INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION

INSANITY: PROGNOSIS TO DEFENCE

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ABSTRACT

Insanity, as a defense, is primarily used in criminal prosecutions. This plea is based on the assumption that the accused could not anticipate the nature of the criminal act, due to the unsoundness of the mind. This paper focuses on insanity as a defense from a legal perspective, instead of medical insanity.

The doctrine of insanity has gone through various phases of development. Numerous researchers have refined the plea of insanity to shape it into as it stands today. In India, the principle of unsoundness of mind was inherited from the British rule, and the Indian judiciary has over the years, through plethora of judgments, defined and refined the concept so borrowed, giving it a critical place in our criminal judicial structure. However, this defense of insanity is not free from defects, giving way to a big loophole in our criminal justice system, and is in turn susceptible to misuse.

This paper commences with a brief history of the doctrine of insanity, and how the law evolved and was refined through years. It transverses the process of evolution of the law on the issue, based on various cases and judgments passed by the courts in India and other countries. This paper aims to highlight the existing vacuum in the criminal justice system, allowing the guilty to walk away, more often than not. It also discusses how the principle suffers from several technical defects; how on several occasions this plea has failed on the account of lack of evidence, and how difficult it is to determine legal insanity and even harder to defend it in court. As a conclusion, the authors have given their suggestions as to how to overcome the loopholes of this plea, with focus on initiating academic practical research, along with establishing proper mental and psychiatric centers to enhance the quality of the criminal justice system,

Keywords- Insanity defense, Section 84 IPC, Criminal Law, M'Naughten rule

I. INTRODUCTION

Martin Luther King Jr. said, "Injustice anywhere is a threat to justice everywhere"[1173] and hence chastisement of any individual who cannot eugenically differentiate right from wrong would be a grave illustration of Injustice.

On March 27, 2012, Clayton Osbon[1174], a pilot with JetBlue airways disrupted a cross country flight when he rammed out of the cockpit after having turned off the radio control setups and balling and yelling about Al Qaeda and Jesus. In an attempt to subdue his movement one of the flight attendant's ribs were pulverized. Yet, the 49-year-old pilot walked scot free and was found not guilty by the instatement of Insanity.

"The loss of acumen" is the essence of legal insanity.

The defense of insanity also referred as the mental disorder defense, is an affirmative or ratifying defense used as an extenuation or excuse in a criminal case, arguing that the offender is not liable for his or her conduct or behavior owing to an episodic or enduring psychiatric disease or disability at the time of the misconduct or impropriety. The dictionary meaning of insanity is "in a state of mind which prevents normal perception, behavior, or social interaction". Whereas, the Cambridge dictionary defines insanity as the, "condition of being mentally ill".[1175]

From a psychological standpoint insanity per se is not defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5)[1176].

II. HISTORY

The origin of the defense of Insanity can be traced back to the Code of Hammurabi of Babylonian law and Ancient Greece, cruising swiftly into the reign of Edward II wherein under English Common Law the concept of the WILD BEAST TEST developed, in which the wrongdoer was inculpable if found lacking Mental Capacity.

The first formal transcription regarding the same can be drawn from the trial dates of 1724 and the acquittal of James Hodfeild in 1800. However, the codification of the defense of

*UILS, Panjab University.

[1173]Atherton, J., Social *Christianity: A Reader*, SPCK Publishing (ed.1994).

[1174]CBS News, 2012. JetBlue pilot who disrupted flight with mid-air meltdown can go free, judge says. [online] Available at: <https://www.cbsnews.com/news/jetblue-pilot-who-disrupted-flight-with-mid-air-meltdown-can-go-free-judge-says/> [Accessed 15 August 2020].

[1175]In: Cambridge Dictionary. 2020. Insanity. [online] Available at: <https://dictionary.cambridge.org> [Accessed 15 August 2020].

[1176] Psychiatry.org. 2020. DSM-5. [online] Available at: <https://www.psychiatry.org/psychiatrists/practice/dsm> [Accessed 15 August 2020].

