

Decoding the Insanity Defense

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Abstract

The insanity defence exempts the mentally ill from criminal liability when they cannot appreciate the nature or consequences of their acts. The underpinning of the insanity defence is found in landmark cases like the McNaughton's Case and the ALI Test, among others. It reflects the principle that there can be no guilt without a proper act and a culpable mental state. Its application in this area falls at the interface of many complex questions on burden of proof, malingering, and standards of proof which raises expectations on scientifically validated psychiatric evaluation and procedural clarity. This defence also demands rigors for safeguards against its misuse and fairness in its practice. In Nepal, though the insanity defence is an established defence, it nonetheless remains plagued by judicial inconsistency, especially with regard to burden of proof. While the burden of proving unsoundness of mind normally lies with the accused, courts have in some instances shifted the burden onto the prosecution which results in erratic jurisprudence and precedents. These gaps indicate a reform that needs to be done which includes setting up clear evidentiary standards, better access to forensic psychiatrists, and improving collaboration between the legal and mental health sectors. By attending to these issues, Nepal will have considerably enhanced the fairness and harmony of its insanity defence with international norms.

Keywords: mens rea, criminal liability, insanity

Introduction

Criminal law is a code or system of rules that dictates the “who, what and why of criminal liability and the how much, or quantum, of punishment.”¹ It is based on prevailing moral values and norms. It aims to protect and preserve the life, liberty, dignity, and property of the members of the society by prohibiting certain acts and omissions that are contrary to the public interest. It enables the state to impose sanctions on those who act against the provisions of the criminal laws. Most jurisdictions define crime as a combination of mens rea and actus reus. Mens rea is the mental component of the crime, i.e., the intention to do a crime, while actus reus is the physical component of the crime, i.e., the illegal act or omission. In most criminal cases, the onus falls on the prosecution to prove beyond a reasonable doubt that the crime was committed by the accused. Proving the existence of both the actus reus and the mens rea while also showing the absence of a valid legal defense is a prerequisite for imposing criminal liability. In order to maximize desired values, the state has created exceptions known as defenses, acknowledging that the ingredients of a particular offence may not be specific enough to exclude everyone who should be exempt from criminal culpability.² According to **Black Law’s Dictionary** criminal defense is “the field of

¹Tim Carmody, Criminal Law, in *Dealing with Uncertainties in Policing Serious Crime* 101–14 (Gabriele Bammer ed., ANU Press, 2010), <http://www.jstor.org/stable/j.ctt24hbrf.11> (accessed Dec. 13, 2024).

²Joseph Goldstein & Jay Katz, Abolish the “Insanity Defense”: Why Not? 72 *Yale L.J.* 853, 853–76 (1963), <https://doi.org/10.2307/794654> (accessed Dec. 23, 2024).

criminal law concerning the rights of a defendant accused of a crime and the legal theories that negate elements of crimes”

Broadly there are two types of defenses: justificatory and excusatory. The former means treating the alleged act as not unlawful and the latter means merely considering that the perpetrator is not blameworthy.³ Acts of self-defence, necessity, defence of property, etc. fall under the first category while insanity, infancy, diminished capacity, intoxication, duress, etc. fall under the second category. This paper is divided into different chapters. Chapter I introduces the insanity defense in criminal law, its rationale, and controversies around its misuse as a loophole. Chapter II examines Nepal’s legal framework, including the definition, tests for insanity, and how courts assess such claims, with references to case law. Chapter III contains a comparative analysis of how the insanity defense in different jurisdictions and how they differ or are similar to the Nepalese provision. The concluding chapter presents a discussion of various arguments surrounding the topic and offers suggestions for Nepal to enhance this defence while minimizing the potential for its misuse.

Chapter 1 Insanity Defense: Law and Perception

1.1 Brief overview of the insanity defense in criminal law

The common law has accepted mental incompetence as a defense against criminal behavior since the 12th century. However, when civil and criminal law shifted from a paradigm of strict liability to one based on blame, the present criteria for insanity evolved gradually and in tandem with other defenses of incapacity. Hammurabi's code contains the earliest known instance of the defense of insanity. Furthermore, evidence of the insanity defense's application demonstrates that it was employed by ancient societies including the Greeks, Romans, and Talmudic.⁴ Its evidence as a defense can also be traced back to the writings of Plato, who outlined a thorough plan for handling and punishing those who are accused of being mentally ill. It was proposed that rather than confining an insane accused person to a mental institution, their relatives should be entrusted with their care. If the accused person commits the same crime again, the relatives should be held responsible for the offence and subject to a fine.⁵ Sir Edward Coke and Sir Mathew Hale were the proponents of the “lack of understanding as the criterion of insanity” approach. The significant development of the insanity defense was observed in the 16th and 17th centuries in England based on their works.

The first case to deal with insanity as a defense was *R v Arnold* where it was held that “an insane person could not be guilty of a crime because he did not have a corrupt intent or the will to harm or malice; he was protected by the imbecility of the deed, his lack of reason, sense and understanding, and his likeness to a young child or brute animal.”⁶ This was known as the wild beast test. The second test, known as the Insane Delusion Test, was formulated in the case of *Dew v Clark*, and finally, the third test was formulated in *Bowlers’ Case* where “the court placed more emphasis on the capacity of the accused to distinguish right from wrong.”⁷

³Albin Eser, *Justification and Excuse*, 24 *Am. J. Comp. L.* 621 (1976)

⁴Thomas Maeder, *Crime and Madness: The Origins and Evolution of the Insanity Defense* (Harper & Row, 1985).

⁵Benjamin Jowett, *The Dialogues of Plato* (3d ed. vol. 5, Oxford Univ. Press 1892).

