Insanity Defense: Past, Present, and Future

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ABSTRACT

Insanity defense is primarily used in criminal prosecutions. It is based on the assumption that at the time of the crime, the defendant was not suffering from severe mental illness and therefore, was incapable of appreciating the nature of the crime and differentiating right from wrong behavior, hence making them not legally accountable for crime. Insanity defense is a legal concept, not a clinical one (medical one). This means that just suffering from a mental disorder is not sufficient to prove insanity. The defendant has the burden of proving the defense of insanity by a “preponderance of the evidence” which is similar to a civil case. It is hard to determine legal insanity, and even harder to successfully defend it in court. This article focuses on the recent Supreme Court decision on insanity defense and standards employed in Indian court. Researchers 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. There is an urgent need to initiate formal graduation course, setup Forensic Psychiatric Training and Clinical Services Providing Centers across the country to increase the manpower resources and to provide fair and speedy trial.

Key words: Criminal responsibility, Indian Penal Code Section-84, insanity defense, legal insanity, medical insanity

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.[1] 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.[2] 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.[1] 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.[4] However, in the recent past some of the U.S. states (such as Montana, Idaho, Kansas, and Utah) have banned insanity defense.[3] This issue has raised a serious debate among medical, psychology and law professionals across the world.[1]

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.[5] Another study from India portrays 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.[6] 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.

Disclaimer
Terms such as “insanity” and “unsoundness of mind” are legal concepts and are used frequently in the court of law. Though the Mental Health Act, 1987[7] has clearly recommended the abolition of various offensive terminologies, unfortunately, these terminologies continue to exist in various legislations, rules, regulations, and also even recent case laws.[6] The researchers were also therefore unable to entirely avoid these terminologies. If any person reading this research article feels offended because of usage of such terms, researchers deeply regret.

RESEARCH METHODOLOGY
To answer the objective of the research, authors conducted an electronic search of articles published in “PubMed” unrestricted for date. MeSH terms such as insanity defense, Mc Naughten rule, and criminal insanity were employed initially. Further to be more inclusive, non-MeSH terms such as, not guilty by reason of insanity, guilty but insane/mentally ill and criminal responsibility were used as terminologies to search on PubMed. The cross-references of major articles, and reviews, where ever relevant were further reviewed. In order to carry out searches related to legal issues, we utilized a combination of primary and secondary data. Online searches using various databases such as PubMed, Ebsco Host, Science Direct, ProQuest, Manupatra, Hein Online, Lexis Nexis, Jstor, Springer Link, Westlaw India and International, AIR online and SCC online were helpful. The author found a wide scatter of published articles and case laws. To arrive at a meaningful discussion, only relevant articles were selected for the review.

HISTORICAL PERSPECTIVE OF INSANITY DEFENSE IN INDIA
Insanity defense has been in existence since many centuries; however, it took a legal position only since the last three centuries. There were various tests used to declare a person legally insane such as Wild Beast test,[8] The Insane Delusion test,[9] and “test of capacity to distinguish between right and wrong.”[10] These three tests laid the foundation for the landmark Mc Naughten rule.

In 1843, Daniel Mc Naughten, a wood-turner from Glasgow, shot and killed Edward Drummond mistaking him for Sir Robert Peel. Mc Naughten believed that he was persecuted by the Tories, and evidence was brought to show that he had been totally deluded on this subject for some time.[11,12] His state of mind was apparent from the outset when he had to be coaxed, and finally tricked, into pleading “not guilty.” After hearing seven medical witnesses testify that he was completely insane, the judge stopped the trial, the jury brought in the special verdict without summing up and without retiring, and Mc Naughten was forcibly committed to the Bethlem Hospital.[13,14] Immediately thereafter, five propositions were drawn which were called Mc Naughten rules.[14]

This Mc Naughten rule became a legendary precedent for the law concerning the defense of insanity. Even, in India, insanity defense law, Section 84 IPC is solely based on the Mc Naughten rules. Since it is drafted, no changes have been made. However, in 1971, there was an attempt by the Law Commission of India to revisit the Section 84 in their 42nd report, but no changes were made.