Insanity is owed to the preeminent and distinguished M'Naughten[1177] rule which was propounded after Daniel M'Naughten assassinated the then Prime Minister Sir Robert Peel's secretary mistaking him for the Prime Minister himself. Yet the indicted was found, "not guilty by reason of insanity" by the jury. Unappeased by the verdict, Queen Victoria requested a review of the verdict by the Lords and Judges which lead to the conceptualization of the M'Naughten rule which elucidates that a defendant must not be held liable for his actions if he was unable to ascertain that his deeds were wrong and unlawful. This rule was cradled and embraced all over the world for over 100 years.

III. CRITICISM OF M'NAUHTEN RULE

However, with all the cradling came a major chunk of criticism for the rule for its fixation upon one's cognitive abilities as against prioritizing the issue of control over one's behavior. An alteration to the M'NAUGHTEN rule was gestated in the "Policemen at the elbow" or the "irresistible urge test", which was predominated by the suggestion that some individuals might be able to distinguish right from wrong but ineffectual in stopping themselves from doing an act. The one's who were a part of the Legal and Psychiatric fraternity and considered the M'Naughten rule rather rigid were charmed by the comprehension of argument established in the case of Durham v. US[1178] of 1954 wherein the District of Columbia gave a psychological and psychiatric endorsement to the affair by stating that the defendant could not be found criminally liable, "if his unlawful act was the product of mental disease or defect"[1179].

However, the deviation from the M'Naughten rule as established in Durham case did not last long as it was considered vague and a sanctuary for those trying to evade law. In the year 1972 a panel of Judges disregarded the Durham rule in favor of the MODEL PENAL CODE TEST of the American Law Institute. This test cushioned the rigidity of the M'Naughten rule by giving a wider interpretation, which established that no person shall be held liable if the act was a manifestation of a mental disease and lacked the cognitive abilities to determine the criminality of his act. The American Legal Institute's regulation eliminated extending protection to those offenders whose acts by reason of Insanity revealed themselves only as

[1177]Huckabee, Harlow M., Mental Disability Issues in the Criminal Justice System (Charles C. Thomas Publisher Ltd., 2000).
[1178]Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).
[1179]Ibid.

products of a criminal conduct. In 1998 up to 22 states were using the American Legal Institute's regulation.

In 1981, the then U.S President Ronald Reagan was shot by Jon Hichkley Jr.[1180] and was acquitted by the Jury by reason of Insanity, this led to large scale public outcry which was reciprocated by grave alteration in the clause which according to many like Senator Storm Thundermound believed the Insanity clause to be nothing but an anchorage by criminals[1181].

The Insanity Defense Reforms Act of 1984 in many ways mirrored the M'Naughten rule of the 19th century attributed to its rigid text, which necessitated the existence of 'severe' mental defect. Under the new legislation it was now the duty of the defence to prove his mental incapacity. By the 1990's over 30 states adopted this approach. By the year 2000, at least 20 States had adopted to the 'Guilty but Mentally ill' verdict, which necessitated those found guilty by reason of insanity with institutionalization and clairvoyant health treatment.

IV. INSANITY DEFENCE IN INDIA

In India when pronouncing an act as a crime two essential principles are required; one being Mensrea and the other being actus reus. Section 84 of the Indian Penal Code of 1860 embodies the acts of a person of unsound mind and symbolizes two key maxims of criminal garnishment, the first being "Actus reus non facitreum nisi mens sit rea": which means that an act does not make a defendant guilty without a guilty mind and the second being "FuriosiNullaVoluntasEst" which implies that mentally impaired persons has no free will, denoting that no person lacking circumspect thinking shall be held criminally liable. Hence the presence of this section is vital for the armament of the mentally insane. Section 84 of the Indian Penal Code provides for the defenses accessible to an individual with an unsound mind.

The M'Naughten rule from the year 1843 became a rather celebrated and majestic precedent for the laws dealing with the clause of Insanity in Criminal Law. Section 84 of the Indian Penal Code, which attends to the clause of Insanity, is a paradigm of the M'Naughten rule as well. The Penal Code was drafted in the year 1860 and the Section has not been stirred since then.