⁶Anthony M. Platt, *The Origins and Development of the “Wild Beast” Concept of Mental Illness and Its Relation to Theories of Criminal Responsibility*, 1 *Issues Criminology* 1, 1–18 (1965), <http://www.jstor.org/stable/42912527> (accessed Dec. 23, 2024).

⁷4 *Bowlers’ Case*, 1 *Collinson Lunacy* 673 (1812).

The M'Naughton Test, the first contemporary insanity test, was created in 1843 and is still employed as a cognitive test of insanity in certain jurisdictions today. It states that “a person cannot be held accountable for his actions if he had a mental illness or defect at the time of the act that prevented him from understanding the nature and quality of the act he was performing, or if he knew it was wrong or not.”⁸ After the M'Naughton Test, tests of insanity such as the Irresistible Impulse Test and the Durham Test began to develop which included the volitional element as well.

The United States has emerged as having one of the most advanced and refined approaches to the insanity defense and the interpretation and application of this defense have varied globally, shaped by the unique judicial systems and socio-legal contexts of each country. The jurisprudence surrounding the insanity defense is gradually evolving and is influenced by the legal frameworks of developed nations like the USA and UK.

1.2 Rationale behind the insanity defense

The insanity defense deals with the policy concerns that arise from the relationship between blameworthiness and responsibility in the context of criminal culpability.⁹ The underlying principle is that judging the acts of a person lacking complete free will, due to whatever mental illness they may have, in the same way as that of a mentally sound person would not be fair. The rationale behind the insanity defense is the view of the criminal justice system that “the conduct of individuals who lack some degree of mental capacity should not be judged according to general volitional and cognitive principles.”¹⁰ One of the main goals of punishment is deterrence, but punishing the mentally unsound does not do much to further this goal because they are undeterrable since they have little, if any, moral culpability¹¹, and punishing them “precludes the deterrence of others because sane would-be wrongdoers cannot identify with the mentally unsound who are punished.”¹² Rehabilitation is also not achieved by punishing them because of the same reason, being that they suffer from a mental illness that requires medical attention rather than a moral defect that is subject to rehabilitation.¹³ Thus, this defense is employed to identify criminals for whom rehabilitation or deterrence would not be achieved by punishment.

1.3 The public perception and controversies around its misuse as a loophole

The media provides the public with a vast amount of information relating to the insanity defense, but its portrayal is not always accurate. The general public belief is that the availability of this defense will result in “the opportunity for those faking mental illness to avoid punishment.”¹⁴ The suspicion of the validity of mental illnesses arises due to its perceived invisibility. Since mentally ill offenders make up a sizable

⁸Seth Feuerstein, et al., The Insanity Defense, 1 *Psychiatry MMC* (2010), <https://pmc.ncbi.nlm.nih.gov/articles/PMC2993532/>.

⁹Ellen Byers, Mentally Ill Criminal Offenders and the Strict Liability Effect: Is There Hope for a Just Jurisprudence in an Era of Responsibility/Consequences Talk? 57 *Ark. L. Rev.* 447, 486 (2004).

¹⁰Lynnette S. Cobun, The Insanity Defense: Effects of Abolition Unsupported by a Moral Consensus, 9 *Am. J.L. & Med.* 471, 474–75 (1984).

¹¹Timothy S. Hall, Legal Fictions and Moral Reasoning: Capital Punishment and the Mentally Retarded Defendant After *Penry v. Johnson*, 35 *Akron L. Rev.* 327, 331 (2002).

¹²Renee Melangon, Note, Arizona's Insane Response to Insanity, 40 *Ariz. L. Rev.* 287, 301 (1998).

¹³Ira Mickenberg, A Pleasant Surprise: The Guilty but Mentally Ill Verdict Has Both Succeeded in Its Own Right and Successfully Preserved the Traditional Role of the Insanity Defense, 55 *U. Cin. L. Rev.* 943, 951 (1987) (citing *In re Winship*, 397 U.S. 358, 364 (1970)).

¹⁴*La Fond & Durham, Kansas v. Hendricks Exposed*, 92 *Nw. U. L. Rev.* 1247, 1259 (1998).

percentage of the criminal justice system, some public concerns are nevertheless warranted despite the abundance of false information surrounding the use or misuse of the insanity plea.¹⁵

The arguments surrounding the concept of criminal responsibility and the insanity defense are mostly moral in nature rather than scientific. Beliefs in human reason, deterrence, and free choice form the ethical underpinnings of criminal law.¹⁶ Maximizing overall well-being and reducing the harm caused by crime and fear of crime, at least in terms of human cost, should be the goals of criminal law. This means that no one should have to endure needless pain or injury.¹⁷ The criminal justice system is justified if it optimizes the public good. Whether the insanity defense fulfills this objective or not is a question to be considered.

Chapter 2 Insanity Defense in the Nepalese Jurisprudence

2.1 Insanity Defense under Nepalese Laws

The Nepalese Legal System recognizes insanity as a valid defense and exempts criminal liability from a person with an unsound mind. Prior to the promulgation of the National Criminal Code in 2074, the Muluki Ain 2020 was the governing law on matters including insanity defense.

No. 1 of the Chapter on Punishment of Muluki Ain had recognized the M'Naughton rule of right-wrong test. No. 1 of the Chapter on "Punishment" of Muluki Ain 2020 states:

"Where a person who commits any act that is considered by law as an offense is so of unsound mind or insane that he or she cannot know the nature and consequence of the act committed by him or her. At the time of the commission of that act, such person shall not be guilty of such offense nor shall such person be liable to any kind of punishment. Where any person teaches a person who is of unsound mind or insane to commit any offense and such offense is so committed by the person of unsound mind or insanity, the person who so teaches shall be liable to punishment in full as if he or she were the principal offender."

As per this provision, a person who commits an offense while being of unsound mind or insane, and thus unable to understand the nature or consequences of their actions, cannot be held guilty or punished for the offense. However, if someone incites or instructs a person of unsound mind to commit a crime, the instigator will be fully liable and punished as the main offender.

