EVOLUTION OF THE INSANITY DEFENSE JURISPRUDENCE AND THE NEED FOR PROPOUNDED REFORMS IN INDIA

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INTRODUCTION

Over the centuries, notwithstanding the alterations made to the Indian Penal Code, its crux even so, incorporates certain criminal offenses, punishments and criminal defenses that are yet very crucial to the existence of the Code. However one such general defense, that of the Plea of Insanity, Section 84 of the code, still remains obsolete and "dormant" with its abjure to reformation in the face of the contemporary contending countries. The defense of insanity rests on the postulation through the collection of valid circumstantial evidences that prove the accused devoid of any criminal charges. Ascribed to India's colonization by the British, laws, even those of insanity defense were applied to the cases here, through one which may also say that the existence of the concepts of "unsoundness of mind", or "test of wrong and right" have come into force. In the 18th century England, no matter how bewildering and ambiguous the 'concept of insanity' was, much was being accepted on its plea give on the cognitive psychology of heuristics[i] of the Court. The concept however was much explored after the court sought to take a pledge to find adequate and accurate elements for the accused to claim the defense. With the passage of time, the defense of insanity became stringent with today being the M'Naghten rules[ii] as a test to address insanity defense pleas.

REVIEW OF LITERATURE

It's imperative to carry a literature review to define the title and the context in examination, for the synchronization of the general topic and the material/literature at hand to utilize it for the purpose of research. The researcher has openly welcomed the heterogeneity of the information

come across and has endeavored to accommodate relevant findings to contribute in the research. The literatures in review in terms of books were Turner's & Kenny's, *Kenny's Outlines of criminal law* that assisted in learning the English Law informatively, with simplicity. Choudhary's *O.P. Srivastavas's Principles of criminal, is an* excellent book for understanding the concepts of Insanity Defense in a gist, in the Indian context, by providing with commendable short facts of important cases. One of the most referred journals to understand psychiatry and law was Perlin's, *Unpacking the Myths: The symbolism Mythology of Insanity Defense Jurisprudence*, it provides with an exhaustive and remarkable analysis of the jurisprudential concerns and myths related to the insanity defense. While the other journals majorly reflect the work of Perlin, and spread reformative ideas as promulgated by, researcher herself.

JURISPRUDENCE OF THE INSANITY DEFENSE AND SECTION 84 OF THE IPC

To effectively deduce the intention of this chapter, it is imperative to consider each word making up the title separately. Firstly, in examining the term Jurisprudence it may well be understood that almost every jurist living of that time has attempted the task of defining the term over the course of history. In spite of the attempts, no universal definition of Jurisprudence has been established as of yet. However for the sake of our research, we may convert the Latin term into English by referring to its literal meaning as, "Philosophy of Law", in this sense we deliberate over the philosophical concept of a given law. Jurisprudence of the insanity defense would then mean, considering the logical, analytical and attributable role, which inspired in commencing that law.

Secondly, the term Insanity used in the two contexts could either mean someone genuinely suffering from a mental illness or someone being irrational while performing an act. Hence the debate of the insanity defense unfolds from the various interpretations of who could be deemed as an insane person. It is here according to the law that a person having committed a crime can forbear from criminal responsibility; given that his cognitive mental abilities have been impaired, this is said to be a defense of insanity. Further along the paper insanity defense would be simply referred to as 'defense' for the sake of convenience.

On a worldwide basis, the statistics reveal modest usage of the Insanity plea, but it is not the case of statistics that jurists and philosophers are concerned with it, rather the jurisprudentiality of the plea of insanity itself, since it forms the central crux of the philosophical core of criminal law[iii], but also a platform to challenge the criminal law. We ought to look at the jurisprudence of the defense in order to understand the 'knowledge' and purpose behind it. Aforementioned, the law has stirred disparate altercations to the defense by various groups of people, since regardless of the scientific advancements in psychological research it is still difficult to discern mental insanity in an individual, given that many fraudulently apply the defense to their cases. The true spirit behind this defense, was to sensitize and empathize people of such an occurring, wherein its purpose was to provide those who are undoubtedly insane, such as an 'innocent', victim of his own mental illness to avail him of the defense, without which it would be unfair to sentence him to prison due to his vulnerability which compels him into doing wrong.