1180Perlin, Michael, The Jurisprudence of the Insanity Defense (Carolina Academic Press, 1994).

1181Steadman, Henry J., et al., Before and After Hinckley: Evaluating Insanity Defense Reform (Guilford Press, 1993).

Section 84 of the Indian Penal Code reads as," 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.*[1182]" After dissection and scrutiny of the section two paramount suppositions can be established,

1. First being that the section can be bifurcated into two major categories as Minor Criteria, which encircles the loss of acumen, and Major Criteria which encompasses various mental illnesses.
2. Furthermore, the loss of acumen or the Minor Criteria can be ramified into [A]One being incapable of knowing the nature of the act and [B] Not knowing that the acts one is executing are wrong or contrary to law[1183]. Thus, any act done by an individual of an unsound mind, which would ordinarily be criminally liable, shall not be so if the person had a loss of acumen and rationality it is mentally ill. The Section nonetheless lays foundation to establish a distinction between mental insanity and legal insanity as mental insanity encompasses an umbrella of mental deviations. If an individual suffers from some form of mental illness he fundamentally is not sheltered after committing a crime unless he falls under the category of legal insanity. The architecture of being legally insane is in absolute consonance to the Section 84 of the Indian Penal Code.

V. INDIAN CASE LAWS

One of the oldest cases dealing in this defense is *Ashiruddinahmed v. The King*[1184]. In this case, the accused sacrificed his five-year-old son as kurbani. He did this in order to fulfill orders from the heaven, which the accused received in a dream he had one night.

The accused took the plea of insanity under Section 84 of the Indian Penal Code. The only question before the jury was whether he was prevented by his unsoundness of mind to understand whether the act was a) wrong or b) contrary to the law. To claim the benefit under Section 84 IPC, it was necessary that at least one element is present out of the three.

[1182] Indian Penal Code (45 of 1860), as amended by The Criminal Law (Amendment) Act, 2018.
[1183] 2 Gostin LO, Larry OG, A Human Condition: The law relating to mentally Abnormal Offenders. MIND; 1977.
[1184] Ashiruddinahmed v. The King 1949 CriLJ 255.

According to the facts present, the accused was well aware of the fact that the act done by him was contrary to the law and understood the nature of his act too. The element that created confusion in the mind of the jury was the third element, which was whether he knew his act was wrong. The accused was following the instructions from the heaven and was unaware whether the act was right or wrong. He was however convicted. Following this, appeal was filed where the judge pointed out this fallacy of the last element. The court held that the accused committed the alleged act but was unable to understand whether the act was wrong or right due to the unsoundness of mind, which led to his acquittal. This case suffered from a lot of loopholes. Measuring the merits of the case on such unstable grounds could lead to serious consequence. Anything can be right for any individual. The courts noticed this and dropped this point of view. In later cases like Lakshmi v. State[1185], Lakshmiwas found guilty of murdering his step brother. At trial, the appellant took the plea of insanity. There was an evidence of motive against the appellant. His conduct prior to the incident as well as at the time of the incident does not support the contention that he was insane at the time when the offence was being committed. The appellant could not present sufficient evidence to prove the fact that he suffered from episodic fits of insanity. A reference was made to the case of *Ashiruddin Ahmad v. The King,*[1186].

But the court did not endorse the views presented in this case as it was based on an erroneous rationale. This would encourage the accused to plead that he had dream, a dream enjoining him to do a criminal act, and believing that his dream was a command by a higher authority which impelled to do the criminal act, and was therefore, protected by Section 84. Such a plea would be untenable, and would not fall within the four corners of Section 84.

The court held that under Section 84 an accused cannot be protected simply because he did not know whether the act done was right or wrong. This section protects those class of people who are incapable of understanding what is right or wrong. This section does not protect the beliefs of the persons once it is determined that person was capable of distinguishing between right and wrong.

Further, the court differentiated between legal insanity and the medical insanity. For a person to come with the purview of Section 84 had to fall in the category of legal insanity.

