How does India Decide Insanity Pleas? A Review of High Court Judgments in the Past Decade

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ABSTRACT

Background: The Section 84 of the Indian Penal Code (IPC) describes how Indian courts have to deal with 'the act of an unsound person'. This study was undertaken with the objectives of estimating the success rate of insanity pleas in Indian High Courts and determining the factors associated with the outcome of such insanity pleas. Materials and Methods: The data was collected from the websites of 23 High Courts of India using the keywords 'insanity' and 'mental illness', and the judgments delivered between 1.1.2007 and 31.08.17 were retrieved. Information regarding the nature of the crime, diagnosis provided by the psychiatrist as an expert witness, documents used to prove mental illness, and the judgment pronounced by the High Court were retrieved. Results: A total of 102 cases were retrieved from 13 High Courts for which data was available. Out of the 102 cases examined, the High Court convicted the accused in 76 cases (74.50%), thereby rejecting the insanity defense. The High Court acquitted the accused under section 84 IPC in 18 cases (17.65%), thereby accepting the insanity plea raised by the accused. Chi-square tests of independence revealed that the verdict of the lower court, documentary evidence of mental illness prior to the crime, and the psychiatrist’s opinion were associated with the success of insanity pleas. Conclusion: Insanity pleas had a success rate of about 17% in Indian High Courts in the past decade. The factors associated with success of insanity pleas provide valuable guidance to several stakeholders who are dealing with mentally ill offenders.

Key words: Criminal liability, insanity defence, McNaughton’s rules, mens rea
Key message: a) The success rate of insanity pleas in Indian High Courts was a modest 17%. b) Lower court verdict, documentary proof of mental illness and psychiatrist’s opinion were associated with the success of insanity pleas.

INTRODUCTION

The plea of insanity as a defense in criminal cases has a long and fascinating history. The introduction of McNaughton’s rules in 1843 was a watershed moment in the history of the insanity defense. Despite criticisms leveled against McNaughton’s rules as a ‘test of knowing’, and the undue stress it places on the intellectual dimension rather than the moral or affective dimensions, it continues to enjoy widespread usage.[1] Irresistible impulse test, Durham rule, and the American Law Institute’s model
penal code have been proposed in the subsequent decades to address the shortcomings of the McNaughton's rule.[1,2]

In India, Section 84 of Indian Penal Code (IPC) deals with the act of a person of unsound mind. This Section 84 of IPC was heavily influenced by McNaughton’s rules, and there is no other provision for an insanity defense in Indian courts.[3]

The meaning and scope of each phrase of Section 84 IPC have been extensively described with illustrative examples by several authors.[4,5] The concepts of medical versus legal insanity, the burden of proof in insanity cases, and the role of psychiatrists in insanity pleas have been well described.[6] However, questions regarding the outcome of insanity pleas in India and the factors associated with the outcome of such pleas have largely remained unanswered. The present study was conducted to estimate the success rate of insanity pleas in Indian High Courts and to determine the factors associated with the outcome of such insanity pleas.

MATERIALS AND METHODS

The data was collected from the websites of 23 High Courts of India from the official link http://indiancourts.nic.in/. The information was collected only from those High Courts which offered an option of free text search in their websites. The websites were searched using the keywords ‘mental illness’ and ‘insanity’, and the judgments delivered between 1.1.2007 and 31.08.17 were retrieved. Judgments delivered for criminal cases were reviewed in detail to check of its eligibility for inclusion in this study. All judgments where the perpetrator was alleged to have mental illness, and insanity defense was raised were included. Only the final judgments were included. Interim orders and bail appeals were excluded from this study.

A semi-structured pro forma was used to gather details regarding the nature of the crime, diagnosis provided by the psychiatrist as an expert witness, documents used to prove mental illness, and the judgment pronounced by the High Court. In addition, information pertaining to the gender of the accused, the relationship of the victim to the accused, the duration between the crime and the judgment, and the psychiatric evaluation, and the duration between the crime and the judgment were also retrieved.