Thirdly, in light of the first research question pointing at the Indian Law- Indian Penal Code, and as an objective proposed before mentioned: What are the necessary elements to avail the insanity defense as defined in Section 84? Now on referred to as S.84 for the sake of convenience except otherwise used. The idea for doing so lies in understanding the jurisprudentiality of S.84 as devised by the Indian Law framers, however considering that India has adopted many of its laws including S.84 from the British law especially the M'Naghten rules which is equally applicable to various other countries as well such as the U.S., we will consider both the laws of countries including a few set out by the U.S. also helpful for the future chapters of the paper.

S.84 is derived from two Latin maxims here converted, "A madman is punished by his madness only" and "A Madman is like one who is absent." The essential elements of this section are:

I. That during the commission of the act, the accused is suffering from "unsound mind" and the burden of proof lies on him. Preceding or succeeding insanity is hence no defense under this section. Therefore, when the court in M.P V Ahmadulla[iv] observed that an accused having insanity attack before the act, and one after in the jail prior to the opening of the trial wouldn't declare him insane.
II. The accused due to unsound mind doesn't have knowledge of the act being performed; and
III. Even if he had knowledge he didn't know, it was wrong or contrary to law.

The jurisprudentiality and scope of S.84, elucidated by Supreme Court could be understood through the case of Hari Singh Gond V State of M.P.[v] Wherein it was observed that this section, although responsibility as a legal test is applicable to cases having "unsoundness of mind" the strict definition is not available, and courts ought to treat it as insanity, however problematic as it is, insanity itself is not defined in the IPC. Therefore not everyone who is mentally ill is ipso facto excused from criminal responsibility. Hence the court concerns itself with legal insanity and not medical insanity. These terms would be later discussed in the forthcoming chapters.

EVOLUTION OF THE INSANITY DEFENSE AND THE CONTEMPORARY SCENARIO

The second research question that goes as: whether the current test laid for the Insanity defense is justified? If not so, then what are the probable alternate tests that India may consider? The first half of the question has been attempted to answer, while the second half is considered in more depth in the later chapter, hence it is intended to form a base to answer the first half to solidify the second half.

During its inception, it was from the case of R V Arnold[vi] that a judge proposed the wild beast test; herein no mentally ill person is exonerated from criminal charges until he is proved to be deprived of his "understanding and memory" not knowing what he is doing, no more than an "infant, a brute or a wild beast." This even though was accepted, many jurists had doubted its merits; this was owed to the fact that superstitions were prominent while medical science was yet budding. Later in R V Madfield, it was deduced that insanity should be pleaded on the account of "fixed insane delusion."[vii] But it was in the case of Bowler[viii] the test of right and wrong had appeared, considering an accused guilty of crime, where at the time of the act he was aware of the morality of his act: Right or Wrong. Despite the pronunciation of tests in these cases nothing concrete had emerged before the groundbreaking case of M'Naghten[ix].

The verdict of M'Naghten case caused uproar in the country emerged due to which the decision by the court was challenged; the case had become a subject of controversy in the House of Lords. Finally 15 Lords gathered to answer five questions, the answers of which are the basis

of the current law of insanity. In brief, it was laid down as: Sanity of every human is presumed until the contrary is proved; during the commission of act the accused was devoid of reason due to disease of the mind and hence not knowing the nature and quality of the act; he doesn't know that the act is wrong or contrary to law; consideration by the court of the nature of insane delusion significant and that a medical witness not having seen the accused before the trial isn't permitted to give his opinion as to the state of mind of the accused. As a consequence of such evolutions India stands strong with these rules as earlier observed in the elements of S.84 that are similar to the M'Naghten test.

