**CAN THE DEFENCE OF INSANITY BE A LOOPHOLE FOR CRIMINALS?**

**BY-**

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**ABSTRACT**

The notion of excusing a defendant from criminal liability, owing to the absence of a culpable state of mind whilst committing the alleged offense is a safeguard accorded by law to protect a vulnerable class of people in the society. Of the popular defences in Criminal law, one of the most widely reviewed and discussed defence is the Insanity defence. With its modest origins from the ancient law scripts, it has transgressed borders and territories to earn recognition as an Excusable defence in Criminal law. Socio-political and jurisprudential advancements, while giving a novel shape to the defence has also contributed to the widening of its ambit across jurisdictions. The past years have also witnessed voices of concern on the indiscriminate exploitation of the defence by criminals to seek exoneration from criminal liability. Such practices invariably lead to a serious undermining of the core principles envisaged during the introduction of the defence. The challenges raised are humongous, necessitating immediate attention. The present study is an earnest attempt toanalyse the Insanity Defence in the background of a modern and progressive society. Through a brief analysis of its evolutionary aspects and its formulation across jurisdictions, the study progresses to some key problems facing the Insanity Defence in the modern context. From a generalized approach, the study trickles down into narrower perspectives on the issues marring the defence in India.

**KEY WORDS:** Insanity, loophole, incoherence, inefficiency, revamping

**INTRODUCTION**

The fundamental aim behind the institution of Criminal law is the weeding out of criminal propensity in individuals who undertakes practical steps to accomplish their criminal objectives. Every Crime is a combination of a physical act (Actus Reus) along with a culpable state of mind (Mens Rea*)* accompanying its commission. The mental element inherent in a criminal act is considered as blameworthy as the actual commission of the offense, and sometimes, even more abominable. Thus, Mens Rea occupies a central position in any discussion on criminal law.

According to the legal maxim, Actus non facitreumnisis sit mensreum*,* an Act does not make a person guilty unless his intentions are. When law seeks to curb the blameworthy mental condition in a person committing a crime, it takes sufficient care to ensure that not a single person is punished in the absence of it. This is probably the reason behind the exclusion of a certain class of people from punishment, despite them being the actual perpetrators of the alleged offense. Law excuses or justifies the commission of the crime by such persons on account of the particular condition(s) under which these individuals are placed. A justified action is a morally appropriate action, whereas an excusable action is one for which a person is not fully responsible.[[1]](#footnote-2) In Excusable acts, criminal intent is absent in the person committing it, whereas justification defence involves a defendant admitting that when they committed a criminal act, their actions were justified by the presence of certain extenuating factors (duress, necessity, self-defence, provocation and entrapment).[[2]](#footnote-3)

While Justifications focus on the legality of the act, excuses are directed at assessing the blameworthiness of the actor.[[3]](#footnote-4)One of the common excuses valid in criminal law is the incapacity of a person committing a crime. Such Incapacity may be the result of age, intake of substances depriving mental stability, or a disease of the mind. Among these, the disease of mind or the Insanity Defence has been the subject of deep controversies and discussions over long periods of time across different parts of the world. Insanity is a condition of mind rendering a person possessing it, incapacitated to comprehend the true nature of actions around him or assess his actions and judge its consequences. Such a person is deranged, disordered or diseased in mind.[[4]](#footnote-5) The state of mind governing the person lacks the potential to form an intention towards the commission of an offense. The person is thus, excused from criminal liability. The moral basis of the insanity defence is that there is no just punishment without desert and no desert without responsibility; responsibility is, in turn, based on minimal cognitive and volitional competence.[[5]](#footnote-6)The policy of the law according to a favorable consideration to such class of people is well in adherence to its core principles of securing fairness and justice in the society. In India, punishing someone, not responsible for the crime alleged to have been committed is in contravention to the guarantee of fundamental rights under the Constitution[[6]](#footnote-7).Excusing offenders on the basis of their insane condition of the mind can be traced back to the Ancient-era Justinian Code compiled in AD 230. The present form of the defence is a necessary derivation from the core principles of Insanity defence envisaged by architects of law in the ancient era. Codification and migration of common law into several counties accelerated the pace of adoption of the defence in other parts of the world. Gradually, the Insanity defence received recognition as a general defence under Criminal law.

