PLEA OF INSANITY IN CAPITAL PUNISHMENT CASES: AN INDIAN PERSPECTIVE

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ABSTRACT

Insanity is one of the most controversial defences in criminal jurisprudence. It has been a valid defence since ancient times. There have been different applications of this defence in various legal systems. Every case in a court of law is like a new one. There is no proper hard and fast rule as to when the court takes this defence as a valid one. In the Indian system, this defence has been regarded as a loophole due to its infirmities. Some scholars advocate that insanity should be accepted as a defense only on the lines of other defences. Like when there is lack of mens rea or self defense or duress. The only catch is defense of insanity is always used as a mitigating factor. It is never assessed on the basis of above factors. In this backdrop, it is very difficult for the courts to be the decision maker. Especially in the capital punishment cases, it is very difficult to decide on the plea of insanity. Capital punishment cases in themselves pose a controversial stand in the Indian judiciary. In such scenario where would the plea of insanity stand. The objective of this study is to find out whether there is a need for reforming the existing law regarding insanity. The main point of argument is would there be a need to shift it from being a loophole to a double-edged sword. The researcher tries to analyse the existing stand of the courts by looking through some case laws in the past two decades where the plea of insanity was allowed and consider the factors for the respective decisions of the court.

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INTRODUCTION

It is essential for the state to deter criminal behaviour and it does so through punishment. It is very important that the right amount of punishment is meted out so as to have a deterrent effect. There are many essential elements to prove that an accused is criminally liable and they might change from a case-to-case basis. Two most important facets that have to be proven by the prosecution beyond a reasonable doubt in every case are: (i) the accused acted out of his/her own free will, with malicious or guilty intent to cause the harm/injury, i.e, mens rea and (ii) the actual act leading to a criminal event, i.e, actus reus. Guilty mind or mens rea is one of the reasons behind crime. There should be a mind at fault before a crime is committed. As mens rea forms one of the important elements it is only natural that insanity is considered as a defence. One of the main ingredients of a valid mens rea is that it should be voluntary. As people who are of unsound mind are not in control of their mind, they have no control over the acts they perform. There are two maxims which will help us understand the stand of insanity in Indian law. One of them is "*furiosis nulla voluntas est*" and the other one is "*furiosis absentis loco est*". The first implies that a mad man has no will and the later one translates a mad man is like one who is absent.

One of the functions of criminal law is assessing individual culpability and prescribe punishment accordingly. Criminal law helps us identify the offenders and gives them punishment on the basis of their role in the whole crime. In its modern guises, the insanity defence is overbroad. Many facts and circumstances are taken into consideration leaving the focal points like mental illness or disorder and excusable conditions under criminal law. Instead, the judicial system has a subjective approach like all other culpabilities accepted today and as a result this defence is available to a person who is not mentally ill. Some of the most prominent conditions to be taken into account while deciding culpability are mistake of fact, lack of mens rea and act committed under coercion or duress. These three factors form the most important part of general defences in criminal law. For example, mistake of fact is a valid excuse in criminal law as there is no intention when the fact or circumstance is not known to the actor. Mens rea is a subjective factor decided upon case-to-case basis, as it is difficult to establish the knowledge of the offender.

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Punishment of the wrongdoer for the offence he has committed is what makes criminal law effective and deterrent. The criminal justice system of a country chooses it sentencing regime based on the objects to achieve. So far as Indian criminal law is concerned the underlying principles for prescribing punishment is deterrent and retributive. The primary goal is to instill fear in the minds of like-minded offenders. Death penalty is one such punishment to instill fear and have a deterrent effect. Capital punishment is the extreme form of penalty. When incorporating this extreme penalty of law in the code the draftsman said that it ought to be used only very sparingly. Therefore, death penalty is given only in the "rarest of the rare cases". Some of the situations in which death penalty can be imposed are murder (S.302 and 303), abetment of suicide (S.305), attempt murder by life convicts (S.307(2)) and dacoity with murder (S.396). The court takes many factors into consideration before death penalty is given. The gravity of the crime, the effect on the society and many more factors plays a crucial role in the court's judgement. Plea of insanity in capital punishment cases is difficult to assess. The existing law regarding the defence of insanity has many loopholes which make it difficult for the court to decide the culpability of a person.

M'NAUGHTEN'S CASE[i]

This is a landmark case on the topic of insanity as a defence under criminal law. This was the first case to identify that existence of a lacuna in the criminal justice system involving matters of mental instability and crimes due to unsound mind.