[1185] Lakshmi v. State AIR 1959 All 534.
[1186] Ashiruddin Ahmad v. The King 1949 CriLJ 255.

In the present case there was evidence of motive and, no evidence to prove the insanity considering the conduct of the appellant before and after the offence. There is also nothing to indicate that the accused was, at any time, overtaken by any fit of insanity after the crime. Further, there is no evidence of any expert in his favor. Therefore, the appellant was held guilty. In another case, *Shrikant Anandrao Bhosalevs State of Maharashtra*[1187], the accused was able to produce sufficient evidence to claim the benefit under Section 84. In this case, the appellant had been accused with the murder of his wife. The accused pleaded not guilty owing to his insanity. But the appellant has been found guilty by the Sessions Court of the offence under Section 302 of the Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for life. In an appeal filed by the accused, he pleaded insanity while the prosecution portrayed it as extreme anger. The medical experts diagnosed the appellant. He suffered from suspicious idea persecutory delusions, loss of sleep and excitement and was diagnosed as paranoid schizophrenia. The patient had visual hallucination He was brought to hospital 25 times

The question before the courts was whether the appellant could prove the existence of circumstances bringing his case within the purview of Section 84 had to be examined from the totality of circumstances. Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception.

The unsoundness of mind before and after incident is a relevant fact. From the circumstances of the case clearly an inference could be reasonably drawn that the appellant was under a delusion at the relevant time. He was under an attack of the ailment. The anger theory on which reliance has been placed is not ruled out under schizophrenia attack. Having regard to the nature of burden on the appellant, it was held that the appellant had proved the existence of circumstances as required by Section 105 of the Evidence Act so as to get benefit of Section 84. There is a reasonable doubt that at the time of commission of the crime, the appellant was incapable of knowing the nature of the act by reason of unsoundness of mind and, therefore, he is entitled to the benefit of Section 84 IPC. Hence, the conviction and sentence of the appellant could not be sustained.

In later cases, the Supreme Court also tried to determine the scope of this section through various judgments. One of the cases, which try to establish he scope, is *Hari Singh Gondvs*

[1187]ShrikantAnandraoBhosale v. State of Maharashtra (2002) 7 SCC 748.

State of M. P[1188]. In this case, the house was burnt down with the deceased and the accused was held responsible for the death. The trial court found the evidence to be cogent and accordingly recorded conviction and imposed sentence as noted above. It did not accept the plea that Section 84 IPC had application.

In the appeal filed by the accused, insanity was pleaded. The court held that: Section 84 lays sown a test of responsibility. There is no definition of "unsoundness of mind" in the IPC. As there is no definition to this term, the courts usually equate it to the term "insanity". But the term insanity includes varying degrees of mental disorders; therefore, the courts felt the need to distinguish between the legal insanity and the medical insanity.

The court further explained that the accused would only be protected under section 84 when the accused at the time of doing the act was incapable of understanding

(a) The nature of the act, or

(b) that he is doing what is either wrong or contrary to lawon account of insanity.

The court further pointed out that when during the course of the investigation if it is revealed that the accused in fact suffered with episodic fits of insanity before then it is the duty of the investigator to subject the accused to the medical examiner and present the findings before the court. However, the evidence produced must point out insanity prior to the commission of the act and conduct of the accused during and immediately after the commission of the act

The court also explained that there are four kinds of person who to fall within the ambit of "*unsoundness of mind*"

(a) An idiot;

(b) One made non-compos by illness

(c) A lunatic or a mad man and

(d) One who is drunk

To explain this further the court held that: Section 84 only recognizes the incapacity of the accused to understand the nature of the act and presumes that when a person's mind or his abilities to deduct are dim enough that he cannot apprehend as to what he must be doing,

A mere absence of motive is not sufficient evidence to prove legal insanity and clain benefit under Section 84. The conduct of the accused prior and the event is relevant in order to determine the mental state of the accused at the time of the event. The precise state of the offender's mind is very difficult to prove. An episodic fit is not sufficient to prove the

[1188]Hari Singh Gond v. State Of M.P AIR 2009 SC 31.

unsoundness of the mind. If the person, despite his mental disease has the ability to understand and judge the nature of the act cannot plead innocence under this section. A mere cessation of the violent symptoms of the disorder is not sufficient.[1189]

VI. BURDEN OF PROOF

The Supreme Court in the case of *Dahyabhai Chhaganbhai Thakker v. State of Gujarat*[1190] explained that the burden of proof under Section 84 IPC is on the accused.

