actually, as we all are aware, the terms ‘unsoundness of mind’ and ‘insanity’ are same and can be used interchangeably. It is just that the reference is done in different countries by different terms. This paper basically focuses on the detailed concept of the liability of a person who is of unsound mind in criminal matters.

It is a well-established principle of criminal law that there are basically 2 elements which are necessary to be established in order to prove him guilty for an offence which are namely Mens Rea (guilty mind) and Actus Reus (wrong or unlawful Action). The legal maxim Actus Non-Facet Reum Nisi Mens sit Rea which means that ‘The act and the intent must both conquer together in order to constitute a crime.’

According to this legal maxim no person will be punished for the malicious intent or wrongful act alone, rather both the elements must be present at the same time to prove a person guilty.

A person will only be punished for his or her act under criminal law when he has the complete knowledge about the nature of the act and also, he has done that act with his free will and consent.

Now, when it comes to Section 84 of the Indian penal code, then it should be acknowledged that section 84 falls under chapter IV which is related to ‘general exceptions’ under the code.

The chapter related to general exceptions includes within its ambit the provisions which can be used as a valid defence to get exemptions from the establishment of the criminal liability and section 84 which provides immunity to a person of ‘unsound’ mind is discussed in this paper in order to provide a concise, yet detailed understanding of the provision related to unsoundness of mind as provider under the Indian Penal Code 1860.

## INDIAN CONCEPT OF UNSOUNDNESS OF MIND

Section 84 of the Indian Penal Code, 1860 reads:

“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.”<sup>i</sup>

In order to take the defence under this section it is not merely enough to simply take the plea of insanity, rather, based on the facts and circumstances of the case, the thing which is to be proved in front of the court of law is that the person who committed the offence, was suffering from unsoundness of mind at the time of the commission of the offence and was relatively not in a position to judge the nature and consequences of the act at that particular juncture of time.

is the fact that the terms unsoundness of mind and insanity are the terms used for referring to the same concept. The only difference between the two terms is that the phrase ‘Unsoundness of mind’ is used in Indian law while the term insanity is used in the English law.

A major point to be noted here is that the drafters of the Indian Penal Code 1860 chose the expression ‘Insanity of Mind’ in Place of the expression ‘insanity’ with an objective to widen the horizons of the provision as the term insanity of mind includes a lot wider perspective.

The legal maxim “Non compos mentis” is often used to address the person with a unsound state of mind. The maxim means ‘not of sound mind.’ Further, the unsoundness of mind can be of two types in terms of nature:

- a. Permanent unsoundness of mind (In the situation of permanent unsoundness of mind, a person is deprived of his thinking abilities and mental faculty permanently due to any psychological or mental problem)
- b. Temporary unsoundness of mind (in the situation of temporary unsoundness of mind, a person is temporarily in the state of loss of his motor skills and thinking capacity. This type of unsoundness of mind can be due to a number of reasons ranging from intoxication, intake of drugs etc.)

➤ Essentials of section 84 of IPC:

1. The act should be done by an individual of unsound mind
2. Such individual should be impotent of judging and knowing:
  - The exact nature of the act done by him, or
  - The act committed by him is inconsistent with the law of the land, or
  - The act done by him was wrong
3. The impotency thus caused to the individual should be due to the exclusive reason of unsoundness of Mind.
4. The impotency mentioned above in Paras2 must exist at the time of doing the act constituting an offence.

In order to successfully plead the defence of 'unsoundness of mind', the essentials are required to be proved before the court of law beyond reasonable doubt.

## **MCNAUGHTON RULE AND THE ORIGIN OF SECTION 84 OF THE INDIAN PENAL CODE, 1860**

An important point which is very significant to be known is that the provision of 'unsoundness of mind' under Indian law has its origin from the McNaughton Rule under the English Law as established in a decision of the House of Lords in the case of *R v Daniel McNaughton* by the judiciary of England.<sup>ii</sup> It should also be taken a note of that the McNaughton rule is also one of the important tests to determine insanity along with few other tests.