FACTS: In this case, the accused, Daniel M'Naughten was suffering from acute paranoia and was under the belief that the prime minister was trying to harm him. Out of such paranoia, he bought a gun and tried to shoot the prime minister. Honestly believing a man to be the prime minister he actually shot the personal guard. After a few days of medical treatment, the guard passed away and M'Naughten was charged for murder. The accused claimed the defence of insanity and hence not guilty for the death of the guard.

JUDGEMENT: During the course of the trial proceedings, based on all the arguments advanced by the defendants and the evidence divulged in support of the same, including medical reports suggesting the accused was suffering from morbid delusions which often lead the individuals

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to undertake activities beyond their control. The cognitive capacity of those suffering from such a disorder renders them unable to differentiate between reality and wrong. Therefore, the court found him not guilty for the murder and acquitted him.

Before this case there was no written law on the matter or precedents to adjudicate and decide cases of insanity. Therefore, the House of Lords, a group of 15 judges sat together, discussed and brought about certain rules and principles to decide the criminal liability in cases where the accused claimed insanity, i.e, the M'Naughten rules which are given as follows:

1. It is presumed that every man is sane, prudent, and possess a degree of rational understanding until the contrary is established by the defendants in the court of law.
2. A man with substantial medical knowledge and awareness on a particular disease is not permitted to provide his statement before the court as the burden is upon the jury to decide the case and they cannot be swayed due to their lack of understanding.
3. A person will be found unfit to avail the defense of insanity if proved that he was cognizant of the actions he was performing and the consequences thereof or was even partly aware of his activities.
4. Lastly, and most importantly, it must be proved to the court by the defense that at the time of committing the crime, the accused in the case was of unsound mind or incapable of comprehending the nature of his act.

THE DEFENSE OF INSANITY IN INDIA

The Indian Penal Code is a law made in colonial period. So, the Indian laws on insanity have been adopted from the principles and rules provided in M'Naghten's case. The questions relating to insanity are two-fold, one at the time of inquiry and the other at the time of committing the act. Section 84 under the Indian Penal Code is concerned with the later one. It reads as follows:

"*act of a person of an unsound mind - Nothing is an offence committed by someone who is currently unable to know the nature of the act or does what is wrong or contrary to legislation due to a lack of a sound mind.*"[ii]

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In order for this defence to be established and validated, certain elements need to be proved before the court:

1. The accused to be incapable to comprehend the nature of the crime committed due to his mental illness.
2. The accused to be incapable of differentiating between what is right and wrong.
3. The act of crime must be done by an insane person culminating in injury or harm to another.
4. At the time of committing the crime the accused must be suffering from insanity/ the accused must commit the act as a result of his mental condition or unsound mind.

The mere proof of an existing psychological illness or any other neurotic condition is insufficient to avail the defence of insanity. Indian criminal law separates medical insanity and legal insanity. Although Section 84 does not define “insanity”, it prescribes certain rules to establish legal insanity.[iii] This difference has been established in many cases. The existing law only identifies legal insanity as a valid defence over medical insanity[iv]. It is imperative to prove that the accused lack control over his “cognitive faculties” resulting in their impairment and lack of the ability to fathom the consequences and nature of the act along with the state of mind at the point of commission. The court also looks into other evidence to corroborate the claim like non-concealment of weapons used, lack of an accomplice, impervious to multiple crimes and brutal nature of the crime, etc.

In the case *Dahyabhai Chhaganbhai Thakker v. State of Gujarat*[v], the Supreme Court decided that the judiciary and the laws are only bothered about whether or not the accused was insane at the time of performing the crime rather than the insane conduct subsequent or prior to the commission of the crime. It further added that in case the accused is unable to adequately prove to the court that he was insane at the time of the crime, the circumstances and evidence advanced before the court if it can bring in reasonable doubt in the case, especially the aspect of mens rea then that would be noted as a relevant factor in deciding the case.

Ultimately, despite any opinions put forth by the psychiatrists or medical experts during the proceedings, the decision on whether or not to accept and consider that is up to the discretion of the court and the presiding judges. They have the power to either reject the plea of insanity or accept it depending on the evidence and reasoning provided by the defendants about the

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situation and crime during the proceedings. In law, legal insanity is given more prominence and hold a higher value than that of medical and biological proof of insanity. Law is not concerned with insanity as such but the act caused due to insanity. A mere unsoundness of mind is not sufficient to invoke the defence.[vi] Law is concerned whether insanity or unsoundness is the reason behind the act committed. The accused should be able to prove three things to constitute this defence and show that there is loss of reason: 1. Unable to understand the nature of the act, 2. Inability to differentiate right from wrong and 3. Incapable to know that the act is contrary to law.