However, with the introduction of the National Criminal Code, 2074, the liability of crimes committed by people who are mentally unsound at the time of commission of crime started being governed by Section 14 of the National Criminal Code, 2074 which reads as follows:

"14. Act of a person of unsound mind not to be offence: No act done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature, characteristic, fault or consequence of such act, shall be considered to be an offence."¹⁸

This provision provides that any act committed with unawareness regarding its nature, characteristics, or consequence because of unsoundness of mind will not be considered as an offence, and thus, the person committing it is exempted from criminal liability which would not be the case if the same was committed by a person with sound mind and full awareness of the consequential factors attached to the act.

¹⁵Carolyn Alexander, Oregon's Psychiatric Security Review Board: Trouble in Paradise, 22 Law & Psychol. Rev. 1, 5 (1998).

¹⁶Richard J. Bonnie, The Moral Basis of the Insanity Defense, 69 A.B.A. J. 194-97 (1983), <http://www.jstor.org/stable/20755324> (accessed Dec. 23, 2024).

¹⁷R.B. Brandt, The Insanity Defense and the Theory of Motivation, 7 Law & Philosophy 123-46 (1988), <http://www.jstor.org/stable/3504726> (accessed Dec. 23, 2024).

¹⁸National Criminal Code, 2074, S.14.

Not every mental illness qualifies for legal insanity. To claim this defense, it must be proven that the individual was of unsound mind at the time the crime was committed.¹⁹ Being of unsound mind implies an inability to understand the nature of the act or to recognize that their actions were wrong and unlawful. But because no psychological assessment would have been conducted at the moment of the crime, this determination is often subjective and challenging to establish.

2.2 Analysis of relevant Nepalese case law

The Supreme Court of Nepal has deliberated extensively on the scope and ambit of the insanity defense in several cases and has focused on its application in alignment with principles of justice and fairness. Some cases dealing with the insanity defense shall be discussed below, followed by their analysis.

Ram Bahadur Gurung v GoN

The Supreme Court held that if on the basis of collected evidence it has been proved that the accused has committed the charged offence and the accused has even confessed the crime before the court, it is not justifiable to acquit the accused only on the ground of insanity plea, which is not substantiated by any evidence. The accused has the burden of proving the plea for getting remission or acquittal from punishment.

Paras alias Abhishek Koirala v GoN

The accused allegedly murdered a guy. Prior to the incident, he had purchased the weapon and monitored the victim's movements, indicating premeditation. After the murder, he fled the scene, disposed of blood-stained clothes, and attempted to escape to India. The accused claimed to have been suffering from schizophrenia at the time, arguing that this mental illness should absolve them of responsibility for the crime. The Supreme Court rejected his claim for insanity defense under Section 14 of the NCC since there is no evidence supporting their claim of mental illness, specifically schizophrenia, at the time of the crime. He admitted to committing the murder and was fully aware of their actions, as demonstrated by their premeditation, surveillance of the victim, and flight after the crime. No medical records, expert reports, or other evidence indicate that he was suffering from any mental illness. His sudden claim of schizophrenia appears to be a fabrication to avoid punishment. Therefore, his conviction was upheld.

GoN v Dev Giri

The accused killed his 15-month-old son with a sickle, injured his wife, and set fire to their house, destroying all belongings. He had a history of mental instability, including erratic behavior like wandering naked, as confirmed by witnesses and his wife. On the day of the incident, he was seen acting erratically and later committed these acts. These actions were determined to be the result of his mental instability rather than deliberate intent. Evidence from witness testimonies, the injured wife's statements, and on-site investigations established that while he committed the acts, his history of erratic behavior and lack of mental soundness at the time of the incident indicated he was not fully aware of the nature or consequences of his actions. Consequently, under Section 1 of the Muluki Ain, he could not be held criminally liable due to the absence of intent and full mental awareness.

GoN v Kuldhoj Lama

The accused killed his wife by striking her with a spade. Witnesses reported that he had been showing signs of a mental disorder for 5-6 days prior to the incident, including weeping, crying, and running away from home. While a health examination initially indicated his mental state was satisfactory, it also noted

¹⁹Rabi Shakya, Mental Disorder and Crime, The Kathmandu Post, Dec. 25, 2014, <http://kathmandupost.ekantipur.com/news/2014-12-25/mental-disorder-and-crime.html>.

a decline in his thinking capacity. A subsequent report from a mental hospital confirmed he was suffering from schizophrenia. In his statement, the accused claimed he had no recollection of the incident and only became aware of killing his wife after receiving treatment. The Supreme Court acquitted the accused under Section 1 of the Chapter on Punishment, citing that it was not proven he was aware of the nature and consequences of his actions at the time of the offense due to his unsound mental condition and, by doing so, recognizing his mental incapacity as a valid defense.

Tirtha Dangol on Behalf Padma Raj Joshi v. GoN

The accused had killed his wife with an axe while she was breastfeeding her baby. Although he confessed to the crime during the investigation and in court, the hospital report confirmed he was suffering from schizophrenia, and witnesses during the investigation corroborated his abnormal behavior. Despite no prior medical history being presented, the Supreme Court acquitted him, holding that he was insane at the time of committing the act and incapable of understanding its nature and consequences.

Gauri Pun Magarni v HMG

The accused was sent for medical examination to a relevant specialist, and a letter from the Hospital indicated that she was suffering from schizophrenia. However, she could not explain to the police or the court that she had attacked her mother-in-law due to her illness. Instead, she gave a natural and sequential statement to the police and court, admitting to hitting her mother-in-law with an axe in a fit of anger. The letter did not indicate that her mental imbalance persisted continuously after her diagnosis. It was also noted that, at times, a person suffering from such an illness could be entirely mentally stable. There was no evidence to suggest that her mental imbalance had deteriorated to the extent that she was unable to understand the nature and consequences of her actions, nor that this state persisted permanently. Therefore, the court concluded that any criminal act committed while in a sound state of mind would attract liability under Section 1 of the Penal Code related to penalties and punishment.