The Learned counsel for the appellant contended that the High Court, having believed the evidence of the prosecution witnesses, should have held that the accused had discharged the burden placed on him of proving that at the time he killed his wife he was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. He further contended that even if he had failed to establish that fact conclusively, the evidence adduced was such as to raise a reasonable doubt in the mind of the Judge as regards one of the ingredients of the offence, namely, criminal intention, and, therefore, the court should have acquitted him for the reason that the prosecution had not proved the case beyond reasonable doubt.

It is the general principle that the burden lies on the prosecution to prove the guilt of the accused. But, in case of Section 84, the burden shifts on the accused as it is exception mentioned under Section 105 of the Evidence Act[1191]

The court further explained the doctrine of burden of proof as:

[1189] *SherallWalli Mohammed v. State of Maharashtra* (1972 Cr.LJ 1523 (SC).

[1190] DahyabhaiChhaganbhaiThakkervs State of Gujarat (1964) 7 SCR 361.

[1191] 105. Burden of proving that case of accused comes within exceptions. —When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

(b) A, accused of murder, alleges, that by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.

(c) Section 325 of the Indian Penal Code, (45 of 1860), provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under section 325. The burden of proving the circumstances bringing the case under section 335 lies on A. COMMENTS Plea of self-defence When the prosecution has established its case, it is incumbent upon the accused, under section 105 to establish the case of his private defence by showing probability; The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of material on record; Rizan v. State of Chhattisgarh, AIR 2003 SC 976.

1. The burden of proof always lies on the prosecution. The prosecution needs to prove that the accused had the necessary mens rea to commit the offence. The prosecutions also need to present evidence to show that the accused was not insane when the crime was committed.
2. The accused need to provide with rebuttable evidence that prove that at the time of the commission of the offence he was insane, in the sense in which it is laid down by section 84 but the burden that has been placed on the accused under Section 105 is not higher than what rest upon it in a civil proceeding.
3. The accused can be discharged on the grounds where the prosecution is unable to provide with sufficient evidence against the accused that will get a conviction. On the other hand, the accused may not have been able to provide with conclusive proof of insanity but if the information provided raises a reasonable apprehension in the mind of the judge as regards to one of the ingredients of the insanity clause under section 84, including the Mensrea of the accused at the time of commission of the offence, the accused is entitled to be acquitted on the grounds off insufficient evidence

In the present case, evidence was presented to prove the sanity of the appellant at the time and few days before commission of the act. The appellant could not present sufficient facts to establish his insanity and therefore, was held guilty.

This case was followed through in the cases ahead. One of the cases was *State of Madhya Pradesh v. Ahmadulla.*[1192]In this case the Court held that the burden of proof that the mental condition of the accused, lies on the accused who claims the benefit of this exemption vide Section 105 of the Evidence Act (Illustration a). The settled position of law is that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. Mere Ipsi dixit of the accused is not enough for availing of the benefit of the exceptions under Chapter IV.

In a case where the exception under Section 84 of the Indian Penal Code is claimed, the Court has to consider whether, at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Entire conduct of the accused, from the time of the commission of the offence up to the time, the Sessions proceedings commenced, is relevant

[1192] State of Madhya Pradesh v. Ahmadulla AIR (1961) SC 998.

for the purpose of ascertaining as to whether plea raised was genuine, Bonafede or after-thought.

It is admitted that the appellant in this case, has not led any evidence in proof of the plea of insanity. There is nothing on the record to infer that the accused was of unsound mind at or about the time of occurrence. His behavior at the time and subsequent to the commission of the crime clearly indicates that he knew and was capable of knowing the nature of the act done by him.