Statistical analysis

Statistical analysis was done using Statistical Package for Social Sciences (SPSS) version 20 (IBM Corp, Armonk, NY, USA). Categorical data were summarized in terms of frequencies and percentages. The verdict of the lower court, availability of documentary evidence of mental illness in the accused prior to the crime, and psychiatrists’ opinion were considered to be factors that could influence the decision of the High Court. Chi-square test of independence and Fisher’s exact test were performed between each of the above factors and the verdict of the High Court to assess the relationship between these variables.

RESULTS

Out of the 23 High Courts in India, data was available for recovery from the websites of 13 High Courts. The information about a total of 102 cases which fulfilled the inclusion criteria were retrieved for detailed analysis. Kerala (31), Madras (15) and Himachal Pradesh (20) High Courts contributed 66 out of the 102 cases (approximately 63%), retrieved for evaluation. Rajasthan and Karnataka High Courts contributed nine cases each. Madhya Pradesh (Seven cases), Delhi (Five cases), Punjab (Three cases), Chhattisgarh (Two cases) and Andhra Pradesh (One case) contributed the remaining 18 cases (17% of the cases). No cases in the Hyderabad, Jammu and Kashmir or Orissa High Courts were retrieved in which the insanity plea was raised in the preceding ten years. The option of free text search for judgments was not available for Allahabad, Bombay, Calcutta, Gauhati, Gujarat, Jharkhand, Manipur, Meghalaya, Sikkim, and Uttarakhand High Courts.

Nature of crime

The most common crime in which an insanity plea was raised was murder, which amounted to 78 out of 102 cases (76.50%). It is pertinent at this point to note that in most cases, the accused was tried under several sections of IPC. For example, in a vast majority of cases in which the appellant was accused of murder, he or she was also accused of additional crimes like an attempt to murder, trespass, criminal intimidation, or voluntarily causing hurt using dangerous weapons. The highest crime for which the accused was put on trial is tabulated in [Table 1].

Nature of the cases

Among the 102 cases, 92 (90.20%) were appeals against conviction where the accused had approached the High Court challenging the verdict of conviction by the Sessions Court. The remaining 10 cases (9.80%) were appeals against acquittal where the High Court was approached by the State challenging the order of acquittal by the Sessions Court. The median duration between the crime and the High Court judgment was 106 months (Interquartile range: 67), with a minimum of 22 months and a maximum of 422 months.

Relationship of victim to the accused

Among the 102 cases studied, the victim was the spouse of the accused in 22 cases (21.57%) and a first degree
relative in another 22 cases (21.57%). The relationship of the victim to the accused is depicted in [Table 2]. The accused was male in 98 (96.07%) cases and female in the remaining four cases (3.92%).

**Psychiatrist’s opinion**
Among the 102 cases analyzed, psychiatric opinion was not obtained for 26 cases (25.49%), even though the insanity plea was raised by the defendant. Details were not clear about this aspect for nine cases (8.82%). In the remaining 67 cases, the psychiatrist testified that the accused has some form of mental illness in 61 cases and there was no mental illness in six cases. The most common diagnosis provided by the psychiatrist, as an expert witness was schizophrenia and other psychotic disorders (42 cases, [Table 3])

Among the 67 cases where the psychiatrist was called as an expert witness, in 32 cases the psychiatrist had treated the patient prior to the crime. The duration between the previous visit to the psychiatrist and the date of the crime varied between one day and 60 months, with a mean of 14.7 months (SD 18.8).

In 41 of the 67 cases, the psychiatrist first saw the patient only after the crime and after varying intervals. The duration between the crime and the psychiatric evaluation varied widely between one day after the crime and 2555 days after the crime, with a mean duration of 275.2 days (SD 469.7).

