NLUJ Law Review

Pranav Kumar, *Automatism and Section 84, IPC A Proposed Amendment*, 9(1) NLUJ L. REV. 177 (2022).

AUTOMATISM AND SECTION 84, IPC: A PROPOSED AMENDMENT

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ABSTRACT

India does not have a statutory framework for dealing with cases of automatism: the state of total loss of control over one's actions. Over the years, this has culminated into the judiciary utilising Section 84 of the IPC (unsoundness of mind) to deal with the conviction or acquittal of automatons. In this piece, the author argues that a new statutory framework is necessary. The author first looks at the problems with approaching automatism under the unsoundness framework, before drafting the new amended Section 84A that aims to encompass the defence of automatism. The author suggests phraseological changes to the unamended Section 84 that they then justify through the course of their paper. The argument is such: Section 84 needs to be amended to include automatism, and the paper proposes an amendment to that end.

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I. PREFACE

It was deep into the night when bright lights attacked her fatigued eyes, and a loud splash disturbed her sleep. Bewildered, she quickly roused her husband from his slumber. They looked around to realize, that the lights in Pappathi Ammal's home were shining in full glory. The two immediately reached Ammal's residence, only to discover that both Ammal and her son were nowhere to be seen. Caught in fright, they combed the entire neighbourhood trying to find the missing mother and child. Not a trace anywhere.

Just as they were about to give up, something unexpected caught them off-guard - a shallow noise near the well. As curiosity took over fear, the couple walked to the well and peeped inside. To their horror, Pappathi Ammal stared back at them with passionless eyes. Beside her, a life-less child floating over the water's surface. An investigation followed the inquest, and Ammal was charged with murdering her own son.

II. INTRODUCTION

In the aforementioned case of *Pappathi Ammal v. Unknown,*[1] the accused took the defence of somnambulism or sleep-walking, to argue that she was not in control of the events that took place, giving the court a classic opportunity to explore the contours of automatism. However, the court not only ignored the opportunity, but also failed to include automatism in its judgement. Such lacklustre is not unique to this case

[1] In Re: Pappathi Ammal v. Unknown, AIR 1959 Mad 239 (India).

alone, and various other Indian cases too,[2] end up not discussing automatism in cases which require its application. On the other hand, the cases that do discuss automatism tend to push it into the insanity framework enshrined under Section 84 of the Indian Penal Code ("**IPC**"), effectively morphing the true nature of automatism for the worse[3].

In this Article, the author argues against reading automatism into Section 84, for it portrays a shallow understanding of automatons by declaring them insane. Instead, the author proposes an amendment (Section 84A) to the IPC, that attempts to paint a more complete picture of automatism, and also rid the present jurisprudence of the confusion caused (both, medical and legal) by treating automatism as a facet of insanity. To that end, the author shall *firstly,* summarily discuss automatism as a defence. The rest of the article shall be spent justifying Section 84A.

III. DEFENCE OF AUTOMATISM

Automatism is invoked when one portrays a total loss of control over one's actions. It denies the existence of *actus-reus* by arguing that the offence was carried out involuntarily.[4] That is, pleading automatism may completely acquit the accused, if they were not under conscious control of their actions while committing the offence. In the words of Justice Winn,

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[2] *See* State v. Gulzari Lal, 1979 SCC (Cri) 526 (India); Madhya Pradesh v. Ahmadullah, (1961) 3 SCR 583 (India); Patreswar Basumatary v. State of Assam, 1988 SCC OnLine Gau 31 (India).

[3] CHAN ET. AL., CODIFICATION, MACAULAY AND THE INDIAN PENAL CODE: THE LEGACIES AND MODERN CHALLENGES OF CRIMINAL LAW REFORM, (Ashgate Publishing, 2011), Chapter 10 (*hereinafter* "**CHAN, WRIGHT AND YEO**")

[4] John Jennings, *The Growth and Development of Automatism as a Defence in Criminal Law*, 2 OSGOODE HALL L. J. 370 (1962).

automatism involves *"an involuntary movement of the body or limbs of a person, (following) a complete destruction of voluntary control."*[5]

On the other hand, Section 84 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."*[6] As mentioned, Indian courts have forced automatism into Section 84, effectively confusing automatism with the realm of unsoundness of mind. There are multiple arguments against this rigid approach. This Article discusses the three primary contentions – (a) absent nexus; (b) absent theoretical justification; and (c) failures under common law.