 The field of law governing the subject has been dynamic and has even sparked debates and deep discussions in the legal world. The inherent deficiencies were sought to be resolved through conscious and deliberate efforts from legislators and jurists. The inculcation of modern thought into the field led to remarkable changes in the ambit of the defence across jurisdictions.

The ongoing debate on the subject is mainly focussed on its inefficiency in addressing the cry of the society for fairness and justice. The defence has become a tool to override the legal guarantees to the victimized class of people in society. Banging on the principles of the defence, when criminals find their way out from criminal repercussions, the humanitarian face of law takes a deep toll. The Black’s law dictionary defines a loophole as an ambiguity, omission, or exception (as in a law or other legal document) that provides a way to avoid a rule without violating its literal requirements.[[7]](#footnote-8) In reality, loopholes may be perceived as a medium through which manipulation of legal principles can take place. Manipulations in law inevitably lead to disarray in the legal proceedings. The present essay addresses the causes for deformities in the Insanity defence, while also propounding on the huge impacts, it leaves in the general well-being of the society. A review and analysis of the defence is highly merited, especially in the present context of rapid changes in the socio-political realm of our nation.

**EVOLUTIONARY BACKGROUNDTO THE INSANITY DEFENCE**

According to known records, the defence of Insanity has existed since the era of Ancient Greece and Rome. The 1581 English Treatise contains one of the earliest forms of the Insanity Defence, which states that “If a madman or a natural fool, or a lunatic in the time of his lunacy”, kills someone, they cannot be held accountable. The statement clearly points to the emphasis that was attached by the early courts on the mental state of a person accused of committing a crime. In fact, such revelations are testimony to earlier recognition of the Insanity Defence in Criminal law.

Since then, there have been various tests laid down at different periods of time to ascertain the actual presence or absence of a “rational state of mind” in a person committing a crime. These tests inevitably laid the foundation for a more clinical and foolproof approach to Mental Insanity. It is pertinent to have a closer look at some of these tests to derive a better idea about the evolutionary process of the Insanity Defence.

The first test in the direction of laying proof for Medical Insanity was the Wild Beast Test. It emerged from the famous English case of R v. Arnold*[[8]](#footnote-9)* in 1724. Edward Arnold was tried for wounding and making an attempt to take the life of Lord Oslow. The mental derangement of the accused was evident from the available evidence. The court while acquitting the accused on the ground of insanity laid down a refined approach towards the application of the Insanity Defence. The definition of Mental Insanity was stated as a total deprivation of understanding and memory or total absence of knowledge about one's own actions, "no more than an infant, than a brute or wild beast". The case laid down a new standard for the application of the Insanity Defence.

The “Right and Wrong Test” emerged from two cases decided in 1812, in which the jury found itself obligated to determine whether the defendant “had sufficient understanding to distinguish good from evil, right from wrong”. The test was further expanded in Regina v. Oxford*[[9]](#footnote-10)*, where the emphasis was placed on the question of whether the defendant "from the effect of a diseased mind", knowing that the act was wrong or in other words whether such person was "quite unaware of the nature, character, and consequences of the act he was committing". [[10]](#footnote-11)The test has a striking resemblance to the present form of application of the Insanity Defence.

The lack of appropriate and sufficient guidelines regarding the application of Insanitydefence began to be widely felt towards the latter half of the 19th century when more cases requiring its application started coming up. The infamous case of R v Mc Naughten[[11]](#footnote-12)laid the ground for the formulation of the M’Naghten Rules. The case involved a Scotsman, Daniel M’Naghten, who under an insane delusion killed Edmund Drummond, Private Secretary to the British PM Sir Robert Peel. It was later found that his actual intention was the assassination of the PM, whom he thought had attacked him. The acquittal of M'Naghten on the ground of insanity raised a huge furor in England, prompting the judges to reconsider the principles in the Defence of Insanity. A set of five questions were formulated and addressed to a 15- judge bench of the House of Lords. The answers to the second and third questions are popularly known as the Mc Naughten Rules. The modern version of the Insanity defence as is extant in several countries across the world are based on the M’Naghten Rules. The rules lay down conditions under which mentally insane persons are relieved from culpability but are not to be considered as a test of psychosis or mental illness.[[12]](#footnote-13)According to these rules:

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.

