INSANITY AS A DEFENCE IN INDIA AND AROUND THE WORLD

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Insanity is the state of mind where the person is not in control of his actions which in the ordinary condition of mind, a prudent person would not indulge in such a discourse. There may arise circumstances where due to such a condition, the thinking ability of such a person is impaired and he commits an unlawful act or a lawful act by unlawful means. However, the Criminal Jurisprudence has held that despite of an unlawful act committed by an insane person, he shall not be held liable for the same. Insanity in the general sense is different from insanity in the legal context. It is further classified into legal and medical insanity. The former is the condition when the person committing the offence must not be able to understand the nature of the offence the person is committing and the fact that it is an act which is contrary to the provision of law whereas the latter deals with the medical condition of the person who has been charged with the commission of the offence. This Research paper shall expound the origins of insanity as a defence and shall work towards analysing the stand of various international criminal systems in general and India in particular. The criminal courts and legislatures all over the world have laid down various tests which are used to establish insanity as a defence and the paper shall further analyse these tests. The Paper also deals with the competency of the accused to stand trial or the fitness to plead of the accused which is necessary for a fair trial for the person who is accused for the offence. Keeping in mind all these factors, we need to examine the inception, evolution, implementation and interpretation of the insanity as a defence.

INTRODUCTION: ORIGIN AND PROGRESSION OF THE DEFENCE OF INSANITY

Insanity is a factor which can drive a person out of his sense and impair the ability of person to think as a prudent man thus leading a person to act in a wrongful manner which can lead to the person committing a criminal offence. The defence of insanity is part of the criminal in our country and abroad where the accused can prove that he was not in the right state of mind when the offence was committed. Insanity defence is probably one of the most controversial of all criminal defence strategies, and at the same time is one of the least used. Merriam Webster defines insanity as a severely disordered state of the mind usually occurring as a specific disorder. The plea of Insanity has over the years in different cases of different countries around the wold formed the basis of acquittal for many accused who have been able to prove that their capacity to think as a prudent man was paralysed by unsoundness or any other mental disorder suffered by them. The defendant has burden on him to prove that he was suffering from a disorder at the time of him committing the offence. Over the years a few tests have been laid down to determine whether a person falls

under the category of an insane person who would be entitled to the defence of insanity. The first acquittal came in the case of James Hadfield[1] case when he was being charged with attempted murder of King George III. He was acquitted of the charge.

TESTS LAID DOWN OVER THE YEARS

The first test to determine the plea of insanity was propounded by British courts which was known as the "Wild Beast test" whereby a person who does not have a mental no more than in an infant, a brute, or a wild beast, he would not be held responsible for his crimes.[2] He was found guilty of the crime and was convicted for a sentence of imprisonment for life. A test to determine insanity was propounded in the United States in the case of Durham v. United States[3] in 1954 wherein the court held that "the defendant will not be held guilty if the unlawful act was a result of mental disease or mental defect". The court further rejected the idea of the inability to know right from wrong or the inability to control impulses. The court promoted the Durham rule which promotes the consideration of the mental state of the accused.

In the case of US vs Brawner[4] the Brawner Rule by the District of Columbia Appeals set aside the Durham ruling arguing the ruling's requirement that a crime must be a "product of mental disease or defect" placed the question guilt on expert witnesses and diminished the jury's role in determining guilt. Under this proposal, juries are allowed to decide the "insanity question" as they see fit. Basing its ruling on the American Law Institute's (ALI) Model Penal code, the court ruled that for a defendant to not be criminally guilty for a crime the defendant, "(i) lacks substantial capacity to appreciate that his conduct is wrongful, or (ii) lacks substantial capacity to conform his conduct to the law."

The case of R v. Mc'Naghten case[5] which has led to formation of the Mc'Naughten rules is one of the most important guiding principle for Indian criminal law while dealing with the issue of insanity

1. that is every person is presumed to be sane, until the contrary is established.
2. To establish the defence of insanity, it must be clearly proved that at the time of committing the crime, the person was so insane as not to know the nature and quality of the act he was doing or if he did know it, he did not know that what he was doing was wrong.
3. The test of wrongfulness of the act is in the power to distinguish between right and wrong, not in the abstract or in general, but in regard to the particular act committed.