In that case, in regards to the protection of insanity, the House of Lords devised the controversial McNaughton Rules based on the five questions which had been submitted to them. The connection came to be made in a case where McNaughton was charged with the murder by shooting Edward Drummond, who was England's then-Prime Minister Sir Robert Peel's Pvt Secretary. The accused McNaughton provided medical evidence to show he was not in a sound state of mind at the time of committing the act. He said he had an irrational delusion that the Prime Minister was the only cause behind all of his problems. He had also said he mistook Drummond for the prime minister as a result of the mad delusion and attempted his assassination by shooting him. The plea of insanity was admitted, and on the ground of insanity McNaughton was found not guilty.

The aforementioned decision was the focus of controversy in the House of Lords. It was then decided to take the opinions of all the judges on the rules concerning such cases. Five questions were then presented to the Lords of Justice. A review of the responses to questions 2 and 3 and the conditions of section 84 of the IPC, 1860 would clearly indicate that the section was modelled on that answers.<sup>iii</sup>

## **LEGAL INSANITY *vis-à-vis* MEDICAL INSANITY**

There needs to be a difference between legal insanity and medical insanity. A Court is only concerned with legal insanity, and not medical insanity. What is given by Section 84, IPC, 1860 is the defence of legal insanity as distinct from medical insanity. An individual becomes lawfully insane when he or she is unable to recognize the meaning of the act or that what he did was wrong, or against the law<sup>iv</sup>. Individual incapacity on the definition of insanity must be of the sort attracting the application of section 84, IPC, 1860.<sup>v</sup>

An individual who claims exoneration under section 84 of the IPC, 1860 from responsibility for an offense has to prove civil insanity and not mental insanity. The IPC, 1860 did not describe the term "unsoundness of mind" and it was primarily regarded as being similar to insanity. But in various ways the word insane has different meanings and reflects differing degrees of psychiatric illness. Any individual who has mental disorder is not ipso facto excluded from criminal liability. The very reality that the accused is conceited, strange, irascible and his brain is not quite perfect, or that the physical and emotional disorders he has undergone have left his mind poor and have impaired his feelings or indulgences in other peculiar acts, or had fits of insanity at short intervals, or that he has been exposed to epileptic changes and erratic behaviour, or that the action is whimsical to attract the application of section 84 of the IPC, 1860.<sup>vi</sup>

No doubt the medical profession will view the accused as a mentally ill person. However, in order to assert the privilege of defending insanity in court, the defendant would have to show that at the time the crime was committed his cognitive skills were so affected that he did not realize the essence of the act.<sup>vii</sup> Section 84 of IPC, 1860 contemplates only civil insanity.<sup>viii</sup>



## INDIAN CASE LAWS

### ***Ratan Lal v. State of Madhya Pradesh:***

The accused was in the habit of setting fire to his own clothes and house. It was held that this could hardly be called rational and was more likely verging on insanity. The Supreme Court accepted the plea of insanity raised by the accused and absolved him of criminal liability.<sup>ix</sup>

### ***Bhikari v. State of Uttar Pradesh***

The accused was working in the field. A few months before the occurrence, he had threatened to kill all the family members of the deceased. Further, on the date of the event, though there were other people around, he carefully chose only the children of the deceased's family. All this indicated that his actions were deliberate, pre meditated and not acts of an insane man.<sup>x</sup>

### ***SK Nair v. State of Punjab:***

The accused tried to assault a person with a dagger. The deceased caught hold of him and said that the matter will be reported to the superiors. The accused retorted to the deceased with the words 'only if you were still alive' and inflicted a blow with a *khukri* on the deceased and killed him. The defence of the accused was that he suffered from paranoia. A paranoid is not only a person of unsound mind, but also suffers from special and peculiar ideas and visions, which are different from other persons of unsound mind. A paranoid within moments may behave wildly and then be normal again. The threat meted out by the accused to the deceased showed that at the time of the commission of the crime, the accused did not lose his sense of understanding. He was, therefore, convicted under s 302 and sentenced to life imprisonment.<sup>xi</sup>

### ***State of Orissa v. Kalia Alias Debabrata Maharana:***

The accused murdered three people and wounded others, although no prior enmity or motive had been identified. The witnesses said he fled from one location to another, and on his way, he indiscriminately attacked five people without any excuse or rhyme. The proof suggests that the appellant had long developed insanity and had the right to the protection of this section.<sup>xii</sup>

