

# **INSANITY DEFENCE:AN ESCAPE ROUTE FOR CRIMINALS**

**-SNIGDHA SHARMA**

**12112061**

**B.A.LL.B(Hons), L2101**

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## **ABSTRACT**

The Indian legal system governs and takes care of the world's largest democracy. When the legal system has to deal with a wide variety of races, castes, classes and various other social distinctions, it becomes very difficult to make such a law which accommodates the needs of everybody. That is the reason many of our laws become vulnerable and the guilty takes advantage of it, to let themselves go scot free. One such contention can be seen under the Indian penal code which is known as insanity as a defence. Insanity as a defence can be described as that a person cannot be held guilty or accountable if he is not of sound mind. It is a necessary legal principle which ensures that a person who is of unsound mind and cannot comprehend the consequences of his or her actions should not be punished. However for some people this has become a get out of jail free card, as those people who are not of unsound mind commit their crimes and hide behind the veil of insanity as a defence. It is common knowledge amongst most of the populace how unsoundness of mind is used to get out of the clutches of law. This research paper seeks to question whether the various measures taken up to avoid the misuse of this section are sufficient in themselves. This research paper also seeks to prove and find many other alternative measures or tests which might prove much more efficient than the present scenario. We can also draw comparison with other countries and take insight of their understanding of insanity as a defence.

## **KEYWORDS**

Insanity defence, legal and medical insanity, M'Naghten principle, legal tests

## **RESEARCH METHODOLOGY**

To answer the objectives of the research I've used historical method, scientific method, empirical method and evaluative method. The critical analysis of the defence of insanity has also been incorporated. For the completion of my research mainly I've used primary sources in which books, Ipc, literature, case

laws has been used. In secondary source I've focused on journals, articles and research papers and besides this I've explored about this topic on scc online, manupatra, lexis nexus, Jstor and AIRonline. To arrive at a meaningful discussion, only relevant articles were selected for the review.

## **LITERATURE REVIEW**

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This paper mainly examines the insanity plea in India, majorly focus is given to the role of psychiatrist in assisting the court, narrow view regarding the burden of proof is mentioned, differentiation of legal insanity and medical insanity has been provided, not much emphasis has been given to the M'Naghten case which eventually is the basis of section 84 of the Indian penal code.

In my research paper I will be trying to fill these gaps where a global view regarding the insanity plea is mentioned, how insanity defence is being misused by the criminals as an escape route, common misconceptions has been addressed about the insanity defence, more clarity on insanity plea is given using landmark cases, drawbacks of the Indian legal system is also discussed along with recent developments and reforms, explored different methods and tests which helps in determining the insanity, beneficial and adverse effects of the insanity plea is also mentioned along with the detailed critical analysis

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## I INTRODUCTION

The concept of responsibility connects with our most fundamental convictions about human nature and dignity and everyday experience of guilt and innocence and blame and punishment.<sup>1</sup> Punishing a person, who is not responsible for the crime, is a violation of the basic human rights and fundamental rights under the Constitution of India. It also brings the due process of law, if that person is not in a position to defend himself in the court of law, evoking the principle of natural justice.<sup>2</sup> The affirmative defense of legal insanity applies to this fundamental principle by excusing those mentally disordered offenders whose disorder deprived them of rational understanding of their conduct at the time of the crime. Hence, it is generally admitted that incapacity to commit crimes exempts the individual from punishment. This is recognized by the legislation of most of the civilized nations.[1,3] Even in India, Section 84 of Indian Penal Code (IPC) deals with the “act of a person of unsound mind” and discusses insanity defense.<sup>3</sup> However, in the recent past some of the U.S. states (such as Montana, Idaho,

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<sup>1</sup> Morse SJ, Bonnie RJ. Abolition of the insanity defense violates due process. *J Am Acad Psychiatry Law*. 2013;41:488–95.

<sup>2</sup> Gostin LO, Larry OG. *A Human Condition: The law relating to mentally Abnormal Offenders*. Vol. 2. MIND; 1977.

<sup>3</sup> Gaur KD. *Textbook on the Indian Penal Code*. New Delhi: Universal Law Publishing; 2009.

Kansas, and Utah) have banned insanity defense.<sup>4</sup> This issue has raised a serious debate among medical, psychology and law professionals across the world.

Very little research has been done on this topic in India, however, there are few studies on exploring the clinical picture of the patients in prison. A landmark study in the forensic psychiatry of Indian setting occurred in 2011, in which 5024 prisoners were assessed on semi-structured interview schedule reported that 4002 (79.6%) individuals could be diagnosed as having a diagnosis of either mental illness or substance use. After excluding substance abuse, 1389 (27.6%) prisoners still had a diagnosable mental disorder.<sup>5</sup> Another study from India portray a very gloomy picture of patients in forensic psychiatry settings and advocate for there is a need to streamline the procedure of referral, diagnosis, treatment, and certification.<sup>6</sup> To address this issue of streamlining the process of evaluation of insanity defense and certification, this article focuses on semi-structured assessment in the Indian context based on landmark Supreme Court decisions. In addition, it will also present a model for evaluating a defendant's mental status examination and briefly discuss the legal standards and procedures for the assessment of insanity defense evaluations.

Under the IPC, mens rea is an essential element in crime. However, in such offences where mens rea is missing and the act was carried out as a result of distinct persuasive circumstances, such cases falls within General Exceptions provided under the Penal Code under Section 76- 106.As a result, the person is held legally accountable for his acts. If the defence is proved successfully in the court, exemption is given. In criminal prosecution, the defence of insanity is used to show that the perpetrator had a severe mental illness when the act actually occurred. Resulting that the individual may not be aware of what they were doing in their conscious thought. In some situations, a person who is not mentally sick may attempt to avoid punishment by claiming insanity; however, insanity defence is granted in just a few circumstances.Even though it was put in place for better justice, most people exploit the defence of insanity to avoid legal penalties. Such a condition creates a serious problem, as people will become increasingly involved in such crimes since there will not be any deterrence. The research question for this article is threefold: How insanity defence is a loophole for criminal? Whether it is appropriate everytime? When should Insanity Defence

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<sup>4</sup> Neville K. *The Insanity Defense: A Comparative Analysis Senior Honors Theses. Paper 244.* 2010.

<sup>5</sup> Math SB, Murthy P, Parthasarathy R, Naveen Kumar C, Madhusudhan S. Mental Health and Substance Use Problems in Prisons.