Previously mentioned concepts of legal and medical insanity, form a very significant part in the evolution, in the understanding of the type of insanity under consideration by the courts. Courts adjudge on the basis of legal insanity and not medical insanity, the difference was once again highlighted in two cases: Pappathi Ammal[x] and Surendra Mishra V state of Jharkhand[xi], wherein if the facts show that an accused has committed a crime and had knowledge of the wrongfulness of the act despite being insane from the medical point of view would still be held liable for the act. Hence in spite of concrete medical evidence other factors are not to leave unconsidered. Therefore short insane or epileptic fits; weak emotions and intelligence resulting into abnormal acts, or a strange behavior are not exempted[xii]. Earlier the test of irresistible impulse was considered a defense under the English law, however now under both the English and Indian law they are deemed as an unfit defense and hence forbidden. Due to in its weakness as a basis of argument and in the difficulty of proving an uncontrollable impulse it now lacks support in these countries, except in the U.S.

Well then what may be regarded as of "unsound mind"? In India, they're categorized into four types: lunatic or madman, Idiot, Unsound mind by illness, and Unsound mind by intoxication.[xiii] A lunacy is an obtained while idiocy and insanity are innate, by this we may mean that lunacy is a result of a person unable to make rational judgments for himself, while idiocy is everlasting feebleness without intervals in a person, here a person is unable to tell the days of weeks et al. unsound mind by illness is generally equitable to insanity, wherein the cognitive functions of an individual are performed in an extreme abnormal manner or permanently impaired. While for unsoundness of mind by intoxication that is also a separate defense under S.85 of the IPC, a criminal act is committed under the influence of involuntary intoxication.

In the United States, different jurisdictions are at a variance while defining the insanity defense. They use either one of these or a combination of 2 or more: Not guilty by reason of insanity (NGRI) or M'Naghten rules (U.K), irresistible impulse test, Durham rule, and the Model Penal Code.[xiv] The former two have been discussed earlier, while the Durham rule exempts an accused from criminal liability on the grounds that the accused at that time of the commission of the act was under a mental defect such as those committing an act under the influence of drugs. Here the accused ought to prove legal insanity by virtue of "clear and convincing evidence". While now over the course of time many states prefer using the Model Penal Code or MPC, herein the accused is declared "guilty by reason of insanity" (GBRI). To avail the benefits of this defense the accused must be under severe insanity such as schizophrenia or mental retardation at the time of the act by which he was unable to know the consequences of his actions or is unable to comprehend it was contrary to law. Further explanations go up to other chapters. Another historic test was considered by the English legislature sixty years ago, of Diminished responsibility which was laid in Section 2 of the Homicide Act, 1957. In brevity this test, deems an accused charged with murder to be insane, his criminality would be reduced to manslaughter.

Therapeutic Jurisprudence stresses on the observation of law in the life of people, as it plays a major role in their life.[xv] It focuses on the "emotional life and psychological wellbeing of a person". The major benefit of such a study would lead to the change in the thought processes of people, especially the reforms in the laws may start commencing as people feel the need of it, as to uphold the rule of law.[xvi] According to Wexler[xvii], the information on the mental health cannot be a restraint to justice. Such an initiative would empower people and enhance their rights.

ROLE OF EVIDENCES UNDER SECTION 84, IPC

For holding an accused guilty of a crime the two most significant elements of crime as we know: Mens Rea and Actus Rea have to be proved. Mens rea is the mental element of an evil intent of performing a certain wrongful action, while Actus rea is an illegal omission or overt commission of an act in furtherance of mens rea. Perlin[xviii] notes that criminal justice system observes that every individual performs his actions by reason of his own "free will" and would

hence be criminally liable if held to perform act contrary to law. An exception the corpus of this, is the insanity defense, which exempts the accused of criminal responsibility if found to have his cognitive [M'Naghten] or volitional [MPC] abilities impaired.[xix] Given the double-dealing nature of these elements, there comes need of reliable evidences of the case to provide adequate justice upon the facts.