RESEARCH FINDINGS

Those were the rules and the law of insanity prevailing in the country. To analyse more on the subject, research has been done to find out the cases where defence of insanity has been pleaded over the years in capital punishment cases. The graph below depicts the Supreme Court cases over the past. The researcher analysed notable cases in the past 20 years where defence of insanity has been allowed and what are the factors considered to decide the pleas.

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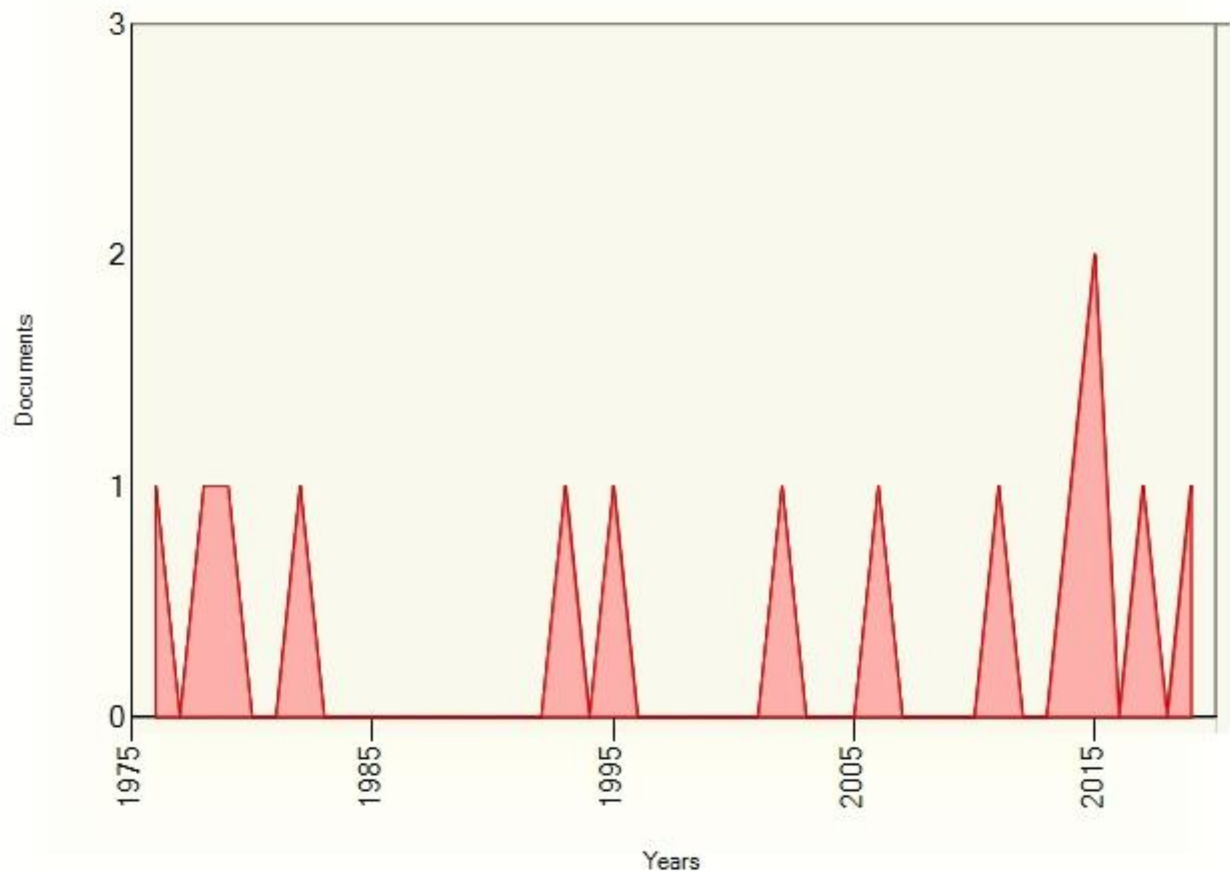

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1. ***Accused X v. State of Maharashtra*** *(2019):*

FACTS: In the case of *Accused 'X' v. State of Maharashtra*[viii], the accused "X" was found guilty and convicted by the court for the vicious rape as well as cruel murder of 2 girls of tender age. It was decided by the trial court that a case of such nature and facts fell within the ambit of "rarest of rare" and deserved to be sentenced to death. This decision was affirmed and upheld by the High Court as well as the apex court. Following such a decision, the defendants filed for a revision application. They pleaded the sentence be commutated to lesser sentence owing to the fact that the accused after awaiting the death sentence for 17 years, worrying and in anxiety developed a mental disorder. This illness warrants for a plea of insanity and a reduced sentence.