<sup>6</sup> Kumar D, Viswanath B, Sebastian A, Holla B, Konduru R, Chandrashekar CR, et al. Profile of male forensic psychiatric inpatients in South India. *Int J Soc Psychiatry.*

used? This article throws light on the concept of defence of insanity, its positive and negative effects and judicial approach on the same.

### ➤ **Insanity – Meaning**

Insanity refers to a person's incompetency to comprehend the essence of their actions or to recognize that they are bad or illegal. It refers to a mental disease in which a person's mental capacities are harmed to the point that he is unable to comprehend the implications of his actions. It is challenging to define insanity in a way that meets legal requirements. Insanity is generally associated with mental illness or some form of mental ailment for the general public. According to Black's Law Dictionary, the meaning of Insanity is "any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility". Insanity is a legal term, whereas "mental illness", "mental disorder", "mental defect" refers to an illness that requires psychiatric or psychological assistance. As a result, one can have a mental illness, disease or disorder without being legally insane; however one cannot be insane without having a mental illness

## **BACKGROUND**

Since ancient Greece and Rome, laws dealing with insanity have been a part of the legislation. Insanity Defence was originally reported in 1581 "English legal treatise", which said that if a "lunatic" murders someone while insane, they cannot be held liable. With the advancement of criminal jurisprudence, in the 18th Century the British Courts devised "Wild Beast" test, according to which the accused will not be held guilty if he had knowledge of "an infant or a wild beast".<sup>7</sup> It was the first legal statute that laid the groundwork for the law of insanity. It also marked the beginning of Defence of Insanity. After the "Wild Beast Test", several tests were devised to determine if a person is legally insane including "Insane Delusion Test"<sup>7</sup> and the "Good and Evil Test".<sup>8</sup> These three tests were the primary rules dealing with Insanity Defence and they constructed the understructure for the famous McNaughton Test.<sup>9</sup>

In *R v. McNaughton*<sup>10</sup>, the English courts established the McNaughton's Test, which is the cornerstone of legislations dealing with insanity and Section 84, IPC. In this case, Edward Drummond was killed by a man named McNaughton who mistook him for someone else. The court ruled his discharge on the grounds of

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<sup>7</sup> 6 R v. Arnold. 1724, 16 St.Tr.695.

<sup>8</sup> Hadfield Case. 1800, 27 St.Tr. 128

<sup>9</sup> Suresh Bada Math, Channaveerachari Naveen Kumar & Sydney Moirangthem, "Insanity Defense: Past, Present and Future"

<sup>10</sup> *R v. McNaughton*, (1843) 8 Eng. Rep. 718, 722.

his mental disorder. However, the jury declared him insane and recommended that he be sent to a mental asylum. Following this decision in 1843, there was a deliberation in “House of Lords”, during which M’Naughton’s Rules were established which are as follows:

1. “Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved.
2. To establish the defence of ground of insanity, it must be clearly shown that at the time of committing the act, the accused was so insane that he was incapacitated to know the nature of the act or that his act was wrong or contrary to law.
3. If the accused was conscious that the act was one which he ought not to do and if such act was contrary to law, then he is punishable.
4. A medical witness who has not seen the accused before the trial should not be consulted to assess the mental state of the accused.
5. Where the criminal act is committed by a person under some insane delusion, which conceals from him, the true nature of the act he is doing, he will be under the same degree of responsibility as he had imagined his surrounding situations to be.”

These rules formed precedents in the area of insanity defence. The guidelines underline the need of observing an accused’s “understandability” in case when the person has committed a crime.<sup>11</sup> In order to claim insanity, the accused must show that he was experiencing from a lack of judgment associated with mental illness, either because he was unaware of the character and nature of the crime, or because he didn't quite understand that his conduct were wrong.<sup>12</sup>

The term “insanity” is not defined anywhere in Indian legislations. Under Section 84 of the IPC, insanity defence is provided as “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”. The defence of insanity, according to the code, is based on M’Naughton’s Rule. Section 84 enshrines two essential maxim of criminal law, namely:

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<sup>11</sup> Pratyush Pandey, “Insanity defence: A loophole for criminals”

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1. “Actus reus non facit reum nisi mens sit rea”- “the act is not culpable unless the mind is guilty”;
2. “Furiosi nulla voluntas est”- “a mad man has no free”.

As a result, no culpability is assigned to people suffering from mental illnesses because they are incapable of rational thought or the essential guilty intent.

## **OBJECTIVES**

- Objective of the research paper is to explore as to how the Plea of insanity is examined by the courts during trial and what kind of investigation is undertaken for establishing the mental state of the accused in order to give or deny the benefit the plea of insanity.
- Further purpose of the study is to ascertain as to what kind of latest or updated tools of medical science are adopted to conclude about the status of insanity of the accused.
- Another objective is to inquire about the use latest developments in the field of psychic sciences to find out the real extent of the plea of insanity or mental disorder.
- Further objective of the study is to verify the best yardsticks to be applied for determining the extent of mental disability.
- Last but not the least objective of the study is to finally differentiate between the mental disorders resulting into temporary mental incapacity and the disorders resulting into permanent mental incapacity and disability of the accused to know the nature of his crime

## **INSANITY AS DEFENCE AND ITS TYPE**

The plea of insanity is a defence in which accused admits the crime done by him but claims that he is not responsible for it due to mental illness. It is more of an excuse rather than an explanation for what the person did. In a criminal trial, a defendant can plead this defence. An evaluation of the criminal’s mentality has become an absolute necessity. In the context of “mens rea” as well the “state of mind” of the suspect is crucial in criminal law. When it comes to mens rea, emphasis is on the state of mind of a person who is not mentally ill. Consideration must be given to criminal’s mental consciousness and not merely

bodily actions. As an Insane person's state of mind is incapable of forming a criminal intent. The "Insanity Defence" is a tactic employed in criminal law in India to absolve a suspect of a crime. It's predicated on the notion that the person was struggling with mental sickness and couldn't understand his acts. Insanity is of two types:

**1. Permanent Insanity:** A problem in which an individual undergoes a mental illness on a continuous basis. Past records and experiences can be used to demonstrate that the person is perpetually insane which makes the individual incompetent of comprehending the seriousness of any circumstance.