The Mc’Naughten rules have served as the basis for the Insanity defence in major countries across the world. However, this is not to say that the rules were absolute and infallible. The assumptions in the rules were the subject of criticisms and debates over long periods of time. The basic proposition of the rules that the lack of knowledge of the "nature or quality" of an act or "incapacity to know right from wrong" was the exclusive or most important symptom of mental insanity was questioned by medical professionals and legal luminaries alike. [[13]](#footnote-14) Despite surmounting criticisms and apprehensions about its broader scope of applicability, the M’Naughten rules still enjoy considerable popularity in the legal world. Amidst concerns about the insufficiency of these rules to properly address the question of culpability on the ground of mental insanity, alternate versions of the defence were propounded at different periods of time. One of the most popular among them is the Durham Test, laid down in the landmark case of Durham v United States[[14]](#footnote-15). The United States Court of Appeal for the District of Colombia formulated the rule that "an accused is not criminally responsible if his unlawful act was the product of mental disease or defect."

In an attempt at Modernisation, the American Law Institute, a panel of legal experts, developed a new rule for Insanity to be appended as part of the Model Penal Code. The rule included in S. 40.1 of the Code, says that a defendant is not responsible for criminal conduct where (s) he, as a result of mental disease or defect, did not possess a “substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law’.[[15]](#footnote-16) The novel approach was perceived as much wider than the M’Naughten standard. The word “approach” is broad and intended to realistically address the graded nuances of mental disabilities.[[16]](#footnote-17) The code envisaged a progressive standard to Insanity defence under Criminal law. In 1984, The Comprehensive Crime Control Act was passed by Congress. It laid down that the defence requires the defendant to prove by "clear and convincing evidence", that "at the time of the commission of the acts, constituting theoffence, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts’.[[17]](#footnote-18)

Several proposals for overhauling and even abolition of the defence became commonplace in the latter half of the century. In lieu of such developments, sweeping changes were introduced to this defence across several jurisdictions. The increasing trend towards movements in favour of major reforms are testimony to the increased attention, the subject has been receiving.

The Indian Penal Code, 1860 is the official legislative framework adopted in India that deals with the various facets of Criminal law, while also laying down punishments for penal offenses. With a view to afford a differential approach to Mental Insanity under Indian law, the term “unsoundness of mind” has been meticulously used in the Penal Code. Though, the term has not been defined in the Penal Code, its ambit is quite clearly encapsulated under Section 84 of the IPC. According to the Section “Nothing is an offense 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”.[[18]](#footnote-19) The provision clearly reflects the ground principles laid down in the M’Naghten Rules. However, the Indian approach to the Insanity defence is quite different and has been distinctively shaped through various landmark judgments.

**INSANITY DEFENCE ACROSS JURISDICTIONS**

In Mazzi v The Queen[[19]](#footnote-20), the High Court of Australia held that when a defence of insanity to a criminal charge is strongly supported by expert evidence, that the accused was suffering from a disease or disorder of the mind, namely paranoiac schizophrenia at the time of the commission of the offense; the charge should explain not only the test to be applied to determine that defence, but also the real meaning of the expert evidence in its bearing upon that test and the considerations, which may properly be used in deciding whether to accept or reject the evidence advanced.