GoN v Laxmi alias Bishnu Maya Aryal

The accused confessed to the offense both before the investigative authorities and in court. She claimed to have been suffering from psychosis for a long time and was under medication. While the trial court and Court of Appeal convicted her under Section 13(3) of the Chapter on Homicide, the Supreme Court acquitted her, recognizing her mental condition. The Court noted that there was no apparent reason for her to kill her own son, and she neither fled the scene nor attempted to hide the crime. It was concluded that, due to her mental disorder, she lacked the capacity to understand the nature and consequences of her actions.

Sudarshan Aryal v GoN

The accused killed his elder brother by stabbing him with a knife after prolonged mistreatment, confessing both during the investigation and in court. He claimed to be suffering from depression, which was supported by a medical report prepared after the incident. Despite this, the Supreme Court convicted him. The primary argument was that a plea for an exemption or reduction in punishment needed to be supported by substantial amount of evidence. The burden of proving that he was mentally ill and, in a state, where he was unaware of the nature and consequences of the act was on the accused. The accused's mental state prior to the act, his previous conduct and behavior, any abnormal activities, the disease diagnosis, the factual basis, and his actions following the occurrence will all be taken into account in order to exonerate him from punishment.²⁰ Whether an expert's prescription for medical treatment given prior to the incident

²⁰ Rewati Raj Tripathy & Dr. Rajit Bhakta Pradhananga, Defense of Mental Disorder: An Overview of Some Supreme Court Judgments, 10 NJA L.J. 1 (2016) [1].

has been submitted and verified by the physician after the incident shall also be taken into consideration. However, a test conducted a long time after the incident cannot prove a mental illness.

Chet Raj alias Chetan Kafle v GoN

The accused killed his father by hacking him with an axe at the neck while the victim was sleeping because his father did not follow his advice in the household affairs. His younger brother in his testimony stated that the accused was mentally ill and was taking medicine for it. The medical report indicated that he was suffering from schizophrenia. Despite this, the Supreme Court convicted him and ruled that a person with a mental illness lacks the capacity to comprehend the nature of their actions and cannot fully appreciate the consequences. While the accused was indeed diagnosed with schizophrenia, there was no evidence to suggest that his condition prevented him from understanding the nature of his act at the time. He was conscious immediately before committing the crime and fled from the scene to save himself from criminal liability. He was not mentally unsound being unable to know the nature and consequence of the act, therefore, the insanity defense is not applicable to him.

Khemnath Dahal v. GoN

The accused killed his elder brother's wife by repeatedly striking her with a hoe following a fight between his wife and the deceased. He confessed to the crime during both the investigation and the trial and was convicted under Section 13(3) of the Chapter on Homicide. In his appeal, he claimed the insanity defense, asserting that he had been suffering from schizophrenia. However, the Supreme Court held that he could “not be exempted from criminal liability on the grounds of insanity either before or after committing the crime. Neither the accused nor the individual recording his statement during the investigation, nor his wife (a co-accused in the case), claimed that he was insane at the time of the crime.”²¹ Merely raising the insanity defense in the appeal was insufficient to establish that the accused lacked awareness of the nature and consequences of his actions. The court also stated that the burden of proving insanity and the inability to understand the nature and consequences of the act rested with the accused.

GoN v Bal Bahadur Damai

The accused set his father's house on fire at night by throwing a lit matchstick. The accused, who had a history of mental illness, had also consumed alcohol at the time. He confessed to the act but claimed he had no intention of causing harm, stating that he was drunk, lit the match to smoke a cigarette, and accidentally threw it. Despite no clear evidence of abnormal behavior, the court acquitted him on the grounds of insanity. The Supreme Court concluded that the prosecution failed to prove that the accused was in a state where he could understand the nature and consequences of his actions. As a result, the court held that the accused was insane and unable to comprehend the nature and consequences of his act.

2.3 Examination of how courts assess and determine insanity claims

Upon the analysis of the judgments delivered by the Supreme Court in various cases involving the invocation of the insanity defense by the accused, the following points can be observed:

The burden of proving the existence of an unsound/unstable/insane mind at the time of commission of the act lies on the accused invoking the insanity immunity and it must be substantiated with clear evidence including medical reports, prior history of mental illness, and corroborating witness testimonies.

To assess the mental state of the accused at the time of the offense, the courts rely on tangible evidence such as medical reports, expert testimonies, and prior behavioral patterns.

²¹Ibid

Evidence of premeditation such as purchasing weapons and fleeing the crime scene often undermines insanity claims. In contrast, spontaneous and erratic actions of the accused were taken as an indication of a lack of intent and awareness which consequently supported the insanity claim.

The courts place significant emphasis on expert medical opinions but their relevance is assessed based on timing. A medical diagnosis made long after the occurrence of the incident may not be a reliable proof of the accused's mental state during the time of commission of crime.

The defense of insanity in criminal law requires more than just a medical diagnosis of mental illness. For an accused to successfully claim insanity, it must be proven that, at the time of the crime, they were unable to understand the nature or consequences of their actions due to mental illness. Medical reports can indicate the presence of mental illness, but the law focuses on whether the accused was capable of distinguishing right from wrong at the time of the incident. Therefore, both medical and behavioral evidence are necessary, and the defense of insanity cannot be granted solely based on a medical diagnosis. The behavior of the accused during the investigation and trial plays a crucial role in assessing the credibility of an insanity defense. If the accused does not raise the claim of insanity during the initial stages (such as during the investigation or trial), it weakens the validity of the defense when raised at a later stage, such as during an appeal.