**2. Temporary Insanity:** A disorder in which a person becomes insane only once in a while or for a short span of time. Depression, anxiety disorders, schizophrenia and other transient mental illnesses are the examples of temporary insanity. In the defence of temporary insanity, there are two conceivable outcomes: "not guilty because insane" and "guilty but cannot be tried because insane".<sup>13</sup>

According to Indian Penal law, to qualify the exception under section 84, it should be established that the suspect was experiencing a deficiency of understanding caused by insanity at the time of the alleged offence, leaving him incapable of grasping the essence of the conduct or that he was committing an illegal or unlawful conduct. 5A person's mental illness has never been accepted as an excuse for committing a crime. The mental condition of the suspect should be serious enough that he is completely unable to comprehend the essence of the offence.

## EVOLUTION OF INSANITY DEFENCE

Since ancient Greece and Rome, laws dealing with insanity have been a part of the legislation. Insanity Defence was originally reported in 1581 "English legal treatise", which said that if a "lunatic" murders someone while insane, they cannot be held liable. With the advancement of criminal jurisprudence, in the 18th Century the British Courts devised "Wild Beast" test, according to which the accused will not be held guilty if he had knowledge of "an infant or a wild beast".<sup>14</sup> It was the first legal statute that laid the groundwork for the law of insanity. It also marked the beginning of Defence of Insanity. After the "Wild

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<sup>13</sup> Russell Covey, "Temporary Insanity: The Strange Life and Times of the perfect defense"

<sup>14</sup> 6 R v. Arnold. 1724, 16 St.Tr.695



Beast Test”, several tests were devised to determine if a person is legally insane including “Insane Delusion Test”<sup>15</sup> and the “Good and Evil Test”<sup>16</sup>. These three tests were the primary rules dealing with Insanity Defence and they constructed the understructure for the famous McNaughton Test.<sup>17</sup>

In **R v. McNaughton**<sup>18</sup>, the English courts established the McNaughton’s Test, which is the cornerstone of legislations dealing with insanity and Section 84, IPC. In this case, Edward Drummond was killed by a man named McNaughton who mistook him for someone else. The court ruled his discharge on the grounds of his mental disorder. However, the jury declared him insane and recommended that he be sent to a mental asylum. Following this decision in 1843, there was a deliberation in “House of Lords”, during which McNaughton’s Rules were established which are as follows:

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<sup>15</sup> Hadfield Case. 1800, 27 St.Tr. 128

<sup>16</sup> Bowler’s case. 1812, 1 Collinson Lunacy 673

<sup>17</sup> Suresh Bada Math, Channaveerachari Naveen Kumar & Sydney Moirangthem, “Insanity Defense: Past, Present and Future”

<sup>18</sup> R v. McNaughton, (1843) 8 Eng. Rep. 718, 722.

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illness, either because he was unaware of the character and nature of the crime, or because he didn't quite understand that his conduct were wrong.<sup>20</sup>

The term “insanity” is not defined anywhere in Indian legislations. Under Section 84 of the IPC, insanity defence is provided as “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”. The defence of insanity, according to the code, is based on McNaughton’s Rule. Section 84 enshrines two essential maxim of criminal law, namely:

1. “Actus reus non facit reum nisi mens sit rea”- “the act is not culpable unless the mind is guilty”;
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As a result, no culpability is assigned to people suffering from mental illnesses because they are incapable of rational thought or the essential guilty intent

## **LEGAL AND MEDICAL INSANITY**

Section 84 of the Indian Penal Code prescribes exam of the criminal responsibility as separated from clinical exam. It may be cited that the dearth of will isn't always simplest because of a lack of knowledge of adulthood however additionally a bad attitude. This corrupt attitude, which gives for freedom from crook activity, contrasts with the clinical and criminal profession. From a clinical factor of view, it's miles truthful to mention that everyone, whilst committing a crook act, is insane and consequently wishes to be free of crook behavior; at the same time as it's miles a criminal concept, someone ought to be taken into consideration the identical character, so long as he is aware of that the act dedicated is illegal.

In the case of **Surendra Mishra v. State of Jharkhand**<sup>21</sup>, It changed into mentioned that Each mentally sick character isn't always a ipso facto free of a crook bond.

Moreover, with inside the case of **Shrikant Anandrao Bhosale v. The State of Maharashtra**<sup>22</sup>, the Supreme Court, in identifying the case below Section 84 of

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<sup>20</sup> Janhavi Arakeri, “Insanity as a defence under the Indian Penal Code”

<sup>21</sup> **2005 (4) JCR 439 Jhr**

<sup>22</sup> **(1973) 4 SCC 79**

the IPC, held that **Simplest the circumstantial evidence** should show that the case changed into dedicated. changed into added: "Mental infection earlier than and after the incident is a fact."

Unsoundness of thoughts should be on the time of the fee of the Act.

The first factor a courtroom docket to be taken into consideration whilst protecting madness is whether or not the accused has mounted that he turned into unsound on the time of committing the act. The word madness isn't always utilized in Section 84 of the penal code.

### **MISUSE OF INSANITY AS A DEFENCE**

In the present scenario, there are very high chances that the defence of insanity can be very well abused as it is a very strong weapon to escape the charges of an offence. It is impossible to prove that the person was incapable of understanding the nature of the act. Defence lawyers can use it to free the culprits of intentional unlawful acts.

#### **Relevant Case Law:**

#### **Jai Lal v. Delhi Administration<sup>23</sup>:**

Here, the appellant killed a small girl with a knife and even stabbed two other people, was convicted under Section 302 of the Indian Penal Code. It was pleaded by the accused that he was suffering from insanity within the ambit of Section 84, IPC.

It was observed that the accused, after being arrested gave normal and intelligent statements to the investigating officers. Nothing abnormal was noticed in his behavior. Considering all these findings, the Supreme Court held that the appellant was not insane at the time of the commission of the act and was well-aware of the consequences of his acts. He was held guilty for murder under Section 302, IPC.

### **MISCONCEPTIONS ABOUT THE INSANITY DEFENCE**

#### **MYTH#1: The Insanity Defense Is Overused**

All of the strongest analysis has been consistently consistent: the general public and the judiciary (especially lawyers) are overly balanced and overly common in both the frequency and success rate of the insane application, an error no

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<sup>23</sup> 1969 AIR 15 1969 SCR (1) 140 ACT

doubt supported by bizarre media exposure, distortion, and errors in identifying mentally ill people who have been charged. Crazy self-defense is used in about 1 percent of all criminal cases, and it is effective about one-fourth of the time.

### **MYTH#2: Use of The Insanity Defense Is Limited to Murder Cases**

In one area where data was carefully analyzed, contrary to expectations, less than one-third of successful psychiatric claims lodged over an eight-year period were reached in cases involving the victim's death. In addition, people who oppose insanity in murder cases are less likely to be diagnosed with NGRI than those charged with other crimes.