The forthcoming paragraphs intend to answer the third research question on: whether the circumstantial evidences play any major role in the determination of insanity under section 84? Evidences play a pivotal role in discerning the judgment of a case, thus under the Indian Evidence Act 1872, there exist numerous types of evidences. However, in light of the defense under study, the courts look at circumstantial or indirect evidence, these are evidences that try to prove the facts in dispute through arriving at other facts, these although are not definite proofs, nonetheless still try to furnish rough ideas as to what might have happened. The basis of this evidence is on an analytical deduction of the present facts.

The flexibility of the defense demonstrate the significance of circumstantial evidences depicting the adjudgement, for the sake of clarity facts of two cases are reviewed: In the first one, the accused had after killing three of his infant granddaughters was resistant to obscure their dead bodies or destroy the evidences, in addition to this he was impervious of his arrest[xx]. In such a case the defense of insanity could be extended to his condition. On the contrary, in a case wherein a man having killed his wife and children refrained from running away, and was found around their dead bodies, was not deemed to be insane.[xxi] The Supreme Court had additional remarked in Dahyabhai Chhaganbhai Thakkar v. State of Gujarat[xxii], having the accused held unfit for the plea of insanity, that the accused may rebut the verdict by providing relevant evidences: Circumstantial, evidential or documentary but the "burden of proof upon him is no higher than that which rests upon a party to civil proceedings."

The provision regarding the burden of proof and evidences, are expressed in S. 45 of the Indian Evidence Act, this section deals with the testimony given by Psychiatrist as an expert witness wherein the second (b) illustration in S.45 clearly asks for the assistance of the psychiatrist in acknowledging the condition of the accused in terms of the "unsoundness of his mind." This also fulfills the fifth requirement of the M'Naghten rules. Hence the burden of proof beyond reasonable doubt falls on the prosecution to prove the accused's mens rea and actus rea.

The quest to ensure fair trials and the protection of public from dangerous mentally ill persons had started early in the British India. Earlier Lord Butler headed the Mentally Abnormal Offenders committee, which had proposed the trial for the accused to last for six months, after which if the case persists unresolved, then a trial should proceed in length regarding the mental illness. Section 27 of the MHA, 1987 talks about the mentally ill prisoners which is read with S. 3 (4) of the ILA, 1912 defining the mental lunatics. Psychiatrists can additionally review in who exactly is mentally lunatic since clever psychiatrist can clearly tell the difference between an actual mentally ill person and one faking it.

MEDICAL SCIENCE: PSYCHIATRY AND THE INSANITY DEFENSE

In his paper, Perlin[xxiii] in the process of distinguishing between myths and reality, stresses over the need in understanding the defense through the eye of "cognitive psychological construct of heuristics", this he describes as the "information- processing tasks by privileging the vivid, negative, accessible anecdote and subordinating the factual, the logical, the statistical and the rational." Considering the jury in his apprehension he contemplates that the most hazardous of all is the "vividness heuristic" wherein the decision makers are under the influence of a certain powerful event, which takes up their entire imagination restricting their concept only to that event thus taking a decision on its basis. In concept of "ordinary common sense" he further says, that it is self-reflective, an example goes as, I see the color blue so does everyone see it and hence that is the way to look at that color blue. This provides a very narrow stereotypical scope of the context; such is also in the case of this defense. The test of irresistible impulse is not applicable in India, but if we assess it, much of the psychiatrists believe it to be unsatisfactory which considers only a group of mentally ill individuals.[xxiv]

While answering the fourth research question: To what extent may we regard Psychiatry as an important factor in the insanity defense under section 84? We need to respect and consider the importance of Psychiatry in helping deliver true justice for those coming under the tag of mentally ill. Advanced Psychiatry provides us with a much more comprehensive illustration on contemporary research. Ralph Solvenko's Law and Psychiatry[xxv] is amongst the top referred essays by psychiatrists, he discusses in this that:

- There may actually not be any causal purport between mental illness and criminal activity, and they may simply coexist.
- May happen that mental illness predisposes towards criminal activity.
- Mental illness may cause in the inhibitions of Criminal activity e.g. bipolar disorder resulting in mood swings: hyperactivity or depression.