However, there is some inconsistency in the way the fact situation has been analyzed by the courts as well which I would like to highlight below:

There appears to be inconsistency in how mental illness is treated in these cases. For example, in *GoN v. Kuldhaj Lama*, the accused was acquitted on the grounds of schizophrenia after showing signs of mental instability, while in *Paras alias Abhishek Koirala v. GoN*, a claim of schizophrenia was rejected despite the his confession and his claim of mental illness. The key difference between the two cases seems to be whether the accused's mental illness was substantiated by evidence or not. This inconsistency seems to indicate that the treatment of the insanity defense often hinges on the subjective interpretation of the evidence presented by the defense. The legal standard for proving insanity should be more clearly defined and uniformly applied to avoid arbitrary decisions. Courts need to better balance the need for medical evidence with a clear understanding of the accused's mental state at the time of the crime.

In many of the cases, such as *Sudarshan Aryal v GoN* and *Khemnath Dahal v. GoN*, the accused was required to prove the existence of mental illness to succeed in the insanity defense. This places a significant burden on the accused, who may not have access to the necessary medical evidence or expertise to prove their mental condition at the time of the crime. Moreover, in *GoN v Bal Bahadur Damai*, despite the accused's confession and claims of intoxication, the court acquitted him on the grounds of insanity without strong evidence. It is important to consider the accused's mental condition in a more holistic way, including their past behavior, the context of the crime, and expert testimony, to ensure fair treatment.

The judgments in these cases place weight on expert testimony and medical records to assess whether the accused's mental condition was severe enough to impair their ability to understand the nature of the crime. However, cases like *GoN v. Dev Giri* and *Chet Raj alias Chetan Kafle v. GoN* demonstrate the potential for conflicting reports or the absence of clear medical evidence, leading to inconsistent decisions. This reliance on expert testimony might overlook the accused's behavior and psychological state in the moments leading up to the crime. The courts may over-rely on expert reports without properly examining the accused's behavioral evidence, such as premeditation, flight after the crime, or changes in their conduct. More weight should be given to a comprehensive understanding of the accused's actions rather than just medical diagnoses.

In several cases, including *Paras alias Abhishek Koirala v. GoN*, the court dismissed the insanity defense by emphasizing premeditation, which suggests that the accused acted with intent and awareness. For example, the accused in *Paras alias Abhishek Koirala* had purchased the weapon beforehand, surveilled the victim, and fled after the murder, which demonstrated premeditation. This seems to rule out the possibility of insanity, which requires that the accused be unable to understand the nature of the crime due to mental illness. The emphasis on premeditation overlooks the fact that some individuals with mental illnesses may still engage in premeditated actions but might not fully comprehend the gravity or consequences of their actions due to their condition. The courts may fail to distinguish between actions taken with a limited understanding versus those driven by full awareness.

In cases such as *GoN v. Laxmi alias Bishnu Maya Aryal*, the court acquitted the accused based on their mental history and lack of intent, but in *GoN v. Kuldhaj Lama*, the accused was convicted despite a history of mental instability and an expert report of schizophrenia. The accused's ongoing mental illness is often not sufficiently considered when assessing the insanity defense. Courts often neglect the broader context of the accused's mental health and focus only on their mental state at the time of the crime. An accused with a long history of mental illness may have a reduced capacity to understand the crime's nature even if they show signs of awareness before or after the incident.

The insanity defense is applied inconsistently, as seen in the cases of *Tirtha Dangol on Behalf Padma Raj Joshi v. GoN* and *GoN v. Dev Giri*, where medical records and witness testimonies pointed to mental instability, but the outcomes differed. Some cases favor acquittals, while others result in convictions, even when similar evidence is presented. This lack of uniformity leads to a sense of unpredictability in the legal process. There needs to be a more uniform application of the insanity defense. This could be achieved through clearer statutory guidelines and better training for courts on the complexities of mental illness. Clearer standards for assessing the severity of mental conditions and their impact on criminal responsibility would ensure that the insanity defense is applied fairly and consistently.

Chapter 3 Tracing Insanity Defense Across Borders

A mental impairment alone does not automatically result in an acquittal on the grounds of insanity. To successfully claim this defense, the impairment must have specifically affected the accused's mental state at the time of the crime. Insanity tests generally focus on two types of impairments: cognitive and volitional. Cognitive impairments relate to a person's ability to understand reality and distinguish between right and wrong. In contrast, volitional impairments refer to a person's capacity to restrain themselves from engaging in actions they know to be morally or legally wrong. This distinction between cognitive and volitional impairments has led to differing views among jurisdictions. Some argue that the insanity defense should only apply when an accused's mental condition makes them incapable of understanding the difference between right and wrong. Others, however, believe the defense should also be available when a mental illness rendered the accused unable to control their actions, even if they understood their conduct was wrong. This debate continues to shape how the insanity defense is interpreted and applied across legal systems. This chapter shall provide a comparative analysis of how the insanity defense is incorporated in the laws of different jurisdictions.

3.1 England

The insanity defense in England developed through a mix of case law and statutes, starting with early cases like *R v. Arnold* (1724) and *R v. Hadfield* (1800), which highlighted mental illness as a factor in

criminal culpability. The landmark *McNaughton's Case* (1843) established the foundational rules, while statutes like the *Criminal Lunatics Act 1800* and *Trial of Lunatics Act 1883* formalized procedures for handling the accused with mental illnesses.