 In Charles L Ryan v Ernest Valencia Gonzales. Terry Tibbals v. Sean Carter[[20]](#footnote-21), the US Supreme Court held that the criminal trial of an incompetent defendant violates “due process” clause. A defendant may not be put to trial unless he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him.[[21]](#footnote-22)

In John Joseph Delling v State of Idaho[[22]](#footnote-23) [United States], it was held that the law has long recognized that criminal punishment is not appropriate for those who, by reason of insanity, cannot tell right from wrong. The case, however carved out an exception to the rule by laying down that an insane person may still be held liable if he was capable of controlling his actions and having active knowledge about the nature of his actions. The State of Idaho, in a major, revamp to the traditional Insanity defence added “the capacity of the defendant to appreciate the wrongfulness of his conduct” as a mandatory test to claim the benefit of the defence. Through the judgment, the US Supreme Court by a majority of 6 to 3 upheld the validity of the modification of the Insanity Defence by the State of Idaho. The court held it to be consistent with the 14th Amendment to the US Constitution guaranteeing “due process of law”.

In Eric Michael Clark v. Arizona[[23]](#footnote-24), the US Supreme Court by a majority of 5 to 4 held that under the State of Arizona law, a defendant cannot be adjudged insane until he demonstrates that at the time of commission of the criminal act, he was afflicted with a mental disease or defect of such severity that he did not knowthe criminal act was wrong. The modified version of Insanity defencewas introduced in the State of Arizona, through an amendment in 1993, when it eliminated the first part of theInsanity defence declared in the M’Naghten’s case.

In Attorney-General for State of South Australia v. John Whelan Brown[[24]](#footnote-25), the Rivy General reversing the order of the High Court and upholding the Trial Court verdict held that where the defence of insanity is raised in criminal proceedings, the law will not recognize irresistible impulse- which per se affords no defence- as a symptom from which the jury may without evidence infer insanity within the M’ Naghten Rules.

In R v Charlson[[25]](#footnote-26), Automatism was recognized as a defence to a criminal charge of maliciously causing grievous hurt under Section 20 of the Offences Against Persons Act, 1861. The accused in the case hit his son with a mallet and threw him out of the window. It was established that the accused might have been suffering from a cerebral tumour which would cause acts of impulsive violence. The court ruled in favour of his acquittal.

In R v. Quick; R v Paddison[[26]](#footnote-27), nursing staff at a mental hospital was charged with assault occasioning bodily harm of a paralysed patient at the hospital. The accused appealed on the grounds of Automatism. The medical history of the patient revealed that he suffered from diabetes since the age of seven. At the time of the incident, the appellant was afflicted with hypoglycemia, a deficiency of blood sugar, after an insulin injection. The Court of Appeal while allowing the appeal ruled that the appellant was entitled to plead automatism, not insanity. In order to sustain a defence of insanity on the ground that the accused was suffering from a disease of the mind, the accused had to show a malfunctioning of the mind or transitory effect caused by an external factor and not by a bodily disorder in the nature of a disease of the mind. The mental condition of the accused in the case was not the result of his diabetic condition, rather it emerged from the intake of insulin. The malfunctioning of mind had therefore been caused by an external factor and not by a bodily disorder in the nature of a disease of the mind.

The Homicide Act of 1957 introduced a new defence to murder known as “Diminished Responsibility” in England. According to Section 2 of the Act, Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind(whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.[[27]](#footnote-28)If the conditions are established, the charge on the appellant gets reduced to that of Manslaughter. In R v Seers[[28]](#footnote-29), it was held that the test of Diminished Responsibility is not whether a person can be described in popular language as partially insane or on borderline of insanity.

The Singapore Penal Code encapsulated the provision on Diminished Responsibility under Section 300 as an Exception VII to Murder. According to the Section, “Culpable Homicide is not Murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing death.”[[29]](#footnote-30) The provision is based on Section 2(1) of the English Homicide Act, 1957. The defence of diminished responsibility was first raised in Malaysia in 1964 in the case of Mohammed Bin Jamal v Public Prosecutor[[30]](#footnote-31) and Lee Soo Meng v P.P.[[31]](#footnote-32)(unreported). The formerly involved conviction of a person on three charges of murder, while the latter involved the murder of the wife of the defendant under an irresistible impulse. The charge on the accused was mitigated under Diminished Responsibility.