Moreover, it is also said that a criminal activity may result in mental illness rather than the other way round wherein the sentence of a punishment is a crucial stressor and "potentially pathogenic". [xxvi] Though still widely believed is that mentally ill individuals are more inclined to committing crimes, though not much has been researched on violent behavior in other diagnostic groups. Those prone to violent activities include, Psychotic patients, Substance abusers, Schizophrenics, and Paranoids. Such as in the case of Shrikant Anandrao Bhosale v. State of Maharashtra[xxvii] the accused suffered from paranoid schizophrenia, the contention was whether the he had killed his wife due to an impulse or his unsound mind, hence it was deduced upon the evidence of his family history suffering from the same disease, therefore projecting circumstances as needed under S.105 of the Evidence Act 1872.

The Judges pronounced in the case of Amrit Bhushan Gupta V UOI[xxviii], where the accused had become insane, is deemed to be dangerous to the society or to person whom he attacked prior, he shouldn't be left free in the society rather he is qualified to attain treatment at the mental asylum. So does the Mental Health Act (MHA), 1987 in its objectives highlights, the change in society where people have stopped attaching stigma to the mentally ill, and they should therefore be treated just as the other sick patients and the environment around them should be as normal as possible. However, while studying the Indian Lunacy Act (ILA), 1912, the Indian Psychiatrists believe that a new legislation should be created in line with the advanced medical science.

CONCLUSION: CRITIC OF THE DEFENSE AND SUGGESTED REFORMS

The study predominantly discusses the jurisprudentiality of the defense and evolution of the tests regarding the defense, where it can also be seen that in the growth of the scope of evidences, owing to the advancements of medical science: Psychiatry. As mentioned earlier, courts reluctantly consider the nexus between the environmental and biological factors, and owe to what Perlin talks about the "free will" of criminality. The M'Naghten or "rationality determination" as observed in S. 84 of IPC, largely focuses on "right and wrong", "knowledge of nature and act, awareness of wrongfulness or contrary to law". However the scope of S.84 needs to be revisited, by propounding better reforms for it.

The MPC either considers only impairment of cognitive functions or both impairment and irresistible impulse. If we consider applying the MPC to IPC, the accused pronounced GBMI would be penalized the same as those "guilty" of the crime. Here he would be incarcerated and receive treatment in jail. The critics of GBMI esteem this inadequate as the role of judges in systematically contemplating responsibility is extensively reduced and that there be creation of scarcity in providing every mental patient incarcerated worthwhile treatment.

It is therefore imperative to refer the Impulse test with the evidences provided by the advancement in psychiatry since this provides with a "control determination" rather "rationality determination."[xxix] In terms of deducing an accused's insanity more than the past and present state of the accused, which is more story like, the "relevant ratio" is noteworthy. This ratio determines the ratio between proportion of cases where symptom is discerned in the population of interest and the portion of cases where same symptom is observed in overall population. Indian journal of psychiatry has given an example: "For example, 60% of murderers with Schizophrenia suffer from X, Y, and Z symptoms and 20% of schizophrenics without crime history suffer from X, Y, and Z symptoms, and the relevance ratio in this case is 3:1 (60%:20%) meaning that a schizophrenic has these 3 symptoms and it has significant value in the commission of the crime. If relevance ratio is >1, the evidence has some tendency to prove a fact at issue."[xxx]

Considering Ralph Solvenko's conditions for a mentally insane person, we may suggest that India consider the impulse test, since many may not have the idea that their disease is the one

that is causing them to act criminally. Moreover we have seen the harms of cognitive psychological construct of heuristics in the courthouses, which creates a stereotypical notion of what the situation ought to be hence limiting our faculties and not to creativity.

As mentioned earlier about therapeutic jurisprudence, it is imperative to ensure its commencement, according to Perlin, " the substantive standard and procedural rules actually do matter" in therapeutic jurisprudence. Since in such a way many of the problems would reduce on it own, therefore keeping the evolution in mind, the evolution of laws shouldn't cease.