### **MYTH#3: There Is No Risk to The Defendant Who Pleads Insanity**

Defendants who argued for the defense of insanity during the trial, and were eventually found guilty of their crimes, drew longer sentences than the defendants who tried the same charges who did not guarantee the defense of madness. Unsuccessful NGRI opponents were jailed for 22 percent longer than people who did not file their application (Braff, Arvantes, Steadman, Arrested Patterns Suspected Successful and Unsuccessful, Criminal 21. 439, 445 (1983)). The same rate is found when murder cases are considered only.

### **MYTH#4: Criminal Defendants Who Plead Insanity Are Usually Faking**

This is the oldest myth of madness, and has not violated American law since the middle of the nineteenth century. Of the 141 people who received NGRI in one place over a period of eight years, there was no dispute that 115 were people with schizophrenia (involving 38 out of 46 cases involving the victim's death), and in only three cases where the diagnostic doctor did not want or could not specify the type of the patient's mental illness. Also, most studies show that 80-84 percent (see Perlin, Jurisprudence, p. 111 n.178), according to the study, of the NGRI defendants have a significant history of previous hospitalizations.

## **LANDMARK CASES RELATED TO INSANITY DEFENCE**

In **Ashirudeen Ahamed v State**<sup>24</sup>, the court's approach was aimed at developing a new insanity test. It was decided that in order to be eligible for protection under Section 84 of the IPC, One of the following must be proven by the accused that: (1) he had no knowledge of the nature of the action charged,

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<sup>24</sup> 1949 CriLJ 255.

(2) he had no knowledge that the act was illegal, or (3) he had no knowledge that the act was unlawful.

In **Dayabhai Chhagan bhai Thakkar v. State of Gujarat**<sup>25</sup> observed that the time period during which the crime was committed is crucial in evaluating the accused's mental state. Only the circumstances leading up to, during, and after the offence can decide if the suspect was in a mental condition that qualified him for the protection of section 84, IPC.

In **Bapu @ Gajraj Singh v. State of Rajasthan**<sup>19</sup>, the Supreme Court defined which ailments are covered by this defence and which are not. This defence does not apply to strange, egotistical, or irascible behaviour, or any illness that diminishes the intellect or affects one's emotions or willpower, according to the law. It's likewise insufficient if the accused has recurrent spells of lunacy or epilepsy but otherwise acts normally.

The Supreme Court in **Hari Singh Gond v. State of Madhya Pradesh**<sup>26</sup>, observed that in circumstances of claimed insanity, Section 84 of the IPC establishes the legal test of responsibility. The courts, “on the other hand, have largely equated this term with insanity. However, there is no clear meaning of the term "insanity." It is a phrase that is used to characterize various levels of mental illness. As a result, a mentally ill individual is not automatically exempt from criminal liability. It's important to distinguish between legal and medical insanity.” The court is only focused in legal insanity, not medical insanity.

The Supreme Court in **Surendra Mishra v. State of Jharkhand**<sup>27</sup> held that the suspect must establish “legal insanity”, not “medical insanity”, so as to be exonerated from criminal culpability under Section 84.

The Supreme Court in **Shrikant Anandrao bhosale v. State of Maharashtra**<sup>28</sup>, held that “when a plea of legal insanity is set up, the crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of section 84 of the IPC can only be established from the circumstances which preceded, attended and followed the crime. 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.”

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<sup>25</sup> AIR 1964 SC 1563

<sup>26</sup> (2008) 16 SCC 109

<sup>27</sup> AIR 2011 SC 627

<sup>28</sup> (2002)7 SCC 748

In **Lakshmi v. State**<sup>29</sup>, it was observed that “Section 84 lays down is not that the accused claiming protection under it should not know an act to be right or wrong, but that the accused should be "incapable" of knowing whether the act done by him is right or wrong. The capacity to know a thing is quite different from what a person knows. The former is a potentiality, the latter is the result of it. If a person possesses the former, he cannot be protected in law, whatever, might be the result of his potentiality. In other words, what is protected is an inherent or organic incapacity, and not a wrong or erroneous belief which might be the result of a perverted potentiality.”

## **BURDEN OF PROOF**

In a situation where insanity is pleaded as a defence to a criminal charge, the accused has the burden of evidence, according to section 105 of the Indian Evidence Act, 1872. The burden of proof in criminal proceedings is always on the prosecution and never transfers, according to a well-established precept of criminal law. This is derived from the basic concept that the accused is presumed innocent until the prosecution proves otherwise, and that the accused is given the benefit of the doubt. If the accused's insanity defence is to be accepted, he must show not only that he was mad in general, but also that he was mad at the time the offence was committed, according to Section 84.

In **State of MP v. Ahamadullah**<sup>30</sup>, the court stated that “the general presumption in law is that every person is sane during the commission of the offence. The prosecution is not required to contest or prove sanity of the accused. The burden of proving the existence of circumstances bringing the case within the purview of Section 84, therefore lies on the accused.” The accused's only responsibility is to prove the existence of insanity at the time of the offence. It is sufficient for him to demonstrate, as in a civil action, that the majority of evidence is in his favour.

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<sup>29</sup> e, AIR 1963 All 534

<sup>30</sup> AIR 1921 SC 998

## **LAW OF INSANITY IN INDIA**

The Indian law relating to insanity has been codified in the IPC, section 84<sup>31</sup> contained also the general exceptions.<sup>32</sup> Section 84 of the Indian penal Code, 1860 mentions the legal test of responsibility in case of alleged unsoundness of mind. It is by this test as distinguished from a medical test that the criminality or the mens rea of the actus reus is to be determined. This section in substance is the same as the M'Naghten Rules which are still the authoritative statement of law as to criminal responsibility in spite of the passage of time.

### **[A.] SECTION 84 OF IPC AND M'NAGHTEN PRINCIPLE**

IPC section 84 deals with the law of insanity on the subject. This provision is made from the M'Naghten rules of England. In the draft penal code, Lord Macaulay suggested two sections (66 and 67), one stating that 'nothing is an offence which is done by a person in a state of idiocy' and the other stating that 'nothing is an offence which a person does in consequence of being mad or delirious at the time of doing it' to deal with insanity.<sup>33</sup> The Law Commissioners in replacing these two provisions by IPC, section 84 have adopted a brief and succinct form of the M'Naghten rules. It has been drafted in the light of the replies to the second and third questions, which is generally known as M'Naghten rules. But IPC, section 84 uses a more comprehensible term 'unsoundness of mind' instead of insanity. Huda says the use of the word 'unsoundness of mind' instead of insanity has the advantage of doing away with the necessity of defining insanity and of artificially bringing within its scope different conditions and afflictions of mind which ordinarily do not come within its meaning but which nonetheless stand on the same footing in regard to the exemptions from criminal liability.