The provision on Diminished Responsibility in Barbados is parimateria with English Law.[[32]](#footnote-33) In *Queen v Walter*[[33]](#footnote-34), the court held that while deciding on Diminished Responsibility, the court is entitled and indeed bound to consider not only the medical evidence but the evidence on the whole facts and circumstances of the case. Such evidence may include the nature of the killing, the conduct of the accused before, at the time of and after the conduct and any history of mental abnormality. The court ruled in favour of attribution of Diminished Responsibility on the accused, whom it described as being on the border-line of insanity or partial insanity.

**INSANITY DEFENCE IN INDIA- JURISDICTIONAL ASPECTS**

Indian Courts often draw a distinction between Medical Insanity and Legal Insanity. While the former may involve any kind of mental aberrations, natural or acquired, the latter is restricted to the impairment of cognitive abilities of mind, which renders a person incapacitated to comprehend the nature of his acts or that it was wrong or contrary to law. It makes room for sufficient judicial discretion in the process of judging the mental capabilities of a person at the exact time of the commission of the alleged crime. In Surendra Mishra v State of Jharkhand[[34]](#footnote-35), the Supreme Court held that an accused who seeks exoneration from criminal liability under Section 84, must prove legal insanity and not medical insanity. Merely because the accused is conceited, odd and his brain is not all right, or that the mental or physical ailments from which he suffered have rendered his intellect and attacked his emotions or indulges in certain unusual acts, or had fits of insanity on short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application[[35]](#footnote-36). The distinction between Medical and Legal Insanity was originally conceived as a safeguard against the indiscriminate involvement of insanity defence in criminal offenses, when such insane condition of mind may fall short of actual inability to conceive the nature of one’s actions. Thus, at the outset it appears that the Indian approach to Insanity defence is restrictive. Though, the existent notion about Insanity indicates in the contrary.

The Indian law on the subject is broader than the English position.[[36]](#footnote-37) The jurisdictional aspects have been increasingly shaped through various landmark judgments governing the subject. In Ashirudeen Ahamed v State[[37]](#footnote-38), the approach of the court was directed at formulating an additional test for Insanity. It was laid down that in order to avail the protection under Section 84 of IPC, the accused must establish any one of the following namely, (1) that he did not know the nature of the act charged, or (2) that he did not know it was contrary to law (3) that he did not know that it was wrong. The case involved the incident of sacrifice by a father of his son on the belief that he was commanded by God to do so. He claimed to have received the divine command through a dream. The court ruled in favour of the person's acquittal on the ground that he was incapable of knowing his act to be morally wrong. In laying down so, the court drew an essential distinction between the terms ‘wrong’ and ‘contrary to law’. This was in deviation to a two-bench decision in Geron Ali v. Emperor[[38]](#footnote-39), which held the terms ‘wrong’ and ‘contrary to law’ as forming one test only. The case led to an expansion of the scope of Insanity defence in India. It became evident that Indian law affords an accused claiming insanity defence with three options to evade legal consequences for his actions. If either of the conditions can be claimed based on the preponderance of possibilities, the defence becomes successful. Jurists of the time viewed this as a critical lacuna in Indian approach to the Insanity Defence.

A subsequent judgement of the Allahabad High Court in Lakshmi v. State[[39]](#footnote-40) added much to the confusion shrouding the Insanity defence, when the court concluded that the incapacity to know the legality, as well as the morality of one's act, is what is protected in the latter part of Section 84. In the presence of either of them, the accused cannot avail the protection under this Section.

In Sheralli Wali Mohd. v State of Maharashtra[[40]](#footnote-41), the Supreme Court while dealing with the question of ascertaining the presence of legal insanity, reaffirmed the view of the Calcutta High Court by holding that, to avail the benefit under Section 84, it must be proved, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The decision further cast doubts on the precedential findings of courts of law in the subject.