The plea rose, on the face of it, is after-thought and bereft of any substance. The opinion of the doctor obtained after about 8 years also does not indicate any history of medical disorder of the appellant. Even at the time of examination in the year 1999, he was diagnosed of suffering from "moderate depression" which is likely to be there in the circumstances where such person is confined in prison on the charge of the murder of his wife and son. The court held that the appellant was sane and understood the implications of the act done by him and in no case was having unsound mind within the meaning of Section 84 of the Indian Penal Code, at the relevant time. Therefore, appeal was dismissed.

Another case where the case of Dahyabhai Chhaganbhai Thakkervs State of Gujarat[1193]was followed was the case of *T. N lakshmaiah v. state of Karnataka.*[1194]In this case, amicus curiae who appeared for the appellant submitted that the accused having remained a patient of mental illness and the record produced during the trial to prove his insanity was within the meaning of Section 84 of the Indian Penal Code which entitled him acquittal. It was further contended that as the case of the prosecution rests only on the circumstantial evidence, the prosecution has failed to connect the accused with the commission of the crime as, according to the learned counsel, the chain of circumstances is not so complete to draw the only inference of the accused being guilty of the offence charged. The superintendent of the police was redirected to ascertain the mental condition. Moderate depression was diagnosed.

Under the Evidence Act, the onus of proving any of the exception mentioned in the Chapter lies on the accused though the requisite standard of proof is not the same as expected from the prosecution. It is sufficient if an accused is able to bring his case within the ambit of any of the general exceptions by the standard of preponderance of probabilities, as a result of

[1193]Dahyabhai Chhaganbhai Thakkervs State of Gujarat (1964) 7 SCR 361.
[1194] T. N lakshmaiah v. state of Karnataka (2002) 1 SCC 219.

which he may succeed not because that he proves his case to the hilt but because of the version given by him casts a doubt on the prosecution case.

VII. REPERCUSSIONS OF THE INSANITY CLAUSE

The insanity defense under Section 84 of the Indian penal code or anywhere around the world is a safe haven for those unleashing lethal activities into a civilized society. The moral principle of being amiable to the mentally deranged creates a passage out of being held liable for even the gravest criminalities. The shortcomings of section 84 are excessive an exorbitant.

1. Lack of a proper definition

   One of the serious defects that this defense suffers from is that there is no proper definition of insanity.

   The DSM- 5 [1195] covers several specimens of mental disorders but does not even colloquy regarding Insanity and Unsoundness of mind. The term Unsoundness of mind stands for insanity and lunacy according to the English Common Law and the American Legal Setup; however, the conundrum arises once it is realized that the meaning of insanity and lunacy is not established, defined or formalized by law. Correspondingly Section 84 of the Indian Penal Code is unsuccessful in providing an accurate, precise and indubitable meaning of the unsound mind. Thus, not furnishing nor providing for a rational definition of insanity.

   This insufficiency provided for more than one predicament and complication. The first being that since no clear definition exists the constituents and ingredients of Unsoundness of mind cannot be established. Furthermore, from a psychological and psychiatric point of view the word has an array of molecules and particles, which are not necessarily recognized by law. Legally the concept of Unsoundness of mind differentiated between mental insanity and legal insanity. Legal insanity refers to loss of acumen and reasoning powers which again creates an enigma as to which illness is to be considered within the ambit of loss of acumen. Not having any definite and intransigent connotation leads the culprit's fate entirely in the magistrate's hand and each adjudicator can render separate interpretation. Outdated Methodology and Lack of a Standard Procedure

[1195] *Supra* note 4.

Another criticism that is faced by this defense would be that there is no standard procedure.

The Insanity clause of India as in section 84 of the Indian Penal Code is a replica of the M'Naughten rule, which stated that an accused must not be held liable if at the time of criminality, he could not distinguish right from wrong. Ever since the conceptualization of the rule in 1843 both American and English laws have made a great deal of advancement and improvements in this sphere However the Indian law with regard to insanity dates back to the time when the Indian Penal Code was propounded. Thus making the procedure of deciding the culpability of those with an unsound mind rather inflexible and outdated.