## 42<sup>ND</sup> REPORT OF LAW COMMISSION OF INDIA

In view of the critique of the McNaughton Laws in various countries like Britain, the Law Commission of India revisited section 84 of the IPC, 1860, but came to the conclusion that the statute of insanity according to section 84 of the IPC, 1860, does not require any reform in Indian circumstances.<sup>xiii</sup>

Section 84 prescribes the substantive standard of liability in cases of suspected mental insanity. The Penal Code does not have a definition of "unsoundness of mind." However, this term was primarily viewed as comparable to insanity by the Courts. But no clear meaning of the word "insanity" itself. It is a term used to describe mental disorder in varying degrees. And a mentally ill person is not ipso facto excluded from criminal liability. A distinction is to be made between legal insanity and medical insanity. A Court is concerned with legal insanity, and not with medical insanity.<sup>xiv</sup> In this case, the accused was being treated immediately before the incident. Proof to show that he stayed mentally fit following treatment for around four years. He was also sent for treatment after the trial and his behaviour was normal afterwards. On these grounds the accused was found not entitled to immunity under section 84. The Court also added that when previous evidence of the accused's insanity comes to light during the trial, the accused must be medically tested and brought before the Court. Any mistake in this regard in the criminal case will establish infirmity and the accused would be entitled to the benefit of doubt.

- **‘At the time of doing it’**- It must be clearly seen that at the time the act was committed, the accused party laboured under such a deficiency of thought, from a mental illness, as not understanding the essence and significance of the act he was doing or, whether he knew it, not realizing he was doing what was wrong.<sup>xv</sup> He is liable if he did know it.<sup>xvi</sup>

In *Sheralli Wali Mohammed v State of Maharashtra*,<sup>xvii</sup> it was held that:

*... it must be proved clearly that, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The question to be asked is, is there evidence to show that, at the time of the commission of the offence, he was labouring under any such incapacity? On this question, the state of his mind before and after the*

*commission of the offence is relevant.*

The critical moment to decide whether or not to offer the advantage of this section is the actual period that the offence takes place. If, at that moment, a man is found to operate under such a defect of conscience as not to realize the essence of the act he was doing or that, even though he knew it, he did not know whether it was either incorrect or contrary to the law, then this section must be used. The specific circumstances, such as the actions of the accused before the execution of the offence and his conduct after the commission of the offence, should be taken into account in coming to that conclusion.<sup>xviii</sup>

The accused forced a four-year - old boy into fire leading to his death but there was nothing to prove that there was any deliberation or preparedness to commit the murder. His deed was followed by manifestations of unnatural brutality and freely performed. He neither covered up, nor backed away, nor attempted to escape observation that showed that he was not aware of his guilt. It was held that the accused had the right to benefit from section 84 and that his conviction was set aside under section 302<sup>xix</sup>. The victim, a young boy born by his parents, was moving abroad for further studies. When going abroad his parents did not want to see him. Much later the death of his parents was revealed to him. On his return to India, he unexpectedly committed violent offences. He proceeded and completed his engineering course again during the pendency of the session's case and started a printing press and later operated a garage and allied industries employing nearly 30 men. Before and after the crimes, his conduct was that of a reasonable man. It was held that at the time of the offence he was insane and sought section 84's defence.<sup>xx</sup> Where the accused was examined by two doctors who declared him to be schizophrenic and where his abnormal conduct was also evident from the reported evidence, the Supreme Court held that the acquittal of the accused by the High Court was acceptable.<sup>xxi</sup>

In other words , in order to gain the protection of section 84 IPC, 1860, it must be shown that, at the time of the commission of the act, the accused was unable to either recognize the meaning of the act or whether the act was either morally incorrect or contrary to the law, and it is most important to assess his state of mind before and after the execution of the offence. Admitting the defence of insanity on claims deriving solely from the character of the crime would be dangerous.<sup>xxii</sup> Therefore the fact that the accused committed the murder over a trifling matter and made his crime a clean breast does not go to prove that he was insane.<sup>xxiii</sup>



- Apart from the M'Naughton Rule there are basically 4 more established tests under the English law which have also been pleaded before the Indian courts to determine insanity of an individual in Indian context as well.