Ascertaining the mental state of a person at the time of committing a criminal act is quite difficult. The tangibility of the state of mind of a person makes it imperceptible to human speculations. In Dayabhai Chhaganbhai Thakkar v State of Gujarat[[41]](#footnote-42), the Supreme Court stated that in determining the applicability of Section 84, the Court has to consider the circumstances which preceded, attended and followed the crime. The relevant facts are the motive for the crime, the previous history as to the mental condition of the accused, the state of his mind at the time of the offence and the events immediately after the incidents which throw a light on the state of mind of the accused. The court was essentially advocating the need for a comprehensive approach strictly based on circumstantial evidence on a case-to-case basis. The standard for deciding the applicability of Section 84 is whether according to the ordinary standard, adopted by a reasonable man, the act was right or wrong.[[42]](#footnote-43) In Amrit Bhushan v Union of India[[43]](#footnote-44), the Supreme Court held that Insanity as an exception to criminal liability must rest on the fact that the accused was incapable of understanding the nature and consequences of his act at the time of the commission of the offence. In the case where it is not possible to do so, the responsibility could not be absolved. The law presumes every person to be sane at the time of the commission of the offence. Even if a lunatic has lucid intervals, the law presumes the offence to have been committed in a lucid interval unless it appears to have been committed during derangement.[[44]](#footnote-45)

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.[[45]](#footnote-46) The obligation on the accused is only to establish the probability of the existence of insanity at the time of the commission of the offence. It is enough for him to show, as in civil case, that the preponderance of possibilities is in his favour.[[46]](#footnote-47)

**THE INSANITY DEFENCE- A SHIELD, NOT A SWORD**

One of the fundamental reasons behind the inclusion of “Mental Derangement” as a general defence was to allay the concerns stemming from a wider social recognition to a plausibly neglected social class of people, whose actions are not driven by their active choice. The defence is essentially a shield to protect this class of people. However, changing social dynamics have posed challenges to a fair utilization of the defence. Though the defence is popularly hailed as a lifeline for mentally disabled persons, many times it serves to the interests of brute criminals who wield the defence as a means to escape conviction and punishment. A closer analysis of the failure of the defence in many cases reveals that the seeds for its exploitation were inherent in the formulation of the defence itself. This possibly explains the fact of its abolishment in countries like Germany, Argentina, Thailand and many other countries in England. Perhaps, one of the most significant pitfalls in the application of this defence is the uncertainty shrouding its definition. Even scholarly writings on the topic differ widely, and at times, the terms which are used in attempting to draw a line between sanity and lunacy are so vague. This is much to the extent that they are differently interpreted by medical and legal professionals and these interpretations as such afford no fixed landmarks for the guidance of the juries or the judges.[[47]](#footnote-48) The bounds and facets of interpretations vary across jurisdictions leading to divulsions and compromises to the core principles originally envisaged by the law-makers. Lack of uniformity paves the way for further complexities and hindrances in usage.

The inadequacy of a uniform regulatory framework, most of the times, end up in favour of the accused. They secure acquittals from a loosened and broad spectrum of psychological and physical disorders.[[48]](#footnote-49) Further, the wide distinctions between Medical and Legal Insanity result in fewer rates of institutionalization of persons who secure acquittals on grounds of Legal Insanity. These persons in turn, pose a significant social danger. A consequence of the substantive and procedural safeguards is the creation of a revolving door through which individuals who have earned acquittals by reason of insanity may be prematurely returned to the community.[[49]](#footnote-50)

In India, the fallaciousness of the defence has been put to test several times. During the last about 160 years, the law relating to Insanity as incorporated in Section 84 as an extenuating factor has remained static.[[50]](#footnote-51)The Indian position is by and large the replica of the Mc’ Naghten Rules when even the country of its originhad brought in significant alterations to the rules.[[51]](#footnote-52). The fallaciousness of the rules received wide criticisms from across the world. Even then, the reluctance to amend the legislative framework governing Insanity in India is distressing.