ENDNOTES

[i] Michael L. Perlin, Psychodynamics and the Insanity Defense: "Ordinary Common Sense" and Heuristic Reasoning, 69 Neb. L. Rev. (1990) Available at: http://digitalcommons.unl.edu/nlr/vol69/iss1/3 reasoning, 69 NEB. L. REV. (1990)
[ii] R V M'Naghten (1843) 10 Cl. and F. 200 (T.A.C.).

[iii] Jerome Hall, *General Principles of Criminal Law* (Indianapolis and New York: Bobbs-Merrill 1960), p. 455.

[iv] AIR 1961 SC 998: (1961) 2 CriLJ 43
[v] (2008) 16 SCC 109: (2010) 4 SCC (Cri) 2II: AIR 2009 SC 31.
[vi] (I724) 16 St Tr I28
[vii] (I800) 27 St Tr I28
[viii] (I812) I Collins on Lunacy 673.
[ix] R V M'Naghten, supra note 2.
[x] AIR 1959 Mad 239, 1959 CriLJ 724
[xi] (20II) II SCC 495: (20II) 3 SCC (Cri) 232: AIR 20II SC 627
[xii] Dr. S. Madhusudhan & G. V Vaniprabha, *The Insanity Defense- An Analysis with specific reference to section 84 of the Indian Penal Code, 1860.*, 4 International Journal of Humanities and Social science invention 24–29 (2015), http://www.ijhssi.org/papers/v4(9)/D0491024029.pdf (last visited Sep 19, 2017).
[xiii] Ram Naresh Choudhary, *O.P. Srivastavas's Principles of criminal law* 222 (6th ed. 2013)

[xiv] Insanity Defense, Findlaw, http://criminal.findlaw.com/criminal-procedure/insanity-defense.html (last visited Nov 2, 2017).
[xv] Perlin, supra note 1.
[xvi] Ibid.
[xvii] David B. Wexler, *Therapeutic Jurisprudence and Changing Concepts of Legal Scholarship*, 11 BEHAV. SCI. & L. 17, 21 (1993); *see also* David Wexler, *Applying the Law Therapeutically*, 5 APPLIED & PREVENTIVE PSYCHOL. 179 (1996).
[xviii] Michael L. Perlin, supra note 1.
[xix] Randy Borum & Solomon M. Fulero, *Empirical Research on the Insanity Defense and Attempted Reforms: Evidence Toward Informed Policy*, 23 Law and Human Behaviour 375–392 (1999), https://link.springer.com/content/pdf/10.1023%2FA%3A1022364700424.pdf (last visited Oct 19, 2017).
[xx] Shriram v state of Maharashtra, I97I Cri LJ I63I (Bom).
[xxi] Sheralli Wali Mohammed V State of Maharashtra, (1973) 4 SCC 79: 1973 SCC (Cri) 726: AIR 1972 SC 2443.
[xxii] AIR 1964 SC 1563: (1964) 2 Cri LJ 472.

[xxiii] Perlin, *supra* note 1.

[xxiv] Dr. S. Madhusudhan & G. V Vaniprabha , *supra* note 12.

[xxv] Ralph Slovenko: Causation in Law and Psychiatry, cf: Ian Frekleton and Datna Mendelson [eds.]: Causation in Law and Medicine, Burlington: Ashgate Publishers, 2002

[xxvi] Subramanyam, B V (Ed.): Modi's Medical Jurisprudence and Toxicology, New Delhi: Butterworths, 23rd Edition., 2004

[xxvii] (2002) 7 SCC 748: 2003 SCC (Cri) I44: AIR 2002 SC 3399.
[xxviii] (1977) SCR (2) 240: 1977 SCC (1) 180: AIR 7608
[xxix] T V Asokan , *The insanity defense: Related issues*, Indian Journal of Psychiatry , https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5282615/#ref15 (last visited Oct 19, 2017).

[xxx] *Ibid.*