Section 84 of IPC deals with the “act of a person of unsound mind,”[15]. “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.”

On analysis of the Section 84 IPC, the following essential ingredients can be listed. For the sake of easy understanding, the Section 84 IPC can be divided into two broad categories of, major criteria (medical requirement of mental illness) and minor criteria (loss of reasoning requirement). Major criteria (mental illness requirement) mean the person must be suffering from mental illness during the commission of act. Minor criteria (loss of reasoning requirement) mean the person is:

a. Incapable of knowing the nature of the act or
b. Incapable of knowing his act is wrong or
c. Incapable of knowing it is contrary to law.
Both major (mental illness) and minor (loss of reasoning) criteria constitute legal insanity.

Section 84 IPC, clearly embodies a fundamental maxim of criminal jurisprudence that is, (a) “Actus nonfacit reun nisi mens sit rea” (an act does not constitute guilt unless done with a guilty intention) and (b) “Furioosi nulla voluntas est” (a person with mental illness has no free will).[16] This means that an act does not constitute a crime unless it is done with a guilty intention called “mens rea.”[17] Hence, Section 84 IPC fastens no culpability on persons with mental illness because they can have no rational thinking or the necessary guilty intent.

**SUPREME COURT DECISION ON INSANITY DEFENSE IN INDIA**

Modern criminal law is based on the belief that humans are morally responsible and not harm causing agents. To be held criminally responsible, two essential elements have to be proven, beyond reasonable doubt, (a) the person committed the act (actus reus)[19] (b) in doing so, the person acted with his or her own free will, intentionally and for rational reasons (mens rea).[17]

Psychiatrists may be asked to assist the court in determining whether certain mental disorders affected a person’s ability to form the intent necessary to make that person legally culpable.

**Medical insanity versus legal insanity**

Section 84 lays down the legal test of responsibility in cases of alleged crime done by a person with mental illness. There is no definition of “unsoundness of mind” in the IPC. The courts have, however, mainly treated this expression as equivalent to insanity. But the term “insanity” itself has no precise definition, carries different meaning in different contexts and describes varying degrees of mental disorders.[19] Every person who is mentally ill is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A court is concerned with legal insanity, and not with medical insanity.[16,19] Any person, who is suffering from any kind of mental illness is called “medical insanity,” however “legal insanity” means, person suffering from mental illness should also have a loss of reasoning power. This issue is clearly depicted in Section 84 IPC as that person incapable of knowing:

a. The nature of the act, or
b. That he is doing what is either wrong or

c. Contrary to law.[16]

Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behavior of a psychopath affords no protection under Section 84 IPC.[16]

In one of the landmark decisions, in the case of Surendra Mishra versus state of Jharkhand,[20] the Apex Court has stated that an accused who seeks exoneration from liability of an act under Section 84 of the IPC is to prove legal insanity and not medical insanity. Further, it also said that expression “unsoundness of mind” has not been defined in the IPC, and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorders. Every person who is suffering from mental illness is not exempted from criminal liability. The mere fact that the 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 affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behavior or the behavior is queer are not sufficient to attract the application of Section 84 of the IPC.[16]

The Apex Court in its judgment reported that though accused suffered from certain mental instability of mind even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offense did not know the nature of his act; that it was either wrong or contrary to law, hence rejected insanity defense.[20,21] In a similar case, despite having a medical history of insanity proved by evidence in court, the court convicted the accused based on his subsequent conduct viz., his act of concealing the weapon, bolting the door to prevent arrest and absconding thereafter as the said acts were held by the court to be a display of consciousness of the guilt.[22]

The crucial point of time for determining the state of mind of the accused is the time when the offense was committed. The person suffering from mental illness is one of the facts for Section 84 IPC. However, other facts which also needs to be given importance are: Motive for the crime, the previous history as to mental condition of the accused, the state of his mind at the time of the offense, and the events immediately after the incident that throw a light on the state of his mind.[23] To summarize, it is not only the fact that the person
is suffering from mental illness but it is the totality of the circumstances seen in the light of the evidence on record to prove that the person was also unable to appreciate the nature of the act or wrongdoing or that it was contrary to the law is appreciated in the court of law for insanity defense.