**High Court verdict**
Out of the 102 cases examined, the High Court convicted the accused in 76 cases (74.50%), thereby rejecting the insanity defense. The High Court acquitted the accused under section 84 IPC in 18 cases (17.65%), thereby accepting the insanity plea raised by the accused. There were four cases (3.92%), in which the accused was acquitted due to lack of evidence and another four cases (3.92%), in which the trial was vitiates as the lower courts did not follow the due procedure.

**Factors associated with High Court verdict**
The data was analyzed further to check for the association of the gender of the accused, the decision of the lower court, availability of psychiatrist’s opinion, psychiatric diagnosis, and also the availability of documentary evidence of mental illness prior to the crime with the final verdict delivered by the High Court. Those cases where the trial was vitiates (four cases), or the accused was acquitted due to lack of evidence (four cases) were excluded from this analysis.

Among the 94 cases, the accused was male in 90 cases and female in four cases. Among the 90 males, 16 were acquitted due to insanity. Among the four females, two were acquitted due to insanity. These different numbers with respect to the gender of the accused on the High Court verdict cannot be commented upon, as males vastly outnumbered females.

| Nature of crime | Number of cases (%) |
|-----------------|---------------------|
| Murder          | 78 (76.47)          |
| Rape            | 5 (4.90)            |
| Attempt to murder | 4 (3.92)          |
| Murder and attempted suicide | 2 (1.96)       |
| Culpable homicide not amounting to murder | 2 (1.96)       |
| Voluntarily causing grievous hurt using dangerous weapons or means | 2 (1.96)       |
| Assault on a woman with intent to outrage her modesty | 1 (0.98)       |
| House-trespass; Criminal intimidation | 1 (0.98)       |
| Mischief by fire with intent to destroy house; Obscene acts in public | 1 (0.98)       |
| Rash driving on a public way; Causing hurt by act endangering personal safety of others | 1 (0.98)       |
| Impersonation and forgery; Cheating | 1 (0.98)       |
| Cheating and dishonestly inducing delivery of property | 1 (0.98)       |
| Falsification of records; Misappropriation of funds | 1 (0.98)       |
| Bribing the presiding officer of the court | 1 (0.98)       |
| Cheque dishonored due to an insufficiency of funds | 1 (0.98)       |

Total number of cases 102 (100)

| Relationship of victim to the accused | Number of cases (%) |
|--------------------------------------|---------------------|
| Spouse                               | 22 (21.57)          |
| Parent                               | 13 (12.75)          |
| Child                                | 6 (5.88)            |
| Sibling                              | 3 (2.94)            |
| Second-degree relative               | 14 (13.73)          |
| Employer/superior                    | 2 (1.96)            |
| No relation                          | 34 (33.33)          |
| Not applicable                       | 4 (3.92)            |
| Details not available                | 4 (3.92)            |
| Total                                | 102 (100)           |

| Diagnosis                            | Number of cases (%) |
|--------------------------------------|---------------------|
| Schizophrenia and other psychotic illnesses | 43 (42.16)       |
| Bipolar disorder/Mania               | 7 (6.86)            |
| Depression                           | 7 (6.86)            |
| Organic psychosis                    | 2 (1.96)            |
| Epilepsy                             | 2 (1.96)            |
| No mental illness                    | 6 (5.88)            |
| Not obtained                         | 26 (25.49)          |
| Details not available                | 9 (8.82)            |

Among the 94 cases, the accused was male in 90 cases and female in four cases. Among the 90 males, 16 were acquitted due to insanity. Among the four females, two were acquitted due to insanity. These different numbers with respect to the gender of the accused on the High Court verdict cannot be commented upon, as males vastly outnumbered females.
Chi-square test of independence was performed to examine the relation between the verdict of the lower court and the verdict of the High Court. The relation between these variables was significant, $X^2 (1, N = 94) = 22.098, P < 0.001$. It was found that those who were convicted by the lower court had a much higher probability of getting convicted by the High Court, and conversely, those who were acquitted by the lower court due to insanity had a much higher probability of getting acquitted due to insanity by the High Court [Table 4].