### **[B.] UNSOUNDNESS OF MIND**

The Code does not define unsoundness of mind.<sup>34</sup> But to exempt a man from criminal liability unsoundness of mind must reach that degree such that it materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. A distinction must be drawn between

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<sup>31</sup> Indian Penal Code, § 84: 'Acts of a person of unsound mind— Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law

<sup>32</sup> State of M.P. v. Digvijay Singh, AIR 1981 SC 1970.

<sup>33</sup> K.N. PILLAI, CHANDRASEKHARAN, GENERAL PRINCIPLES OF CRIMINAL LAW, 267

<sup>34</sup> Kader Hasyer Shah, (1896) 23 Cal 604,607

insanity affecting the cognitive faculties of a man and that affecting the will or emotions. It is only the first that is within the purview of the section.<sup>96</sup>

In **Bikari v. State of U.P.**,<sup>35</sup> it was held that where evidence of deliberate or premeditated actions are found, destruction of cognitive faculties cannot be inferred. Such unsoundness however cannot be inferred from mere lack of motive or the nature of the defendant's preceding or subsequent actions. Such was the dictum of the Supreme Court in *Sheralli Walli Mohammed v. State of Maharashtra*<sup>36</sup>

In **Lakshmi v. State**,<sup>37</sup> the meaning as to unsoundness of mind was cleared up. It was held that what section 84 lays down is that the accused claiming protection under it should not know an act to be right or wrong but that the accused should be "incapable" of knowing whether the act done by him is right or wrong. The former is a potentiality; the latter is the result of it. If the person possesses the former, he cannot be protected in law, whatever might be the result of his potentiality.

## [C.] THE LAW COMMISSION REPORT SUMMARY

After much deliberation it was decided that the provisions in the criminal justice system dealing with the insanity defense need no alteration and the same were left untouched.<sup>38</sup> However, This decision of the Law Commission has come under fire since the M'Naghten Rule (which is based the Indian insanity defense) has come under increasing attack in most common law countries.<sup>101</sup> In fact to remedy it's in adequacies, a vast number of legislations and new theories have been formulated. In India however no such innovations have been introduced and we continue to live with this much criticized system.<sup>102</sup> The Indian Law on insanity is based on the rules laid down in the M'Naghten case.<sup>39</sup> However, the M'Naghten rules have become obsolete and are not proper and suitable in the modern era.

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<sup>35</sup> AIR 1961 SC 1

<sup>36</sup> AIR 1972 SC 2443

<sup>37</sup> AIR 1963 ALL 534.

<sup>38</sup> Shivraj Singh v. State of M.P., 1975 Cr LJ 1458

<sup>39</sup> 3 Bhan Singh v. State of M.P., 1990 Cr LJ 1861 (MP)



## **LAW OF INSANITY IN OTHER CRIMINAL CODES: AN OVERVIEW**

The Criminal Codes of many countries provide for a broader scope for the defence of insanity.

### **[A.] INSANITY LAW IN USA**

The United States' courts expanded upon the M'Naghten Rule by exempting from criminal liability those who acted under "irresistible impulse."<sup>40</sup> This test focused on exempting spur-of-the-moment reactions from criminal responsibility.<sup>106</sup> Thus, courts, following this rule, would not excuse crimes committed after prolonged contemplation.

Parsons v. State<sup>41</sup>, a much-noted early case, exemplified this proposition. In Parsons, a wife and daughter were accused of killing their husband/father by fatally shooting him. The two defendants were tried jointly and both pled insanity. At the trial level, the jury found the defendants guilty of murder with malice aforethought.

Another development with limited application in the law of the insanity plea in the United States was the so called "product" test.<sup>110</sup> According to this test, the defendant would not be criminally responsible if his unlawful act was the product or result of a mental disease or defect.

### **[B.] AUSTRALIAN CAPITAL TERRITORY**

Pursuant to the Crimes Act 1900, section 428(1):<sup>42</sup> An accused is entitled to be acquitted of an indictable offence on the grounds of mental illness if it is established on the balance of probabilities that, at the time of the alleged offence, the accused was, as a result of mental dysfunction - ♣ Incapable of knowing what he or she was doing; or ♣ Incapable of understanding that what he or she was doing was wrong.

### **[C.] NEW SOUTH WALES**

In New South Wales, §38 of the Mental Health (Criminal Procedure) Act 1990 states:<sup>43</sup> If, in an indictment or information, an act or omission is charged

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<sup>40</sup> MICHAEL L. PERLIN, THE JURISPRUDENCE OF THE INSANITY DEFENCE 84 (1994)

<sup>41</sup> 2 So. 854 (Ala. 1887).

<sup>42</sup> 5 Diamond, Criminal Responsibility of the Mentally Ill, 14 STAN. L. REV. 59, 61-62 (1961)

<sup>43</sup> G. P. Fletcher, "Two Kinds of Legal Rules: a Comparative Study of Burden-of-Persuasion Practices in Criminal Cases" 77 Yale L.J. 880, 899-901(1968).

against a person as an offence and it is given in evidence on the trial of the person for the offence that the person was mentally ill, so as not to be responsible, according to law, for his or her action at the time when the act was done or omission made, then, if it appears to the jury before which the person is tried that the person did the act or made the omission charged, but was mentally ill at the time when the person did or made the same, the jury must return a special verdict that the accused person is not guilty by reason of mental illness.

It is noted that this test invokes the common law; New South Wales is the only Australian jurisdiction to do so in those terms

#### **[D]TASMANIAN CRIMINAL CODE**

Section 16 says that an accused may not be punished if he may not understand the nature of the act or that it was against law. They may also not be punished if they committed the act under an 'irresistible impulse'.

#### **[E.]PENAL CODE OF FRANCE**

Article 64 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'.