**Burden of proof in insanity defense**

Under law, every man is presumed to be sane and assumed to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. Every person is presumed to know the natural consequences of his act. Similarly, every person is also presumed to know the law. The prosecution does not have to establish these facts.

In insanity defense, there are two aspects of proving an offense, which are as follows:

a. Commission of crime and  
b. Insanity defense.

The burden of proving the commission of an offense is always on the prosecution, and that never shifts. The prosecution has to prove the same beyond a reasonable doubt. However, the onus of proving the existence of circumstances (Section 84 IPC) for insanity defense would be on the accused (Section 105 of the Evidence Act) and the court shall presume the absence of such circumstances. The accused has to prove by placing material before the court such as expert evidence, oral and other documentary evidence, presumptions, admissions or even the prosecution evidence, satisfying that he was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. The Supreme Court have ascertained 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 appellant for claiming the benefit of the Section 84 provision.

In Dahyabhai Chhaganbhai Thakker versus state of Gujarat, this court has held that even if the accused was not able to establish conclusively that he was insane at the time he committed the offense, the evidence placed before the court may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offense, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged. Though the burden is on the accused, he is not required to prove the same beyond all reasonable doubt, but merely satisfy the preponderance of probabilities. The burden of proof casted upon him is no higher than that rests upon a party to civil proceedings.

**Motivation for a crime**

Mere absence of motive for a crime and howsoever atrocious the crime may be, in the absence of plea and proof of legal insanity, cannot bring the case within the ambit of Section 84 IPC. Also the fact that the accused made no attempt to run away from the crime scene, would not indicate that he was insane or, that he did not have the necessary mens rea for the commission of the offense. Further, the Supreme Court have clearly stated that the mere abnormality of mind or partial delusion, irresistible impulse or compulsive behavior of a psychopath affords no protection under Section 84 IPC.

**Plea of insanity**

The onus of proving unsoundness of mind is on the accused, hence the plea of insanity should be taken by the accused or by his lawyer or his family members or previous history of insanity is revealed, it is the duty of an honest investigating officer to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused. Hence, the plea of insanity should be taken during the investigation or during the trial in the lower court not during the appeal to the higher court.

To summarize, the concept of insanity defense is a legal one and not a medical one. Although a psychiatrist’s opinion is taken into account ultimately the decision to accept or reject the defense lays with the court the world over. Based upon the reasoning power of the defendant during the circumstances of the crime as shown in the Table 1.

**ROLE OF PSYCHIATRIST**

A standard evaluation procedure of all patients who plead insanity defense is absolutely necessary. It is unfortunate that till date, no such standardized procedures exist in our country. Psychiatrists are often called for conducting mental health evaluations and

**Table 1:** Assessment of other evidences to ascertain reasoning power of the defendant during the commission of crime

| Planning: deliberation, time spent on planning, presence of an accomplice, procuring of required weapon, date and time of execution of offence and arranging vehicle to escape |
| Avoid detection: waiting until proper time, taking the victim to a secluded place, use of gloves and mask, disguising and concealment of weapons |
| Disposing evidences: wiping off fingerprints and blood, discarding weapon, destroying documents, burying, concealing victim, planting false evidences and threatening witnesses |
| Escaping from the crime scene: efforts to avoid arrest, resisting arrest, lying to police, notifying police and expression of guilt after the offense |
| Presences of Accomplice: if multiple accomplice are present |
| Performing complex task: if a person has performed a complex task (which requires cognitive ability) immediately before and after commission of crime |
treatment. Apart from treatment, courts may also request for various certifications. This includes:

1. Certifying the presence or absence of psychiatric illness if the defendant claims for an insanity plea (defendant’s mental status when the alleged offense took place);

2. Assessment of fitness to stand trial in cases where mental illness incapacitates cognitive, emotional and behavioral faculties of an individual causing serious impact on the ability to defend the case (defendant’s present mental status and his competence during adjudication).\(^6,31\)

Psychiatrist should consider inpatient admission for a comprehensive evaluation of the defendant.