3.1.1 *Rex v Arnold*

The wild beast test is typically credited to “Judge Robert Tracy in 1724, presiding over the trial of Edward Arnold, who asserted that a person is insane if she or he was totally deprived of his understanding and memory, and does not know what he is doing, no more than a brute, or a wild beast.”²² This test defines insanity as a global sense of incapacity that attaches to an entire person, not as a component of someone’s behavior or byproduct of a mental disease or defect.²³ There are several potential criticisms stemming from inconsistencies that the wild beast test would have with positive law, some of them being :

- The wild beast test transforms insanity into a status-based defense that attaches to the person, not the action or moment in time in which a crime is committed, such a person would have unrestrained license to do whatever she wants without consequence.²⁴
- Under principles of utilitarianism, punishment will not effectively deter the wild beast from committing future crimes or generally deter other wild beasts from committing the same crimes because while the wild beast is not volitionally impaired, she does not have the same moral emotions or reasons that are the driving motivation behind the behavior of her human counterparts.²⁵
- Punishing a "wild beast" under retributivism is irrational because the beast lacks the moral awareness (scienter) required to understand the inherent immorality (malum in se) of crimes like murder. Punishment, in this case, serves only to symbolically restore societal balance, but it is unjust to the beast, who is not morally blameworthy.²⁶

3.1.2. *R v Hadfield*

This case established a new category of criminals known as "criminal lunatics," a term later deemed inappropriate, by introducing the exceptional verdict of "Not guilty, being under the influence of insanity at the time the act was committed." It led to a legal requirement for courts to order the safe custody of individuals found insane until a decision was made by the Crown. This development prompted the enactment of the **Criminal Lunatics Act 1800**, which allowed indefinite detention of such individuals ‘at His Majesty’s pleasure.’ The state took on a more active role by funding accommodations for criminal lunatics and later establishing dedicated male and female criminal lunatic wings in 1814. Over time, criminal lunatics were housed in a range of facilities, including private asylums and workhouses. After years of debate and concerns over costs, the **Criminal Lunatics Asylum Act 1860** was passed which eventually shaped the modern system of secure psychiatric hospitals.²⁷ This case added “insane delusions” to the "wild beast" test as a basis for a finding of insanity.²⁸

3.1.3. *R v McNaughton*

This case led to a substantial change in the legal rule used to determine insanity. This case established the

²²*Rex v. Arnold*, 16 How. St. Tr. 695, 764–65 (1724).

²³Anthony M. Platt, *The Origins and Development of the “Wild Beast” Concept of Mental Illness and Its Relation to Theories of Criminal Responsibility*, 1 *Issues Criminology* 1, 2, 9 (1965) [1].

²⁴Thomas Aquinas, *Summa Theologica* pt. II, sec. II, 312–13 (145).

²⁵Model Penal Code § 4.01, cmt. 3, n.12.

²⁶Kent Greenawalt, *Punishment*, 74 *J. Crim. L. & Criminology* 343–44 (1983).

²⁷Thomas Bewley, *Madness to Mental Illness: A History of the Royal College of Psychiatrists*, https://www.rcpsych.ac.uk/docs/default-source/about-us/library-archives/archives/madness-to-mental-illness-online-archive/important-legal-cases-of-the-19th-century-james-hadfield.pdf?sfvrsn=e4cedf57_6.

²⁸*Hadfield's Case*, 27 How. St. Tr. 1281 (K.B. 1800).

McNaughton rule which stated that the jurors ought to be told in all cases that “a man is presumed to be sane, until the contrary be proved to their satisfaction; and that to establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that what he was doing was wrong.”²⁹ The rule followed the **right-wrong test**, providing a legal framework for juries to consider when insanity was raised as a defense. Juries were instructed to answer two key questions:

1. “Did the accused understand what they were doing at the time of the crime?”
2. Did the accused know that their actions were wrong?”³⁰

Notably, this test did not take mental illness into account as a separate factor.

3.2 United States of America

The development of the insanity defense in the U.S. stems from the English McNaughton Rule (1843), which emphasized distinguishing right from wrong due to mental illness. Over time, American courts introduced broader standards, such as the Durham Rule (1954) and the ALI Model Penal Code (1962), to address the complexities of mental health in criminal law. Public backlash, especially after Hinckley's acquittal (1982), led to stricter reforms, including the Insanity Defense Reform Act (1984).

3.2.1 United States v Sickles

This case marked one of the first uses of the insanity defense in the U.S. Daniel Sickles, a congressman, killed his wife's lover but was acquitted by arguing temporary insanity caused by the emotional shock of his wife's infidelity.

3.2.2 Durham v United States

There has been much discussion throughout the country since the decision of the Durham case. The court in this case “directs trial judges within its jurisdiction to instruct juries that where there is some evidence of mental disease or defect, in order to convict, they must find two things, (1) that the accused was not suffering from a mental defect or disease, and (2) that even if he was, the criminal act was not the product of that condition, for if the jury finds that the mental disease did not cause the act, it should have no influence on the question of the accused’s guilt.” Thus, if a criminal accused’s “mental disease or defect” was the reason that he or she committed a crime, the accused is not guilty by reason of insanity. This test is currently used only in New Hampshire because it has been deemed too broad by other states and jurisdictions.

Because it does not specify exactly which symptoms are necessary for a verdict of mental irresponsibility, it has been criticized for being ambiguous. Another criticism of this test is that the usage of the word "product" to convey the idea of causality gives fact finders too much discretion.

3.2.3 ALI Model Penal Code

The court took a different stance in *United States v. Brawner* (1972) and replaced the Durham rule as a threshold of legal insanity with the one found in the American Law Institute's (ALI) Model Penal Code. The ALI standard modified the insanity defense by combining elements of the McNaughton Rule and the Durham Rule. It added a provision stating that “accused could not be held responsible if they lacked substantial capacity to appreciate the criminality of their conduct or to conform their conduct to the law

²⁹Robert Aitken & Marilyn Aitken, *The McNaughton Case: The Queen Was Not Amused*, 36 *Litigation* 53–56 (2010), <http://www.jstor.org/stable/25801820> (accessed Dec. 23, 2024).