#### **[F.] SWISS PENAL CODE**

Section 10 states 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'. The American Law Institute suggested that 'a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks the substantial capacity either to appreciate the criminality of his conduct or to confirm his conduct to the requirements of law'

### **THE DRAWBACKS OF THE INDIAN LEGAL SYSTEM**

The data revealed that lower court findings were based on documentation proof of mental illness previous to the crime and the opinion of a physician. Murder was the most prevalent crime (as murder carries a death penalty). The victim's wife was the most prevalent relationship, followed by a first-degree relative. Schizophrenia was the most commonly diagnosed mental illness. Women made up just 3% of the total number of insanity pleas. Another noteworthy statistic is that women had a higher success rate in insanity pleas. As a result of these

factors, some people believe that the law has a role in imposing sexual stereotypes.

The study drew attention to a few key difficulties. They came upon some major challenges. The need of recording the different treatment processes by clinicians was obvious. However, in a poor nation like India, where mental health disorders are stigmatised, this is not the case. Due to a paucity of psychiatric institutions and the employment of unscientific religious rituals, as well as the usage of Ayurveda to treat mental diseases, documental proof is only available to the upper crust.

There is a dependence on psychiatric opinion, but no formal system for obtaining and analysing psychiatric data or opportunity for psychiatric examination has been established. The study also found that for people who sought psychiatric assistance before committing a crime, the interval between the act and the previous psychiatric consultation ranged from one day to six months (the average being 275.2 days). The psychiatrist was new to the accused in the majority of cases (41 of 67), indicating that the majority of the accused had never seen a doctor before. In the case of insanity pleas in India, the higher court was much less likely to overturn the lower court's decision in the event of an appeal, according to the study.

Not only Indian psychiatrists see the urgent need for change in the field of forensic psychiatry. In the Bolabhai Hirabhai case<sup>44</sup>, the Gujarat High Court emphasised the need of forensic psychiatry in the administration of justice. It also stated that forensic psychiatry is still underutilised in the criminal justice system. The court noted that the single part of criminal culpability that emerges from mental illness has piqued the court's curiosity.

According to the expert view, the court should consider whether a person in this situation could have done the same crime if he had emotional equilibrium, average intellect, and suitable perception. It should also look at whether his mental condition was strong enough to counteract the aforementioned causes. The high court also praised Dr. Agarwal, who testified as a defence witness and provided an expert opinion. The doctor has 18 years of psychiatric experience, as well as clinical experience. It also chastised the trial court for failing to give the doctor's view the weight it deserved. The inadequacies of the Mental Health Act of 1987 were also highlighted by the court.

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<sup>44</sup> (2000) 3 GLR 242

## **CRITICIS OF M'NAGHTEN PRINCIPLE**

The M'Naghten Rule has been chastised for a number of reasons. The following are some of the most important reasons:

1. It was established that if a person is unable to distinguish between good and wrong, he is mad. However, there are also medical circumstances in which a person knows 'what is right' but feels compelled to do evil. When a person can't stop themselves from doing something bad, it's known as 'irresistible impulse.' People suffering from manias and paraphilias, for example.
2. The regulation has been criticised for giving the defendant an easy way out. If somebody suffers from a serious mental illness, he can easily avoid criminal accountability, regardless of how much this illness assisted in the commission of the crime. There have been certain instances when the legal definition of insanity differs with the medical criterion for insanity.
3. It is also criticised since the M'Naghten rule only provides a legal definition of insanity and does not provide a medical one. The guideline does not define or define phrases such as temporary or permanent insanity. There might be a condition that is just transient and manifests itself at different times during a person's life. If somebody suffers from a serious mental illness, he can easily avoid criminal accountability, regardless of how much this illness assisted in the commission of the crime. There have been certain instances when the legal definition of insanity differs with the medical criterion for insanity.
4. It is also criticised since the M'Naghten rule only provides a legal definition of insanity and does not provide a medical one. The guideline does not define or define phrases such as temporary or permanent insanity. There might be a condition that is just temporary and shows up at different points during a person's life

## **REFORMS**

In today's legal system, a thorough examination of the patient's medical history, prior medical history, family and personal history, premorbid personality, and drug misuse is essential. More significantly, a thorough investigation of his cognition, behaviour, emotions, and perception before, during, and after the occurrence should be done. It is necessary to determine the accused's level of legal understanding and the nature of the offence committed. If necessary, a cognitive functioning exam should be conducted using open-ended questions rather than leading questions. Psychiatry's importance grows as a result of

this. However, there are no established degree programmes or institutes in forensic psychiatry in India at the moment. As a result, there is a pressing need to develop educational institutes of this type to suit the needs of the times we live in. Judicial officers, police officers, correctional officers, and human rights workers should all get training or basic education in forensic psychiatric concepts.

Despite the fact that India's new mental healthcare act of 2017 aimed at considerable reforms in the domain of criminally insane rehabilitation (which had decriminalised suicide). However, the concerns surrounding the insanity plea persist at both the national and international levels. It is well acknowledged that nations with an inquisitorial criminal justice system do better than countries with an adversarial criminal justice system when it comes to the insanity plea.

In Scandinavian nations, the plea is still handled more successfully by a board made up of people with judicial, psychiatric, and human rights backgrounds. The human condition is far from simple, especially when it comes to legislation; the human species still has no understanding of its own mind. The only way to ensure that mankind's oldest defence argument has a brighter future is to combine scientific and legal advances.

## **A CHANGE IN THE LEGAL TEST**

What we require is change in the way of thinking, instead of focusing our approach towards defining insanity on the basis of M'Naghten Rules, we should focus on other approaches as well, which includes:

### **a) The Model Penal Code test**

The Model Penal Code Test originated in the late twentieth century. This Test was made to be much more flexible than other tests available at the point of time. This test presents that there should be two conditions either of which should be fulfilled in order for the test to prove that the individual was insane at the time of the crime committed, these two conditions are-

- That the individual is unable to grasp the consequences of his actions
- In the present Condition his behaviour cannot be corrected so as to not cause harm to the society in the foreseeable future.

The tests check for any mental disorder which the person is suffering from and how his mental disorder caused this individual to commit the crime that he did.

### **b) Irresistible Impulse Test**

The Irresistible Impulse Test states that the individual who is using insanity as defence should not be held liable even though he was fully aware of his actions only because he was unable to control his movements and since he did not control his action this would provide for absence of mens rea. Since, it was created from the Criticisms of M'Naghten Rules It states that McNaughton rule does not factor in the cases where the individual is aware of his actions but cannot control his impulses due to mental trauma or disorder or any other reason.