## **WILD BEAST TEST**

One of the important tests to determine insanity under common law is the WILD BEAST TEST. This test was laid down or propounded in the landmark case of R v. Arnold<sup>xxiv</sup> where the defendant was accused of an attempt over lord Onslow. An important point to be taken into consideration here is that all the proofs and evidences were against the accused in the mentioned case but was still acquitted and Tracy J. laid down the principle as follows “ *if someone is under the visitation of God and could not distinguish between good and evil, and he did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence, against any law whatsoever.* ”<sup>xxv</sup>

The same test was ratified in Lord FERRER'S CASE<sup>xxvi</sup>, this case is related to the acquittal of an accused named Earl Ferrers who was tried in front of the House of Lords for murdering his steward. He pleaded the defence of Insanity successfully.

## **INSANE DELUSION TEST**

The *Hadfield case*<sup>xxvii</sup> played a significant role in laying down the foundation of one of the most significant tests to determine and examine the insanity of an individual. In this type of situation, the person loses his mental faculty either permanently or temporarily and the person suffers from delusion, so high that they over shadow the state of faculties of the victims thus involved.

## **IRRESISTIBLE IMPULSE**

A criminal's mere abnormality of mind or partial illusion, overwhelming compulsion or compulsive conduct provides no protection under section 84 as the law found in that section is still squarely focused on the obsolete 19th-century M'Naughton Laws. In fact, the rules of

section 84 are the same as those set out in the Judges' answers to the questions put to them by the House of Lords, in the case of *McNaughton*. Behaviour, history, predecessor, and subsequent to the incident can be important in determining the accused's mental state at the time of the case, but not that remote in time.<sup>xxviii</sup>

Similarly, in *Kalicharan*<sup>xxix</sup>, it has been pointed out that mere absence of motive for a crime, howsoever atrocious it may be, in the plea and proof of legal Insanity being the case within the ambit of this section. The main fact that the murder is committed by the accused on a sudden impulse and there is no discoverable motive for the act can form no bases of accepting the plea of insanity<sup>xxx</sup>

## **DURHAM RULE**

The case of *Durham v. United States*<sup>xxxi</sup> held all the other prevalent tests to determine insanity as obsolete and suggested that all the other tests should be suspended and thus the circuit courts propounded a new rule known as the Durham rule to determine insanity. This rule can be one of the most apt tests regarding the test of insanity as this rule takes into account the causal connection between the act committed and the mental state of mind of the accused and this approach is a practical approach and it out rightly rejects the involvement of any un natural element as a factor of causing insanity.

## **CONCLUSION**

It can be clearly drawn from the article that the *McNaughton Rule* form the base of the law related to the criminal liability of a person of unsound mind in India. This article gives a contrasting account of the law relating to insanity (as referred in UK) and the law of unsoundness of mind (as referred under Indian law). Best possible have been put in to make an in-depth analysis along with various case laws and authorities to support the claim. It can further be said that it is the duty of the law commission of India to take active action with regard to reforming the provision. The law of unsoundness of mind or in other words, Section 84 of

Indian Penal code needs or requires to be re visited in order to fix the loop holes in the law as per the changing time and needs of the society in order to prevent its misuse.