It is the duty of the psychiatrist to educate the court, clarify psychiatric issues, provide honest and objective opinions based on factual data and sound reasoning. Forensic psychiatry assessment proforma, a modified version of the Kumar et al. 2014 [Table 2].\(^6\) This NIMHANS Detailed Workup Proforma for Forensic Psychiatry Patients-II is used in the Institute since many decades for semi-structured assessment of forensic psychiatric cases. This proforma is modified periodically as per the clinical evaluation and legal requirement.

**Review of accompanying documents**

It is the duty of the psychiatrist to review all the accompanying legal documents and ascertain the referring authority, reason for referral, date and time of referral, and available time in hand to provide the opinion. Further defendant’s medical and psychiatric records should be reviewed prior initiating the assessment of the defendant. A careful history should be gathered from all possible sources such as the defendant, accompanying person, FIR, postmortem and autopsy report, photographs of the crime scene, behavior observational report, interviewing the family members, and past treating psychiatrist.

**Assessment of history of presenting illness**

The accused should be interviewed as early as possible in time to the offense though practically, this may not always be feasible. At the outset of the assessment, the defendant must be informed about the purpose of the evaluation and the lack of confidentiality. Psychiatrist should document the date and time of assessment, demographic details, identification marks and injuries on the body. A comprehensive inquiry should be done into the history of presenting illness, past history, family history, personal history and premorbid personality. Psychiatrist should never forget to do an assessment of substance use in past and present.\(^6\)

**Assessment focusing on mental state at the time of the offense**

Psychiatrist should make an effort to evaluate the mental status of the defendant at the time of the offense. He should try to get the detailed account of the incident through open-ended questions. It would be prudent to ask the defendant to give a step-by-step account of his behavior, emotions, biological, occupational, and social functioning beginning 1-week prior to the offense and to be enquired till 1-week after the commission of offense. The comprehensive inquiry should be done on his cognition, behavior, emotions, and perception, prior, during, and immediately after the commission of the offense. Psychiatrist should enquire by asking open-ended questions to ascertain the defendant’s knowledge of law, nature of his act and also whether he is in a position to appreciate right and wrong.

Please refer to Table 3 for illustrative questions to interview the defendant.

Psychiatrists should also look into behaviors of the defendant before, during, and after the commission of offense, which can give clues toward patient’s complete mental status.

**Mental Status and cognitive functioning assessment**

Mental status examination should be done without

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**Table 2: NIMHANS detail workup proforma for forensic psychiatry patients (NDFPP) (modified version of Kumar et al. 2014)\(^6\)**

| Date:          | Time:       | Place of Examination: |
|---------------|-------------|------------------------|
| Name of the Patient with alias: |             |                        |
| Father’s/Mother’s Name: |             |                        |
| Residential address with mobile number: |             |                        |
| Identification Mark: |             |                        |
| Gender:        | Age:        |                        |
| Marital status: | Education:  |                        |
| Occupation before arrest: |             |                        |
| Name the referring authority: |             |                        |
| Reason for referral: |             |                        |
| Accompanying letters (Referral letter with date): |             |                        |
| Legal status of the prisoners: Under Trial/ Convicted |             |                        |
| Duration of stay in prison (in months): |             |                        |
| Charges against the patient (if possible include IPC sections): |             |                        |
| Behavioral Observation report from the prison: |             |                        |
| Chief complaints as per the referring authority: |             |                        |
| Chief complaints as per the patient: |             |                        |
| Circumstances around the alleged crime: |             |                        |
| History of Presenting Illness: |             |                        |
| Past history of Medical/psychiatric illness and Treatment history: |             |                        |
| Family history (please do pedigree charting with names of each family members): |             |                        |
| Personal history: |             |                        |
| Premorbid personality: |             |                        |
| Mental Status Examination and Cognitive Function: |             |                        |
| Provisional Diagnosis: |             |                        |
| Plan of management: |             |                        |
| Investigations: |             |                        |
| Requesting for more information (letters to be dispatched): |             |                        |
| a. FIR from the police station: |             |                        |
| b. Family members to provide information and to plan for management: |             |                        |
| c. Any other letters: |             |                        |
| d. Treatment: |             |                        |
leading questions. The psychiatrist should ask open-ended questions and he should restrain himself from asking leading questions. In-experienced psychiatrist can fall easily into the trap of the malingering patients. Hence, it is advisable to admit the patient and do a serial mental status examination and serial ward observations. The behavioral observation report is given in Table 4.[6]