A. ABSENT NEXUS

Even the most common causes of automatism, which include somnambulism, epilepsy, hypoglycaemia etc, have no inherent element of mental disorder, insanity or unsoundness.[7] Automatons, as various authors and cases argue, may be of absolutely sound nature.[8] In fact, some argue, that being of sound mind is one of the primary requirements to invoke the automatism defence;[9] since only then the "conscious mind of the defendant has ceased to operate [and] his actions [are] solely controlled by his

[5] Watmore v. Jenkins, [1962] 2 QB 572, p. 587.
[6] Indian Penal Code, 1860, §84, No. 45, Acts of the Parliament,
[7] UK LAW COMMISSION, INSANITY AND AUTOMATISM: A SCOPING PAPER, (2012); People v. Martin, 87 Cal. App. 2d 581 (1948); People v. Hardy, 33 Cal. 2d 52, 198 P.2d 865 (1948); RICHARD ROSNER & CHARLES SCOTT, PRINCIPLES AND PRACTICE OF FORENSIC PSYCHIATRY 275 (R Bluglass and P Bowden ed. 1990) (*hereinafter* "**Defence of Automatism**").
[8] *Id.*
[9] Patricia Gould, *Automatism: The Unconsciousness Defense to a Criminal Action,* 15 SAN DIEGO L. R., 839 (1978).

subconscious or subjective mind."[10] Thus, it makes little sense to label them as insane or unsound. Not only does such a label trivialize the issue of automatism itself, but it also rests the whole defence on a shaky presumption that insanity is an element of causation of automatism. Even through the lens of legal procedure, it makes no sense to use arguments, precedents and defences unique to insanity, to acquit/convict an automaton. The nature of automatism as a disorder is shielded by forcing it to exist under the shadow of Section 84.

B. ABSENT THEORETICAL JUSTIFICATION

Under the insanity framework, conviction leads to the emergence of strong control over the individual's liberty once they are declared insane. Criminal theory justifies this, by perceiving such persons as threats: something that society ought to be shielded from.[11] As has been incessantly argued, the function of criminal law is to administer just punishment.[12] According to this viewpoint, the rules of evidence and criminal procedure aid in administering appropriate punishment while limiting the risk of unjustified punishment. The requirement and quantum of such punishment are a function of societal views on morality. Though the rules of substantive criminal law assist in providing a fair warning to potential offenders that they may face punishment, it is never to say anything about *what* the justification of punishment is.

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[10] People v. Martin, 87 Cal. App. 2d 581 (1948), ¶ 8.

[11] Benjamin B. Sendor, *Crimes as Communication: An Interpretive Theory of the Insanity Defense and the Mental Elements of Crime*, 74 GEO. L. J. 1371, 1427-1428 (1986).

[12] MICHAEL S. MOORE, PLACING BLAME: A THEORY OF THE CRIMINAL LAW (Oxford University Press, 2010).

In the case of insanity, the justification is simply, as stated above, that such people are a threat, and endanger society; since their actions cannot be perceived or understood by civil society, it makes them unfit to live in the same.[13] Thus, convicts under this section are sent to state facilities or asylums in an attempt to keep them afar from 'normal' society.

However, such an approach fails to justify the bringing of automatism under the framework of insanity. In most, if not all, instances, the risk of reoccurrence of the automaton state is minimal.[14] Ergo, the risk of re-commission of the offence in such a state, is almost nil. For example, the risk to society posed by a man suffering from dissociative identity disorder, is nowhere close to the risk posed by a person acting as an automaton due to a muscle spasm from an external physical blow. Such difference in risk is not only intuitive, but also well-accepted in automatism scholarship.[15] Accordingly, one also finds no justifiable reason to exercise continued state supervision over such a person or label such a person as insane, for it would unnecessarily burden the actor with societal stigma and unwarranted state control.