### **c) Durham Test for Insanity**

This test also brings to light that the individual should not be held liable if he is suffering from mental illness. Since, it means that there is the absence of ill intention to do harm. Hence, any action done by this person is not a crime since there is only action but no intention. This Test is only applicable in New Hampshire

## **BENEFICIAL EFFECTS OF INSANITY DEFENCE**

1. For the mentally challenged accused, the insanity defence is a lifesaver since their thinking is like that of a toddler who doesn't understand what they're doing and isn't aware of the implications of their actions.
2. Because an insane person who confessed to a crime was unable to appreciate the seriousness or nature of the offence, death penalty is not justifiable.
3. An activity against the legislation is an offense, and if an offense is done, the suspect is viewed as a lower human being. Once the offence is established, defence is taken. This defence gives relief to the mentally deficient individual.

## **ADVERSE EFFECTS OF INSANITY DEFENCE**

1. The insanity defence has really been frequently misapplied, with the guilty being released on the grounds of mental illness in a variety of situations and circumstances, which devalues the concept of law. Many countries, including Germany, Argentina, Thailand, and the majority of the United Kingdom, have eliminated this defence due to widespread abuse .

2. Because the accused bears the burden of demonstrating insanity as a defence, proving and availing this defence is a difficult effort. While showing medical insanity is simple, legally establishing insanity is a complex effort that the accused must prove with tangible proof.

3. To avoid criminal liability, all of the essential factors must be satisfied under Section 84, but it is impossible to satisfy all of the criteria, and as a result, most insanity defence cases result in the accused being charged with criminal responsibility and penalised.

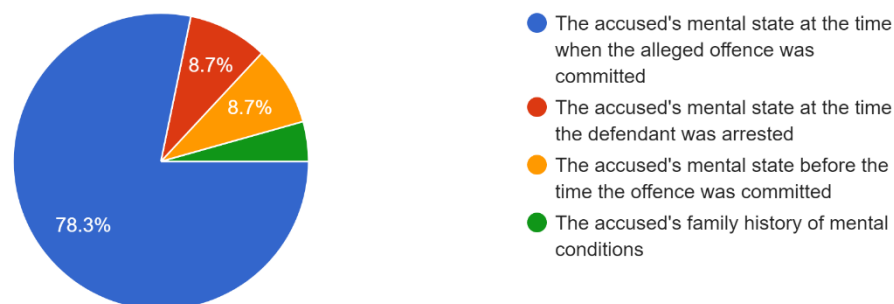
4. As a consequence, the insanity defence is frequently misapplied because it is hard to determine if a person's thoughts was in a “sound or unsound” state of mind at the time the crime has been committed.

## SURVEY RESULTS

With the purpose to achieve the objectives of this research a survey was conducted through a google form questionnaire where a large number of people participated from different age, gender, and professions from which we could gather the following information :

The defence of insanity is concerned with what?

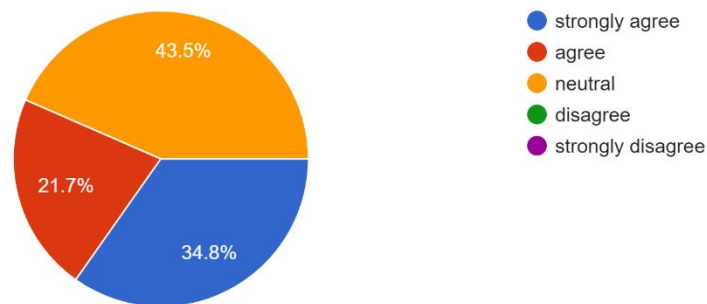
23 responses



78.3% of the total population of the sample taken had a clarity about the topic and knew about the plea of insanity on the other hand 8.7% of the population

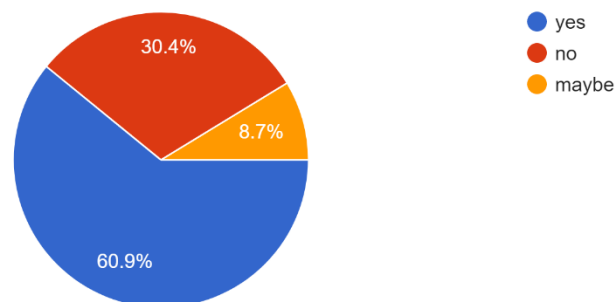
thinks that the accused's mental state before the time the offence was committed or the accused's mental state at the time defendant was arrested is known as the defence of insanity and 4.3% believes that the defence of insanity concerns with the accused's family history of mental conditions.

The "Insanity Defence" is a tactic employed in criminal law in India to absolve a suspect of a crime.  
23 responses



A major part of the sample did not agree or disagree to the question that the insanity defence is tactic which is employed in criminal law in India to absolve a suspect of crime in percentage they are of 43.5 % and 21.7 % of the population agreed and 34.8% strongly agreed for the same.

Are you aware that there is a difference between medical and legal insanity?  
23 responses

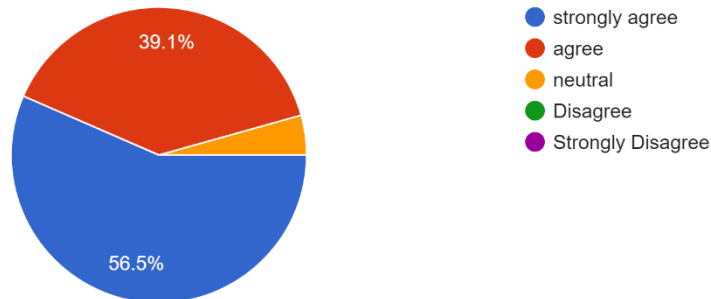


This question meant to check the awareness among the society and the major part of the society which in in percentage is 60.9% is aware about the difference between the medical and legal insanity and 30.4% is not aware about the same.



"there are very high chances that the defence of insanity can be very well abused as it is a very strong weapon to escape the charges of an offence"

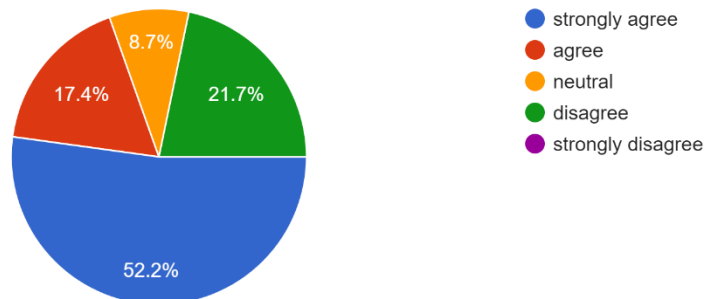
23 responses



More than half of the population of the sample taken strongly agrees that there are very high chances that the defence of insanity can be very well abused as it is a strong weapon to escape the charges of an offence which in percentage is of 56.5% and 39.1 % also agrees for the same but 4.3% of the population tried to remain neutral on this issue.