The A.L.I standard of 1962 provided for a forward looking, homogeneous and invariable approach to deliberate upon the Unsoundness of mind and insanity in the United States of America[1196]. Yet, after all these years of progress and procession in the field of criminal jurisprudence in India the laws pertaining to the liability of those with an unsound mind remain rigid, orthodox and regressive.

The begetter of Section 84, of the Indian Penal Code is the M'Naughten rule which was done away with by almost all countries by the 1950s, owing to its rigid nature and lack of inclusion and consideration for medical and psychiatric evidence Lack of standardized procedure for establishing Unsoundness of mind creates room for ludicrous, arbitrary and facetious appeals under Section 84 of the Indian Penal Code. The outdated nature and lack of a standard existed format excludes-a wide array of severe mental illnesses from being sheltered by the Penal Code and creates severe ambiguity and vagueness for those claiming the defense as well as those dealing upon the subject matter.

2. Highly Subjective

Another loophole that the plea of insanity suffers from is that it is highly subjective. The courts have only been focusing on severe mental illnesses and it effects and have been ignoring other mental illnesses. Like in the case of Hari Singh Gond[1197], the Supreme Court laid down the parameters, which included awarding the benefit of insanity to severe cases only. Various researches have shown that the symptoms and

[1196] Gerber RJ, The Insanity Defense. Port Washington, New York: Associated Faculty Press; 1984.
[1197] Hari Singh Gond v. State Of M.P AIR 2009 SC 31.

effects of mental disorders cannot be contained in a definite compartment. The response and reaction of a patient with the mental disease cannot be anticipated. Even if, the patient has a fair idea about the consequences of an act and is aware about the nature of his act might not be able to stop him due to sudden impulses.

3. Recurring Nature of Mental Illnesses

One of the major deficiencies and inadequacy in psychology is its lack of focus on the relapse of various psychological diseases and illnesses. While the DSM-5 substantiates upon various types and categories of mental illnesses, the topic of relapse however finds little or no mention.

When dealing with an appeal under Section 84 of the Indian Penal Code, the adjudicator has to cluster more information than what is ordinarily presented, as unsoundness of mind presents itself in more than one way. It is not imperative that unsoundness of one's mind is ceaseless and perpetual as several disorders present themselves as occasional and episodic fits. It can be an extremely laborious task to prove and establish that during the time of criminality the accused was mentally impaired. The Burden of proof for establishing the ill state of the accused's mind lies upon the defense council and if the incriminated is a patient of episodic and recurrent fits it can get extremely burdensome to claim sanctuary under Section 84 of the Indian Penal Code.

The section extends to patients of mental illness who are likely to have a relapse, for instance, an individual is acquitted by virtue of Section 84 of the Indian Penal Code but later goes on to commit similar or even sizable felonies then it can be considered an absolute case of injustice to all the victims of the disordered. Very often such accused are acquitted or institutionalized but as per several psychologists the chances of relapse are ever existing and improper dosage of such patients can actualize itself in catastrophic and jeopardizing ways. The famous American Legal Institute's standard of the United States of America, which was considered as extremely flexible in comparison to the M'Naughten rule, excludes those offenders from protection whose loss of acumen demonstrates only in ways of criminal conduct. The conundrum of the moral principle to go delicate on the mentally ill who find themselves at crossroads with law becomes all the more austere.

4. Escape clause for the radicals

The insanity plea provides itself as a perfect defense even in the case of terrorism. The terrorists have found an easy way to avoid the liability imposed following their criminal acts. The guilty are released without paying any compensation for their acts. This further stimulates those aiming for annihilation. There is a bigger threat to this problem. The country is just not harmed by people committing first-degree murders, but is also getting harmed by people who follow the policy of mass destruction and are part of terrorist groups. The accused has two ways to avoid prison. They either win with the verdict of not guilty by the reason of insanity or be continuously assessed for mentally incompetency to stand trial, both these ways end up landing the accused in a medical Asylum. The medical Asylum has far better conditions and Prisoner also mentally check for sanity.