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REASONING: The Supreme Court of India quoted Article 20(1) of the constitution which gives paramount importance to the element of "knowledge" in order to validate a crime. Further, the purpose of the death sentence must be communicated as well as appreciated by the accused. In case the accused is unable to comprehend the reason for such punishment and realize the nature of his crime, it defeats the entire *raison d'être* of capital punishment. The primary purpose of imposing punishment for crime is to instill a sense of fear and deter future crime. When an individual is pushed into capital punishment when incapable of comprehending its reason and purpose, this object of deterrence loses its value and power and might as well be put within the same bracket of murder.

The court enunciated that the mental instability that germinates subsequent to a conviction for a crime as a result of prison living conditions, the fear and anticipation of a death sentence is a relevant factor which has to be accounted for as well to determine the criminal liability. The court cited the case of *Bachan Singh v. the State of Punjab*[ix] which said that in the situation when a mental illness germinates at any point prior to the execution of the sentence awarded, culminating in the accused being incapable of appreciating the nature and purpose of the penalty/punishment, at such a point the principle of "rarest of the rare" ceases to apply. Thus, the death sentence can no longer be carried out. The apex court asserted that in order to uphold justice, the courts have to strive to strike a balance between the principle of rule of law and the power of judicial discretion. The court acknowledged the plausibility of detrimental and unfortunate circumstances arising from exposure to violence, inadequate facilities, harassment, etc in prison.

2. ***Rajesh Kumar v. NCT Delhi*** (2011):

In this case, of *Rajesh Kumar v NCT Delhi*[x] it was informed that a man had entered a house asking for water and food. While the woman went inside to get him food and water, the man dealt severe blows to one of her kids. The woman rushed out, took her child and left him in her neighbour's house. By the time she got back to her house the man locked the door with the other young boy inside. Another call was later made to the police claiming that a man had murdered the boy locked in with the accused. After the police arrived at the scene, upon looking through the window, the police saw the dead boy, with his throat slit open. The other boy was suffering for severe injury and later passed away. The police then arrested the accused, Rajesh Kumar and charged under section 302 for murder. The trial court as well as the High court

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found that these cases indeed fell within the ambit of rarest of the rare cases and awarded the death sentence to the accused. The defendants argued that certain mitigating factors must be considered as well prior to passing a death sentence, here the accused was a young man who could be reformed in time, he had two children and family to provide for and lastly, was a first-time offender and may not pose a threat to society. This was countered by the prosecution that such murder of two children is a vicious crime especially taking into account the lack of remorse for the same. next, there is no proof of insanity advanced, it has instead been provided in the medical reports that the accused does not suffer from any mental illness. The court in this case, after considering all the evidence and arguments put forth by the prosecution and the defence, they agreed that this was ruthless murder of two young boys in a barbaric nature for absolutely no apparent reason. However, looking into the mitigating circumstances as suggested by the defendants, this behaviour seems to be one driven by unknown factors and wasn't a calculated murder as the accused had not entered armed with the murder weapon. Next, he is a young man with a family to provide for and there is no evidence that has been adduced which suggests that the accused is beyond the scope of rehabilitation. Lastly, it's possible that this is a one-time offence and may not be a threat to society. Considering all these factors, the court found it in the best interest of justice to commutate the sentence to life imprisonment by stating that the death penalty would not be the right decision for such a case. It further criticized the trial court and high court for not striking an appropriate balance between aggravating and mitigating circumstances.

3.***Bablu v. State of Rajasthan*** (2006):

In the case of *Bablu alias Mubarik Hussain vs. State of Rajasthan*[xi], where a man named Bablu who repeatedly abused his wife and kids, later killed his wife, Anisha and his son Babu, daughters, Gulfsha, Nisha, Anta, and Munni by strangulating them consecutively. This was reported by his brother Alladeen. Alladeen also claimed that Bablu was well known for crazy and devious activities. Upon investigation, it was found that the lifeless bodies of the dead, their thumbs were bound by a thin thread. Bablu was charged under section 302 of 1PC for murder. The trial court, based on the evidence divulged to then by the prosecution, such as his open declaration and acceptance of his crime, the discovery of the wife's jewellery on him, his presence in the house at the time of death and the history of abuse, found his guilty for murder and duly convicted him. However, the defendant pleaded that he was not guilty as it was also brought to their notice that the accused was not in his senses, lacking awareness due to