One of the foremost defects which the defence is perceived to be suffering from is the absence of a standardized definition to "unsoundness of mind". It reflects a critical lacuna in the core principles of the defence. The standard of proof requirements in most cases is based on the preponderance of possibilities, going by which even minor ambiguities may operate in favor of the accused. This can lead to unjustifiable bypassing of judicial scrutiny causing a serious undermining of the ideals of justice and fairness. The end result is the accelerating use of the insanity defenceas a loophole by criminals to escape conviction. Though significant efforts were made from time to time towards standardizing the overall approach to the Insanity defence, many of them have had few successes. The problem of Insanity assumes different and even more significant proportions in a heterogeneous country like India, where mass illiteracy, ignorance and economic differentiation of the people render any uniform test of culpability difficult.[[52]](#footnote-53)

Further, the requirement that the accused person must be of unsound state of mind at the time of the commission of the offence is practically impossible to fulfill.[[53]](#footnote-54) This is so, owing to the difficulty in obtaining an unambiguous judgement of a person’s state of mind. The problem becomes more complicated when the question of interpretation is constrained to a limited time period (the time of commission of the offence). The principles of the defence get tweaked to fit the best interests of the convicts. Thus, the defence in the present context, is popular as the most convenient one which can be resorted to for avoiding conviction. In an independent study conducted in 2019 on the sustainability of Insanity defence in India, it was found that the most common crime in which the plea was raided was Murder.[[54]](#footnote-55)

Courts in India have through time and again, advocated the need for adopting a more progressive attitude in the application of “unsoundness of mind” envisaged in the Penal Code in light of advancements in medical sciences, especially in the field of psychiatry.[[55]](#footnote-56) The Law Commission of India, however disregarded such considerations and concluded that such amendments may raise graver issues of medico-legal concerns in the country. India has remained oblivious to the introduction of modern principles like Diminished Responsibility, recognized across major jurisdictions in the world. The law in place at India is seen as outdated especially, in the present context of a fast-advancing society.

**CONCLUSION**

The foregoing discussion is a brief overview of Insanity as an excuse to Criminal Liability. While maintaining the focal point of the discussion on the fallacy surrounding the ambit of the defence across jurisdictions, the paper delves into deep analyses on the facets and contours of the applicability of the defence under foreign as well as domestic law. Evolutionary aspects relevant to the thematic content has also been appended to draw appropriate conclusions from the study and analyses. The assessment leads to some key conclusions enhancing the overall academic quality of the content.

The relative efficiency with which a criminal trial is concluded is an indicator of its success in upholding the ideals of justice. Procedural delays, tampering of evidence, undue influence on witnesses etc., may severely impact the success of a criminal trial. Members belonging to the legal fraternity, have time and again pressed on the need for preserving the supreme virtues in law during the conductance of criminal trials. Despite such vehement cries, evasion of law takes place at the behest of criminals who make way for their acquittals by making inroads through the crux of important legal principles. Such tendencies shake the very balance on which the legal system rests on. The process of evading justice may be further accelerated when there exist ambiguities in the content or formulation of principles governing criminal acts. This calls for increased attention towards bridging the gaps inherent in such provisions.

One of the major drawbacks facing the Insanity Defence across jurisdictions was irregularities and incoherence in its formulation. Countries across the world strived towards bringing forth a clear-cut enunciation of the principles under the defence. Failed attempts even led to the abolition of the defence in several parts of the world. Many countries successfully revamped the structural deficiencies in the defence, whereas others like India still continue to tread with the traditional notions of the defence. The mechanized application of the rules in a changed socio-political scenario is often associated with its inefficiency in several cases. Regressive tendencies arrest the development of law in response to changing phases of development of the society. A relook on the traditional notions governing the defence in the demographically challenging country like India has by and large, become the need of the hour.

The past years have witnessed attempts to inculcate progressive and steadfast changes in jurisprudence. Decriminalisation of Section 377, revamping of Adultery law and amendments to discriminative provisions under Personal laws of several religions being a few among them. Indeed, such efforts are testimony to the fact that any remarkable developments in law requires alacrity from the class of jurists as well as from the general public. The urge to keep pace with the developmental standards of a fast-moving country is remarkable. In fact, such efforts leave hope for a rethink on the law governing “unsoundness of mind” in our country through a successful bypass of the legal hurdles posing the bigger question.

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