Like in the case of Yusef DeJarnette[1198]the accused wounded two people in separate shootings and was sent to psychiatric facilities as he was successfully able to claim the benefit of the plea of insanity. In another case, Patrick Gott[1199], who still remains in the safe custody of the Feliciana Forensic Facility at Jackson, was involved in invoking fear of terrorism post 9/11 attacks. He was acquitted on the grounds of insanity.

The plea of insanity ignores the actual motives, which lead to people who are claimed terrorist in much superior facilities than prison. If not full insanity the accused can also take the difference of partial insanity, which can be used to reduce the sentence.

In 2008 Hammad Samana[1200] was sentenced to a lesser sentence due to the mental health conditions he was declared unfit for trial and send to psychiatric care.

The defense lawyers can go up to any extent to magnify the history of any kind of mental disorder of the accused which could result in a lesser sentence, psychiatric care. It may not always work but history shows that terrorist with serious charges against them have gotten away using this loophole.

[1198]State v. DeJarnette, 2011-Ohio-3691.

[1199] Paul Purpura, mentally ill killer can't leave state hospital, Jefferson Parish judge rules, The Times-Picayune (August 1, 2013 - 12:35 AM), https://www.nola.com/news/crime_police/article_805103b9-a4c3-5964-81c4-7e17c2a3c994.html.

[1200]Four Men Indicted on Terrorism Charges Related to Conspiracy to Attack Military Facilities, Other Targets, Department of Justice, Wednesday, August 31, 2005 https://www.justice.gov/archive/opa/pr/2005/August/05_crm_453.html.

Shortage of able psychiatrist and psychologist has also added to the situation. Not every country has the appropriate resources and technology to deal with such cases. Financial issues in the country may lead to absence of psychologist and improper psychiatrist facilities which may lead to terrorist with serious charges out in the open and still have the ability to plan and coordinate more terrorist activities.

5. Exorbitant cost of hiring a psychologist

The role of psychologist and psychiatrist in establishing the unsoundness of mind of the accused is vital. However, in an improved impoverished country like ours, the disposition of more than one psychologist or psychiatrist on cases dealing with the unsoundness of mind is exorbitant. Furthermore, it is an established fact that the number of psychologists deployed on a particular case need to be more than one in reckoning in order to avoid predisposition and bias. Psychological tests are extremely subjective in nature and the mentally disordered are likely to respond to various tests in varying ways thus making the need for more than one psychiatrist rather vital. Employment of a considerable number of psychologist and psychiatrist is uneconomical and rather extravagant for our judicial set up.

VIII. CONCLUSION

The fundamentals and essence of Justice Call for the guilty to be held liable, yet there exist several exceptions to the subject. The general exception which grabs the most eyeballs and creates a severe dilemma is of unsoundness of mind. A concept which dates back to the time of the Code of Hammurabi and continues to be in the limelight is one of the most debated and deliberated upon topics. The conundrum regarding the guilty being acquitted arises out of weighing the fundamentals of Justice against the acts of an unsound mind. The plea of insanity has come a long way, the rigid right and wrong M'Naughten rule has been done away with globally giving a chance to an array of disorders to be grouped as legal insanity. The efficient deployment of the psychologist and the psychiatrist has helped set up a fair apparatus for those pleading for the insanity clause after committing some criminality. Provision of institutionalizing has helped sensitize the issue and provide for a chance for the unstable to break free from the shackles of criminal outbursts. However, the impediment of the clause does not take long to come into notice as those with the rigid mindset might consider the exception from conviction as nothing but an anchorage and asylum for those

wanting to unleash terror and threat upon the high functioning society. The loopholes in the clause come into the limelight when those guilty of vicious acts are not held liable, as lack of proper knowledge and definition of unsoundness of mind in written legal text creates several complications. The predicaments enhance owing to the lack of modern and standardized form of analysis of a mentally insane person. However, the insanity defense as what it was and what it has come to be is nothing but proof of refinement, enlightenment and evolution for Global Legal Order.