Similarly, a Chi-square test of independence was performed to examine the relation between documentary proof of mental illness prior to the crime and the verdict of the High Court. The relation between these variables was significant, $X^2 (1, N = 91) = 6.349, P = 0.012$. In other words, those cases where there was a document to prove that the person was mentally ill prior to the crime had a higher probability of being acquitted due to insanity by the High Court. On the other hand, those cases with no document to prove that the accused was mentally ill prior to the crime had a lower probability of being acquitted due to insanity by the High Court [Table 4].

In those cases where psychiatrist’s opinion was not obtained (in about 24 cases), or the psychiatrist reported that there was no mental illness in the accused (six cases), there was no verdict of acquittal under section 84 of IPC. Among the 56 cases where the psychiatrist reported of some form of mental illness in the accused, the accused was acquitted under section 84 of IPC in 16 cases. Fisher’s exact test found that this relationship was significant $P = 0.002$ [Table 4].

The role of the actual diagnosis on the outcome of the trial could not be meaningfully analyzed because of the limited number of cases under each category except for schizophrenia.

### DISCUSSION

The success rate of insanity pleas was found to be a modest 17.6%. The verdict of the lower court and the availability of documentary evidence of mental illness prior to the crime were associated with the decision of the High Court in cases where the insanity plea was raised. The opinion of the psychiatrist regarding the presence of mental illness in the accused was also noted to be associated with the success of insanity pleas.

In an eight-state study in the USA, it was found that 26% of insanity pleas were successful and the range varied widely between 7% and 87% in different states.[17] A national survey in the USA reported that the median success rate for insanity pleas was one acquittal for every 6.5 pleas (approximately 15%).[18] The 17.6% success rate of insanity plea found in our study is comparable to the above findings.

In the present study, the association of gender of the accused with the outcome of insanity pleas could not be analyzed as the vast majority of the accused was male. A previous report suggested that the success rate for females was higher during the insanity pleas.[19]

Predictably, this study found that the presence of documents proving mental illness prior to the crime was associated with a higher success rate of the insanity plea. A similar finding was reported in the USA, where defendants who had a history of prior hospitalizations for mental illness had a higher success rate of the insanity plea.[9] Another study conducted among inmates of a Canadian maximum security psychiatric institution found that the seriousness of the index offense, and the diagnosis were the most important determinants of insanity defense verdicts.[10] Similarly, in the current study, the psychiatrist’s opinion regarding the presence of mental illness played a notable role in the outcome of insanity pleas.

### Implications

This study has important implications for several stakeholders in the field of mental health: For practicing psychiatrists, the present study highlights the importance of documentation in the case sheets, as it provides valuable documentary evidence in the
unfortunate event of criminal proceedings against a psychiatrically ill person. The findings of this study offer an opportunity to the expert witnesses to gain a better understanding of the legal scene of insanity plea in India and the importance of their opinion in the outcome of such pleas. Our results would be useful for practicing lawyers, as the factors found to influence the outcome of insanity defenses can guide the defense attorney.

Limitations
The present study has its own share of limitations. The data from some of the High Courts were not reviewed due to lack of access. Furthermore, as the data was collected from the final judgments and not from the case transcripts, it is possible that the unique circumstances of the case and other decisive factors in the nature of evidence in the individual cases were overlooked.

Future directions
It would be valuable to know how insanity pleas are decided by the Sessions Courts, where the trial occurs for the first time for the crime committed. In addition, understanding the decision-making process, by reviewing the court transcripts, would provide in-depth understanding and fresh insights on how Indian courts decide on the insanity pleas. Future work to answer a pertinent question as to how often insanity plea is raised in criminal cases in Indian courts should also be carried out.

CONCLUSION
Insanity pleas had a success rate of about 17% in Indian High Courts in the past decade. The factors associated with success of insanity pleas provide valuable guidance to several stakeholders who are dealing with mentally ill offenders.

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Conflicts of interest
There are no conflicts of interest.

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