**Diagnosis**

Considering the nature of the assessment and law presumes everyone is sane unless the contrary is proved, it is prudent to start assessment in the same direction. Psychiatrist should resist making definitive diagnosis initially. Diagnosis needs to be kept open or provisional diagnosis to be considered. After gathering information from all possible sources, depending upon the serial mental status examination, serial ward observation, psychological testing and laboratory investigations, psychiatrist should make honest subjective assessment and give his opinion regarding the patient’s lifetime diagnosis and present mental status. He should also make sincere effort to opine on the mental status of the defendant during the commission of the offense.

Table 3: Illustrative questions to interview the defendant

| Question                                                                 |
|-------------------------------------------------------------------------|
| a) Explain the environment and people present during the occurrence of   |
| incident?                                                               |
| b) How did nearby people respond to the act? why?                       |
| c) What was behavioral and emotional response of the victim?            |
| d) What may be the reason victim reacted in that way?                   |
| e) What would be your response if you were victim?                      |
| f) What recourse would you expect from the law, if you were a victim?   |
| g) What would you do, if someone else had committed the act?            |
| h) What will be the role of police in such incidents?                   |
| i) What will you do if one of the known person was the victim?          |

Table 4: NIMHANS behavioral observation report (NBOR) (modified version of Kumar et al. 2014)[6]

- General Appearance and Behavior:
- Personal Hygiene:
- Behavior and social functioning with:
- Biological functioning:
- Involvement in ward activities:
- Activities of daily living:
- Compliance to medicine intake:
- Assistance required in day-to-day activities:
- Abnormal/disorganized behavior and details of the behavior: (hallucinatory behavior, collecting garbage, hoarding, eating excreta and so forth)
- Deficit behavior: (negative symptoms)
- Any contradictory behavior:
- Self injurious behavior:
- Violence towards others:
- Substance use:
- Behavior of the person when staff is not observing:
- Any other information to be documented:

**FUTURE DIRECTIONS**

There are no formal graduation courses in forensic psychiatry in India. Forensic Psychiatric Training and Centers that provide forensic psychiatric clinical services are few in number across the country. Taking into consideration the current state of affair in forensic psychiatry, researcher is compelled to suggest:

- a. To develop Forensic Psychiatry Training Centers to train mental health, judicial, human rights and correctional officers at each state level,
- b. Prison mental health services needs to be started in each central prison as per the recommendations of the Bangalore prison study,[42]
- c. There is an urgent need to train the psychiatrist in each district hospitals and medical college in assessment of insanity defense and evaluation of fitness to stand trial, so that forensic psychiatric services are easily accessible and undue delay can be avoided in getting the expert opinion[31] and
- d. To revisit the criminal responsibly and to do a systematic research in the area of criminal and diminished responsibility.

**CONCLUSION**

Psychiatrists may be asked to assist the court in determining whether certain mental disorders affected a person’s ability to form the intent necessary to make that person legally culpable. The medical discipline describes the patient’s mental status on a continuum that ranges from extremely ill to completely healthy. However, the legal language is clearly categorical in nature, either criminally responsible or not responsible. While a psychiatrist is concerned with medical treatment of individual patients, courts are concerned with the protection of the society from the possible dangerousness from these patients. Psychiatrist needs to understand that it is not only the fact that the person is suffering from mental illness but it is the totality of the circumstances seen in the light of the evidence on record to prove that the person was also unable to appreciate the nature of the act or wrongdoing or that it was contrary to the law is appreciated in the court of law for insanity defense. Above all that Forensic Psychiatric Informal Training and Clinical Services Providing Centers are few in number across the country. To provide fair and speedy trial, forensic psychiatry needs to be given utmost importance.

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