[1] 1800, 27 St.Tr.128.
[2] R v Arnold (1724) 16 How St. Tr. 765
[3] 214 F.2d 862 (D.C. Cir. 1954)
[4] 471 F.2d 969, 1005 n.79 (D.C. Cir. 1972).
[5] 8 ER 718, Volume 8

INDIAN PERSPECTIVE – HOW IT DEALS WITH PLEA OF INSANITY AS A DEFENCE? DIFFERENCE BETWEEN LEGAL AND MEDICAL INSANITY

Section 84 of the Indian Penal Code, 1860 states that 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". Section 84 provides the benefit of doubt if it is proved that the accused at the time of commission of offense was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration. The above principle was highlighted in Bapu @ Gajraj Singh vs State Of Rajasthan[6]

The Hon'ble Supreme Court in case of S. Sunil Sandeep v. State of Karnataka[7] gave the following principles to be borne in mind in applying this Section:-"(a) every type of insanity is not legal insanity; the cognitive faculty must be so destroyed as to render one incapable of knowing the nature of his act or that what he is doing is wrong or contrary to law;(c) the burden of proof of legal insanity is on the accused, though it is not as heavy as on the prosecution;(d) the Court must consider whether the accused suffered from legal insanity at the time when the offence was committed;(e) in reaching such a conclusion, the circumstances which preceded, attended or followed the crime are relevant considerations; and (f) the prosecution in discharging its burden in the face of the plea of legal insanity has merely to prove the basic fact and rely upon the normal presumption of law that everyone knows the law and the natural consequences of his act. The court also held that "Medical insanity should be distinguished from legal insanity. Legal insanity would always be different from eccentricity or changed behaviour". The apex court in Hari Singh Gond vs State of Madhya Pradesh[8] differentiated between legal insanity and medical insanity and explained that the standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.

The same principles have also been reiterated in various landmark judgements by the apex court as well as high courts of country in matters such as Surendra Mishra vs State of

[6] 2007(3)ACR3308(SC) 2007(8) SCC 66
[7] 1993 Cri LJ 2554
[8] (2008) 16 SCC 109

Jharkhand[9] The Supreme court in the case of State of Maharashtra v. Umesh Krishna Pawar[10] held that the onus to prove that the accused was so insane as not to be able to distinguish between right and wrong. Whether accused on the day of the incident knew everything he was doing, he would not fall in this exception. The Apex court held in Ratan Lal vs State of Madhya Pradesh[11] and Sudhakaran vs State of Kerala[12] that It is now well-settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused.

INTERNATIONAL PERSPECTIVE ON INSANITY AS A DEFENCE

In South Australia the Criminal Law Consolidation Act 1935 (SA) Australia in section 269C deals with mental competence of the person at the time of the commission of the crime. According to the section a person is mentally incompetent to commit an offence if, at the time of the conduct alleged to give rise to the offence, the person is suffering from a mental impairment and, in consequence of the mental impairment if the person does not know the nature and quality of the conduct; or does not know that the conduct is wrong; or is unable to control the conduct.

The Swiss Penal Code[13] provides that 'any person suffering from a mental disease, idiocy or serious impairment of his mental faculties, who at the time of committing the act is incapable of appreciating the unlawful nature of his act or acting in accordance with the appreciation may not be punished'.

Penal Code of France[14] provides that 'there is no crime or offence when the accused was in state of madness at the time of the act or in the event of his having been compelled by a force which he was not able to resist'.

In Canada, The defence of mental disorder is codified in section 16 of the Criminal Code. In order to establish a claim of mental disorder the party raising the issue must show on a balance of probabilities first that the person who committed the act was suffering from a "disease of the mind", and second, that at the time of the offence they were either 1) unable to appreciate the "nature and quality" of the act, or 2) did not know it was "wrong". The meaning of the word "wrong" was determined in the Supreme Court case of *R. v. Chaulk*[15] which held that "wrong" was NOT restricted to "legally wrong" but to "morally wrong" as well.

[9] 2011 (11) SCC 495 , AIR 2011 SC 627
[10] (1994) 1 Bom. Cr. 575
[11] AIR 1971 SC 778, (1970) 3 SCC 533, 1971 3 SCR 251
[12] (2010) 10 SCC 582
[13] Section 10
[14] Article 64
[15] [1990] 3 S.C.R. [1990] 3 S.C.R.

COMPETENCY TO STAND TRIAL

Another kind of insanity which needs to be considered is the competency to stand trial. Competency does not address the guilt or innocence of a party. Such type of insanity deals with the ability of the individual to understand the charges and penalties that have initiated against him and would not be able to assist the defence in the manner a sane and prudent man would be able to do in his defence. When a person who is found to be mentally incompetent to stand trial is usually hospitalized for treatment until such time that the person is competent to stand trial

A thorough competency assessment must focus first on gathering history specific to the particular case. Standardized testing is useful, but not to the exclusion of first tailoring an expert assessment to the relevant issues of a given case. A precise and conscientious report also will include soliciting information from collateral historians whenever possible. Review of hospital and corrections records, including private communications, yields considerable information about competency to stand trial, especially when staff may be consulted directly. Input about motivation, mental health, and ability to understand material relevant to his proceeding may successfully be gathered from confidantes and family. In some instances, particularly when the court raises a competency concern because of a defendant's behaviour, impartial officers of the court should be engaged. The competency assessment may warrant the forensic expert actually observing him in court[16].