³⁰Jonas Robitscher & Andrew Ky Haynes, *In Defense of the Insanity Defense*, 31 *Emory L.J.* 9 (1982).

due to a mental illness. Section 4 of the Code reads as: “(1) 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 substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. (2) The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.”³¹ This test is still used in many states, but it was criticized after it led to the acquittal of John Hinckley.

3.2.4 United States v Hinkley

John Hinckley made an attempt to kill President Ronald Reagan in 1981. However, the president's press secretary sustained a permanent brain injury and the president was gravely injured. Hinckley did the stunt to impress a movie actress he had never met; it was later discovered. Hinckley was ruled not guilty by reason of insanity throughout the trial. The irresistible impulse test was re-examined and rejected after John Hinckley was found not guilty of attempting to kill Ronald Reagan due to insanity. “It is a fundamental principle of the criminal law that volition is a requisite element of every crime. The chief reason for this requirement is that without volition there can be no act. It is also stated that criminal intent requires volition.”³² Since an impulse, if irresistible, necessarily negates volition, it follows logically that irresistible impulse should constitute a defense.

3.2.5 Insanity Defense Reform Act 1984

Major flaws in the legislation were brought to light by John W. Hinckley Jr.'s trial and subsequent acquittal: the definition of the defense was too broad, the Government was given the burden of proof, which led to an excessive number of acquittals, and expert witness use was given too much discretion. In addition to fixing these flaws, the 1984 reform established post-acquittal commitment protocols. The volitional component has been eliminated, and the definition of insanity has been narrowed. “The burden of proof of insanity by clear and convincing evidence is placed on the accused. In addition, the proposed amendment adopts a bifurcated voting system by which panel members vote on guilt or innocence; then, if they determine the accused is guilty, vote on the issue of insanity.”³³

3.3 India

In India, the insanity defense is present under Section 22 of the Bharatiya Nyaya Sanhita. It states that “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.”³⁴ Prior to that, Section 84 of the IPC was the provision dealing with the insanity defense.

“Actus non facit reum nisi mens sit rea” and “Furiosi nulla voluntas est” are two foundational principles of criminal jurisprudence that were contained in Section 84 IPC. Accordingly, an action is not criminal until it is carried out with “mens rea,” or a guilty purpose. Because people with mental illnesses are incapable of rational thought or the requisite guilty intent, Section 84 IPC absolves them of responsibility.

Although McNaughten's rule permits the acknowledgment of an offense, Section 22 of the BNS totally exonerates those who lack mental competence and leads to a conviction of “not guilty by reason of insanity” as opposed to “guilty but mentally ill.”

³¹ Model Penal Code § 4

³² Edwin R. Keedy, Irresistible Impulse as a Defense in Criminal Law, 100 U. Pa. L. Rev. 986 (1952).

³³ R.R. Carroll, Insanity Defense Reform, 114 Mil. L. Rev. 183–224 (1986).

³⁴ Bharatiya Nyaya Sanhita, 2023, § 22.

3.3.1 Surendra Mishra v State of Jharkhand

In order to be exonerated of liability for an act under Section 84 of the IPC, an accused must demonstrate legal insanity rather than medical insanity. Furthermore, the term "unsoundness of mind" has been largely regarded as being synonymous with insanity and has not been defined in the IPC. However, the definition of insanity varies depending on the context and refers to different levels of mental illness. Not all individuals with mental illnesses are immune from criminal prosecution. "It is not appropriate to apply Section 84 of the IPC just because the accused is arrogant, strange, irascible, and his brain is not quite right; or the physical and mental illnesses he had caused his intellect to become weak and affected his emotions; or he engages in certain unusual acts; or because he had short-term fits of insanity; or because he had epileptic fits and displayed abnormal behavior or queer behavior."³⁵

3.3.2. Ratan Lal Vs. State of Madhya Pradesh

"By providing evidence such as expert testimony, oral and other documentary testimony, presumptions, admissions, or even the prosecution's proof, the accused must demonstrate in court that he was incapable of comprehending the nature of the crime or that what he was doing was unlawful or wrong."³⁶ The accused bears the burden, but he need not prove it beyond a reasonable doubt. The standard of proof is the preponderance of evidence. He does not have a higher standard of proof than a civil process party.

3.3.3 Dahyabhai Chhaganbhai Thakker v State of Gujarat

The evidence submitted to the court by an accused may raise questions about one or more of the elements of the offence, including his mens rea at the time of commission of crime. Because the prosecution's general burden of proof was not met, the court would have the authority to acquit the accused in such a case.

3.4 Observations

The McNaughton rule, established in England in 1843, remains a foundational test for insanity defenses, mainly in the U.S. This test focuses on the accused's cognitive awareness rather than their ability to control actions. To succeed, the defense requires proof that the accused had a mental defect at the time of the crime which rendered them incapable of understanding the nature and quality of their act or recognizing it as wrong. Jurisdictions differ on how they define "wrong," with some focusing on legal wrongness and others incorporating moral wrongness. Notably, evidence of concealment or escape attempts often weakens an insanity claim since it suggests that the accused was aware that his act was wrong.

The irresistible impulse defense expands on McNaughton by addressing both the accused's mental awareness and their ability to control their actions. While it retains the requirement of a mental defect, it adds the element of volition and excuses conduct that the accused could not control due to their mental condition, even if they knew it was wrong. This approach offers a more lenient standard than McNaughton but requires the trier of fact to differentiate between actions that are uncontrollable and those that are not. However, over the years, this defense is rejected by most of the states and the federal government.

The substantial capacity test sets a lower bar for proving insanity by requiring a lack of substantial, not total, capacity to understand right from wrong or to conform to the law. It focuses on legal wrongs rather than moral ones and offers a more flexible approach compared to the stricter McNaughton or irresistible impulse standards.