" Defence lawyers can use it to free the culprits of intentional unlawful acts"

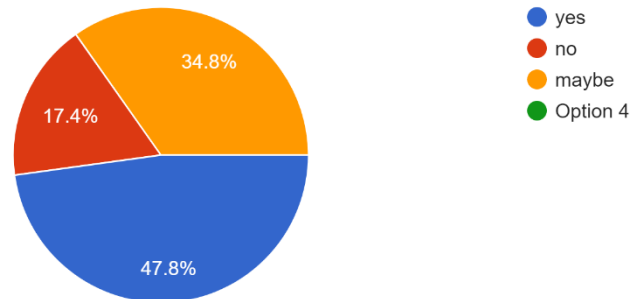
23 responses



52.2 % of the population strongly agrees that defence lawyers can use this plea of insanity to free the culprits of intentional unlawful acts and in retaliation 21.7% disagreed for the same and 17.4% agrees and 8.7% chose to remain neutral on this matter.

"In a situation where insanity is pleaded as a defence to a criminal charge, the accused has the burden of evidence" Do you think its fair?

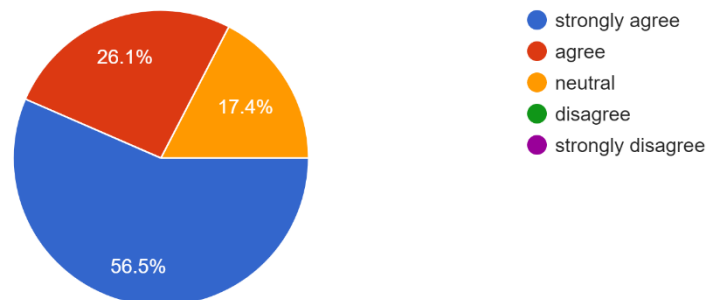
23 responses



Major part of the population of the sample thinks that it is fair to put burden of evidence on the accused where insanity is pleaded as a defence to a criminal charge which in percentage is of 47.8% , 34.8% chose to remain neutral and 17.4% is against it which believes burden of proof should also rely of on the defendant not always on the accused.

Do you believe that in a nation like India where mental health disorders are stigmatized , documental proof is only available to the upper crust of the society ?

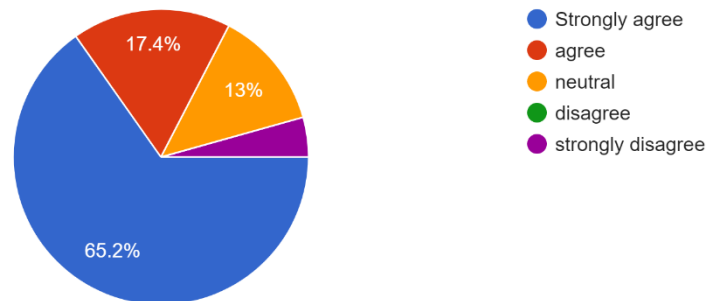
23 responses



56.5% of the population believes that a poor nation like India where mental health disorders are stigmatized the documental proof is only available to upper crust or class of the society and 26.1% of the population agrees for the same and 17.4% chose to remain neutral.

"There is a dependence on psychiatric opinion, but no formal system for obtaining and analysing psychiatric data or opportunity for psychiatric exam...mal system should be established for a fair trial?"

23 responses



66.2% of the population strongly agreed to the point that a formal system should be established for a fair trial only an opinion of psychiatrist is not enough and 17.4% agrees for the same and 13% chose to remain neutral and in retaliation 4.3% disagreed and believes psychiatric opinion is enough no need of any formal system to be established.

## CONCLUSION

An inference drawn from the research is that Section 84, IPC incorporates M'Naughton Rules. The Section deals with insanity, which is a defence that covers all types of incapacity, whether "temporary or permanent", "natural or supervening", "arising from disease or existing from birth", and is based solely on the suspect's behaviour, which is the sole criterion for assessing criminal guilt. It is difficult to detect a person's mental state when they are committing a crime, and it is therefore difficult to establish their mental condition. Also, it is extremely difficult for an insane person to prove his defence. Simultaneously sane person also using this plea to get away from punishment. The situation becomes barrier for the law to serve its main purpose thereby turning it into a loophole. Another thing that make this law a loophole is that the court have to determine mens rea in this case, which in itself is very complicated. It is not appropriate to use it every time. The plea of insanity should only and only be raised in genuine cases. Though it is on the discretion of the court at the end but there must be fair use of the laws made for the benefit of the general public. It is fair to conclude that the law of insanity has lost its initial vitality and has now become a mechanism for criminals to avoid legal consequences. In view of advances in medical sciences, particularly in the field of psychiatry, Indian

courts have often urged for a more progressive approach in the application of the Penal Code's definition of "unsoundness of mind".

## **CRITICAL ANALYSIS**

The Indian Law on insanity is based on the rules laid down in the M’Naghten case. However, the M’Naghten rules have become obsolete and are not proper and suitable in the modern era. The M’Naghten rule is based on the entirely obsolete and misleading conception of nature of insanity, since insanity does not only affect the cognitive faculties but affects the whole personality of the person including both the will and the emotions. The present definition only looks at the cognitive and moral aspects of the defendant's actions but ignores the irresistible impulse that may be forcing him to commit that act. An insane person may often know the nature and quality of his act and that law forbids it but yet commit it as a result of the mental disease.

The Law Commission of India in its 42nd report after considering the desirability of introducing the test of diminished responsibility under IPC, section 84 gave its opinion in the negative due to the complicated medico-legal issue it would introduce in trial. It is submitted that the Law Commission’s view needs modification since it is not in conformity with the latest scientific and technological advances made in this direction. There are three compartments of the mind controlling cognition, emotion and will. IPC, section 84 only exempts one whose cognitive faculties are affected.

The provision is regarded as too narrow, and makes no provision for a case where one’s emotion and the will are so affected as to render the control of the cognitive faculties ineffectual. The Courts must also adopt a broader view of the Insanity and introduce the concept of diminished responsibility.

The Indian Government may also look at the provisions of the other countries relating to insanity. Swiss Penal Code, section 10 states 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’. This provision is much broader and is better suited for the defence of insanity.

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