The U.S. Supreme Court ruled in Dusky v. United States[17] that a defendant must have adequate ability to lucidly consult with his attorney and to have rational and factual comprehension of the charges against him in order to be found competent to stand trial.

In the case of Medina vs California[18] the Court concluded that due process only requires "the most basic procedural safeguards" and once the defendant is provided "access to procedures for making a competency evaluation," due process does not further require "the state to assume the burden" of proving competency. A person with a mental disorder should be assumed to have mental capacity to decide on various matters unless the contrary can be shown.

A common principle as the United States is followed in countries like Australia where the same grounds have been provided under section 269H of the Criminal Law Consolidation Act 1935 (SA)

In England the principle of fitness to plead is followed which also deals with the ability of the defendant to understand the proceedings against him. In England and wales after a plea is raised the decision is mostly based on psychiatric evaluation. The test of fitness to

[16]https://www.forensicpanel.com/expert_services/psychiatry/criminal_law/competency_to_stand_trial.html
[17] 362 U.S. 402(1960)
[18] 505 U.S. 437 (1992)

plead is based on the ruling of Alderson B. In the landmark case of R v Pritchard[19]. The court held that the accused will be unfit to plead if he is unable either: 1) to comprehend the course of proceedings on the trial, so as to make a proper defence; 2) to know that he might challenge any jurors to whom he may object; 3) to comprehend the evidence; or 4) to give proper instructions to his legal representatives.

In Scotland a simpler test is followed as laid down in HMA v Wilson[20], the test has two elements that is if the accused is able to be able to instruct counsel and that if he is able to understand and follow proceedings

In Canada, in R. v. Demers[21], the Supreme Court of Canada struck down the provision restricting the availability of an absolute discharge to an accused person who is deemed both "permanently unfit" and not a significant threat to the safety of the public. Presently a Review Board may recommend a judicial stay of proceedings in the event that it finds the accused both "permanently unfit" and non-dangerous. The decision is left to the court having jurisdiction over the accused.

In India persons with mental illness need to undergo a medical examination called fitness to stand trial 'as per the Code of Criminal Procedure, 1973 Sec 328, and Sec 329. Section 328 of CrPC (Procedure in case of the accused being lunatic) states that when a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his/her defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a Witness and shall reduce the examination to writing'. If a person is found incompetent to stand trial, the trail is usually postponed until such time as the person is judged competent. A person found psychiatrically incompetent for trial is usually sent for treatment to regain competence (even against his/her will).

Section 329 of the code of criminal procedure deals with the trial of a person with an unsound mind and provides that (1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case. (2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.

[19] (1836) 7 C. & P. 303
[20] **1942 JC 75**
[21] [2004] 2 S.C.R. 489, 2004 SCC 46

The Calcutta high court in the case of Bibhuti Mahato vs State of West Bengal[22] held that it is the duty of the court to satisfy itself under section 328 and section 329 of the code of criminal procedure that a person is a lunatic or unsound mind and cannot stand trial.

CONCLUSION

Insanity has over the years developed as a defence for those who were not in a prudent thinking capacity at the time of the commission of the offence. Insanity disturbs one state of mind and the person is not able to understand the consequences of the act he is committing and the fact that the act is contrary to law. The person who has committed the offense was suffering from a defect of reason or was suffering from mental disease which impaired his ability to think. Countries all over the world have similar grounds to determine whether the person can be classified as insane at the time of the commission of the offence. Insanity can be explained that the standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. That it needs to be proved by the defence that at the crucial point of time at which unsoundness of mind took place is the time when the crime is actually committed and the burden of proving this lies on the accused. It has been observed by courts and legislations all over the world that legal insanity at the time of the commission of the offence is necessary to be proven while medical insanity cannot form grounds for acquittal of the accused. It has been held that there is no crime or offence when the accused was in state of madness at the time of the act or in the event of his having been compelled by a force which he was not able to resist'.

The paper also focuses on the competency to stand trial or fitness to plead of the accused. The principle of competency to stand trial applies when the person is so insane that he would not be able to instruct his counsel properly which hamper the right to a fair trial for the person against whom the charges have been raised. Such type of insanity deals with the ability of the individual to understand the charges and penalties that have initiated against him and would not be able to assist the defence in the manner a sane and prudent man would be able to do in his defence

[22] (2000) 3 Cal LT 115 : (2000) 2 Cal LJ 125