³⁵AIR 2011 SUPREME COURT 627

³⁶AIR1971SC778

The Durham test focuses on whether the accused's criminal actions were directly caused by a mental disease or defect. Unlike other tests, it emphasizes objective psychological standards rather than the accused's subjective understanding and makes causation central to the defense.

3.5 Similarities and differences with the Nepalese law

Section 14 of the NCC aligns closely with McNaughton. Both emphasize the cognitive inability of the accused at the time of the crime, but the former doesn't go further into distinguishing between legal and moral wrongness, which McNaughton sometimes does. The irresistible impulse defense, which adds the element of volitional control (accused cannot control their conduct), is not explicitly covered under the Code. Therefore, it is less flexible compared to the irresistible impulse test. The substantial capacity test is broader than Section 14. Section 14 is more rigid in that it doesn't distinguish between "substantial" or "total" incapacity and only emphasizes the inability to understand the nature or consequences of the act. The Code doesn't explicitly address causation, and thus, it does not have the same emphasis on linking the mental defect directly to the criminal behavior as the Durham test. In summary, the Nepalese provision closely resembles the McNaughton rule in its focus on cognitive impairment and awareness, but it does not clearly address volitional factors, substantial capacity, or causation in the same nuanced way as the other defenses. This makes it a simpler, less flexible standard compared to the more detailed tests used in other jurisdictions.

Chapter 4 Various perspectives on Insanity Defense

4.1 Prevalent supporting and opposing arguments

Opponents of the insanity defense argue that it complicates the identification of mens rea, which is a key factor in determining criminal liability, by introducing vague and subjective questions about how much mental impairment is needed to acquit an accused. They contend that the tests for insanity fail to provide clear, factual standards and leave the determination of guilt or innocence to the discretion of the factfinder, who is expected to act as a moral representative of the community. Critics also claim that the defense is often misused and allows the accused to "beat the rap,"³⁷ while deflecting attention from the real needs of mentally disordered individuals in prison who don't raise or fail with the defense. Additionally, the insanity defense is seen as rarely used and unworkable since experts and laypeople struggle to accurately reconstruct an accused's mental state at the time of the crime, suggesting instead that mental illness should only be considered during sentencing.

Proponents of the insanity defense argue that, despite its rare use and occasional incorrect verdicts, it remains a just and necessary legal principle. Like any legal defense, there will always be instances where a verdict is wrong, but this does not justify the abolition of a defense that serves a moral purpose. The rarity of successful insanity pleas (less than 2% of federal and state trials)³⁸ disproves the claim that it allows criminals to evade punishment. Furthermore, abolishing the defense would likely make the plight of mentally disordered individuals in the criminal justice system even more invisible and exacerbate the lack of adequate mental health care in prisons.³⁹ They also point out that, similar to defenses like duress and necessity, the insanity defense may apply to only a few but is morally essential for fairness. Lastly, they argue that proving insanity is no more difficult than proving mens rea, as both require inferring past

³⁷Stephen J. Morse, *Excusing the Crazy: The Insanity Defense Reconsidered*, 58 S. Cal. L. Rev. 777 (1985).

³⁸Myths and Realities: A Report of the Nat'l Comm'n on the Insanity Defense 14–27 (1983).

³⁹Teplin, *The Criminalization of the Mentally Ill: Speculation in Search of Data*, 94 Psychological Bull. 54–64 (1983).

mental states from the accused's actions, and that mental state at the time of the crime is crucial for determining responsibility and appropriate punishment.

Conclusion

The insanity defense serves a vital role in ensuring that individuals who are unable to understand the nature of their actions due to mental illness are not unjustly held criminally liable. Nepal has incorporated an insanity defense provision in its legal framework, allowing individuals to be excused from criminal liability if they are found to be of unsound mind at the time of committing the offense. However, the Supreme Court's approach is not consistent. The court seems to be uncertain about the burden of proof in deciding the cases where the defense of insanity has been made. If the accused makes the plea of insanity defense, the burden of proof lies with him. However, in some cases, the court has acquitted the accused by stating that the prosecution has been able to prove beyond reasonable doubt that the accused was of sound mind knowing the nature and consequence of the act.

Creating a fair and just insanity defense process in Nepal requires a comprehensive and nuanced approach, one that not only aligns with international standards but also adapts to the country's specific legal and social context. A primary focus should be on strengthening procedural safeguards to ensure that the insanity defense is used appropriately and justly. This can be done by introducing more stringent evidentiary requirements that can help assess the validity of insanity claims thoroughly and fairly. Clearer protocols for the role of mental health infrastructure—particularly in court settings—are essential. Establishing clear guidelines for the evaluation and testimony of mental health professionals, alongside well-defined roles for judges and juries, can help safeguard against wrongful acquittals or unjust convictions based on insufficient or unreliable psychiatric evidence. Another important area for reform is improving access to qualified forensic psychiatrists. In many cases, a lack of trained experts can hinder the effective use of the insanity defense and result in unreliable or biased evaluations. Investing in the education and training of forensic psychiatrists can ensure that mental health assessments in criminal trials are both accurate and credible. Additionally, establishing specialized mental health facilities and promoting collaboration between legal and psychiatric professionals can streamline the process and lead to more informed and transparent decision-making.

Furthermore, addressing the potential for abuse and the challenges of malingering is critical to preserving the integrity of the insanity defense. Procedural loopholes and false claims can undermine public trust in the legal system and lead to skepticism about the fairness of the process. Ensuring that forensic evaluations are conducted using scientifically validated methods, coupled with cross-examinations of mental health professionals, can reduce the likelihood of manipulation or false claims of insanity. Clear guidelines on the burden of proof in insanity cases and more rigorous standards for both defense and prosecution can help mitigate these risks.