## ENDNOTES

- <sup>i</sup> Bare Act, Indian Penal Code (45 of 1860).
- <sup>ii</sup> *R v Daniel McNaughten*, 1843 RR 59: 8 ER 718 (HL).
- <sup>iii</sup> *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] :AIR 2011 SC 265 [LNIND 2010 SC 1046] :2011 Cr LJ 292 .
- <sup>iv</sup> *Kuttappan v State of Kerala*, 1986 Cr LJ 271 (Ker).
- <sup>v</sup> *Siddhapal Kamala Yadav*, AIR 2009 SC 97 [LNIND 2008 SC 1992] :(2009) 1 SCC 124 [LNIND 2008 SC 1992].
- <sup>vi</sup> *Surendra Mishra v State of Jharkhand*, AIR 2011 SC 67 :(2011) 11 SCC 495 [LNIND 2011 SC 27] : (2011) 3 SCC(Cr.) 232.
- <sup>vii</sup> *Sudhakaran v State of Kerala*, (2010) 10 SCC 582 [LNIND 2010 SC 1046] :AIR 2011 SC 265 [LNIND 2010 SC 1046] :2011 Cr LJ 292 .
- <sup>viii</sup> *State of Maharashtra v Govind Mhatarba Shinde*, 2010 Cr LJ 3586 (Bom).
- <sup>ix</sup> AIR 1971 SC 778.
- <sup>x</sup> AIR 1966 SC 1.
- <sup>xi</sup> AIR 1977 SC 1537.
- <sup>xii</sup> 2008 Cr LJ 271.
- <sup>xiii</sup> Law Commission of India, 'Fourty Second Report: The Indian Penal Code' Government of India 1971.
- <sup>xiv</sup> *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] : (2007) 3 SCC (Cr) 509 : (2007) 4 KLT 63 [LNIND 1985 KER 300].
- <sup>xv</sup> Third question and answer in *M'Naughton's case*, (1843) 4 St Tr (NS) 847, 10 Cl & F 200; *Tola Ram*, (1927) 8 Lah 684. *Jaganath Das v State*, 1991 Cr LJ (NOC) 32 Cal.
- <sup>xvi</sup> *Harka v State*, (1906) 26 AWN 193. *Hari Singh Gond v State of MP*, (2008) 16 SCC 109 [LNIND 2008 SC 1728] :AIR 2009 SC 31 [LNIND 2008 SC 1728] : 2009 Cr LJ 346 : (2008) 3 KLT 969 [LNIND 2008 SC 1728] , Mere abnormality of mind, partial delusion, irresistible impulse or compulsive psychopathic behaviour affords no protection under section 84. It is only unsoundness of mind which naturally impairs the cognitive faculties of mind which can justify exemption under section 84. *Bapu v State of Rajasthan*, (2007) 8 SCC 66 [LNIND 2007 SC 774] , time factor, time of the offence is crucial.
- <sup>xvii</sup> *SheralliWali Mohammed v State of Maharashtra*, (1973) 4 SCC 79 :1972 Cr LJ 1523 .
- <sup>xviii</sup> *GovindaswamiPadayachi*, (1952) Mad 479; *Ahmadullah*, (1961) 3 SCR 583 [LNIND 1961 SC 29] :(1961) 2 Cr LJ 43 : AIR 1961 SC 998 [LNIND 1961 SC 29] ; *Dahyabhai*, AIR 1964 SC 1563 [LNIND 1964 SC 88] :1964 (2) Cr LJ 472 ; followed in *Narain v State*, 1991 Cr LJ 1610 All, the accused murdering the Imam of a masjid, acquitted because of proven insanity. *UT Chandigarh*, 1989 Cr LJ 214 P&H, no insanity at the time of attack.
- <sup>xix</sup> *AjayaMahakud v State of Orissa*, 1993 Cr LJ 1201 (Ori).
- <sup>xx</sup> *S Sunil Sandeep v State of Karnataka*, 1993 Cr LJ 2554 (Kant).
- <sup>xxi</sup> *State of Punjab v Mohinder Singh*, (1983) 2 SCC 274 : 1983 SCC (Cr) 402 : 1983 Cr LR (SC) 187 . In a similar acquittal, the HP High Court ordered that the accused be confined to mental hospital so that he would pose no danger to public. *Krishan Dutt v State of HP*, 1992 Cr LJ 1065 HP.
- <sup>xxii</sup> *SW Mohammed*, 1972 Cr LJ 1523 :AIR 1972 SC 2443 .
- <sup>xxiii</sup> *OyamiAyatu*, 1974 Cr LJ 305 :AIR 1974 SC 216 [LNIND 1973 SC 242] . See also *Gunadhar Mondal*, 1979 Cr LJ NOC 178 (Cal), *Kesheorao*1979 Cr LJ 403 (Bom). *Basanti v State*, 1989 Cr LJ 415 (Ori), woman jumped into well with her children, rescued, voluntarily explaining her conduct, no insanity. *ParapuzhaThamban v State of Kerala*, 1989 Cr LJ 1372 (Ker); *Munilal Gupta v State*, 1988 Cr LJ 627 (Del); *Meh Ram v State*, 1994 Cr LJ 1897 (Raj).

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xxiv (1724) 16 St. Tr. 695.

xxv *Ibid.*

xxvi (1760) 19 St. Tr. 885.

xxvii (1800) 27 St. Tr.128.

xxviii *Bapu v. State of Rajasthan* (2007) 8 SCC 66.

xxix A.I.R 1947 Nag 226.

xxx *Ganesh v. Shravan*, (1969) 71 Bom. L.R. 643.

xxxi 214 F. 2d. 862.