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intoxication. The issue which was brought before the court was whether the defence of intoxication and the contention that he was unaware of the actions due to such intoxication is valid and whether the trial court's decision of finding the accused guilty and awarding death sentence was right. The court here refused to admit the defence of intoxication considering the nature of crime and its barbarity. Next, they argued that, based on the material and relevant facts put forth during the proceedings, that this man has a history of devious acts, the intoxication was a voluntary act which only fuelled his existing desires and malicious intent to hurt his family. Therefore, the decision awarded by the trial court was correct in classifying this case as one under the tag of 'rarest of the rare' thereby calling for the death penalty.

4. ***Dharmendra Sinha v. State of Gujarat*** (2002):

In the case of *Dharmendra Sinha v. the State of Gujarat*[xii], a man under the assumption and belief that his two children were illegitimate as a result of his wife's external affair, contending that she was unchaste and killed the three of them. Here, the court agreed to commutate the punishment awarded previously because the man was paranoid, under immense mental agony from the presumption that his wife was unfaithful and that his children were not truly his own. Taking these facts into account, they held that the reduction in the sentence was a justified decision. Further, the court held that such an offence was not one that could be repeated by the accused as it was not "for the lust of power or otherwise or with a view to grab any property nor in pursuance of any organized criminal or anti-social activity" and hence would not pose a threat to the safety, peace and harmony of the society.

Another notable cases before all these cases which set some rules to decide the aggravating and mitigating factors is the Ravji case.

5. Ravji v. State of Rajasthan:

In *the case of Ravji v. State of Rajasthan*[xiii]*, a man was charged under section 302 of IPC for the offence of five brutal murders as well as attempting to murder two other women of which one was his own mother. The accused in case murdered his three young children, his wife who was pregnant at the time and his neighbour for no apparent reason with the help of an axe. The trial court noting the brutal nature of multiple murders by an axe with absolutely no remorse found him guilty under section 302 and sentenced the accused to death. The defendants counsel pleaded insanity as there was no mens rea. Court observed that the accused was*

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conscious of his actions in his attempt to conceal himself and flee the scene after the crime. They stated that "It is the nature of and gravity of the crime but not the criminal which are germane for consideration of appropriate punishment in a criminal trial." The courts finally decided that the accused guilty for the charged crimes weighing the aggravating factors and the heinous nature of the crime with absolutely no provocation of instigating incident. Therefore, the court refused to reduce the sentence of the accused.

ANALYSIS AND CONCLUSION:

The admissibility of defence of insanity was very less during the early periods. The sentencing regime has shifted in the country from punishing the criminal to punishing the crime. This had a huge impact on the insanity defence. Especially in death penalty cases insanity is often used as a mitigating factor and to convert the capital punishment to imprisonment. But the courts have been prudent enough to consider various factors in admitting the defence, like the knowledge of the crime and consequent actions thereto. The recent cases show a shift in the trend of culpability of insane people. The regime went from punishing and instilling fear to preventing and reforming. The focal point shifted to medical insanity rather than legal insanity. Importance was given to the state of mind, which is huge factor in committing a crime. There are many factors to consider and the onus is on the judges, to decide the culpability basing upon the various factors. Although this defence looks like a loophole it is based on humanitarian grounds and the courts of the nation have the rationality to decide the admission of plea of insanity. There is no reason to shift this defence to a double-edged sword, but the courts should evaluate the evidence and factors surrounding the crime carefully. The punishment given should not only satisfy the humanitarian grounds but should have a fruitful impact on the society. The regime and methods followed should pave way to strong judicial system without any loopholes.

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ENDNOTES

[i] **(1843) 8 E.R. 718.**

[ii] Indian Penal Code, 1860.

[iii] *Hari Singh Gond v. State of Madhya Pradesh,* (2008) 16 SCC 109.
[iv] *Shrikant Anandrao Bhosale v. State of Maharashtra, (2002) 7 SCC 748.*
[v] 1964 AIR 1563.

[vi] Surendra Mishra v. State of Jharkhand, 2011) 11 SCC 495.
[vii] Manupatra.
[viii] AIR 2019 SC 3031.
[ix] AIR 1980 SC 898.
[x] (2011)13SCC706
[xi] AIR2007SC697
[xii] AIR 2002 SC 1937.
[xiii] AIR 1996 SC 787.

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