C. LEARNING FROM THE FAILURES OF COMMON LAW

English law distinguishes between non-insane and insane automatism. As per the law, the former does not attract the defence of insanity, while the latter does.[16] Such classification is based on whether the

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[13] Defence of Automatism, *supra* note 7, pg. 2
[14] CHAN, WRIGHT AND YEO, *supra* note 3.
[15] Defence of Automatism, *supra* note 7, at ¶3.25-27.
[16] *Hennessy* [1989] 1 WLR 287; *DPP v. Desmond* [2006] IESC 25; *Sullivan* [1984] AC 156.

cause of automatism is external or internal, i.e., if the cause is internal, then insanity is the defence; if external, then simple automatism.

Since the presence of any 'internal' factor constitutes insane automatism, this distinction leads to a large pool of individuals having no mental unsoundness being labelled insane. This label extends not only to the patients of diabetes and epilepsy, but also to sleepwalkers as courts consider somnambulism to be caused by something *internal*.[17] Additionally, the distinction between internal and external automatism has also given rise to confusion, which often leads to unfair decisions. For example, diabetics may suffer from both, hyperglycaemia and hypoglycaemia, and both could be caused by external (excessive insulin intake) as well as internal factors (prolonged starvation). In the case of *Hennessy,*[18] the defendant pled insanity, simply because he forgot to take his prescribed insulin dose that morning.

Thus, the introduction of automatism into the insanity framework has not only diluted the defence of automatism, but has also muddled the jurisprudence concerning 'insanity' in common law. One must note, that a limited speck of automatism not tainted by the insanity jurisprudence was retained in common law under 'non-insane automatism'. If India were to concretely read automatism into Section 84, which is a provision specifically pertaining to the unsoundness of mind, even the limited thread of non-insane automatism would be lost, and all cases would fall under the framework of insanity.

Nevertheless, the purpose of this Article is not to argue why Section 84 should not take automatism under its ambit, but to propose an

[17] *Defence of Automatism*, *supra* note 7, at ¶2.23.
[18] *Hennessy* [1989] 1 WLR 287.

amendment introducing it into the Indian Penal Code. To do so, we must first discard the distinction of 'insane' and 'non-insane' automatism, but instead adopt, what the author calls 'solus v. non-solus automatism'.

IV. ALTERNATE DRAFTING

A. SOLUS AND NON-SOLUS AUTOMATISM

Instead of identifying the origin of the cause of automatism, we must see if the absence of that cause would have negated the possibility of automaton behaviour completely. Additionally, such enquiry must also factor in the possibility of uninitiated reoccurrence of said behaviour. For this, the author aims to create a distinction between solus and non-solus automatism, as opposed to internal or external automatism that is found in common law.

The Oxford dictionary defines the word 'solus' as "alone or unaccompanied".[19] Thus, solus-automatisms would be those, where the advent of automaton behaviour would occur even if the accused were unaccompanied or alone, with substantial contributing factors posing a probable risk of uninitiated reoccurrence. While, non-solus automatism would consist of those situations, where the automaton behaviour requires the presence of a contingency external to the automaton himself, and substantial contributing factors pose minimal risk of uninitiated reoccurrence. For example, it is more accurate to posit, that a hypoglycaemic man, in such a state, is mentally impaired or incapable, than to undertake the adjudication under Section 84 and declare him unsound

[19] WILLIAM LITTLE, OXFORD ENGLISH DICTIONARY 2.0 929 (*5th Ed,* Oxford University Press, 2003)

or insane. On the other hand, a person being hit by a stick in the head and suffering from temporary automaton behaviour would be considered a non-solus automaton, as there is little risk of reoccurrence (unless he is hit again in similar circumstances). Thus, in the latter case, the substantial contributing factors are external to the automaton himself.

The easiest way to understand this distinction is to see whether the automaton behaviour could reoccur when the actor is *in solus,* or isolated. One must understand, that said distinction cannot be uniformly imposed on a particular physical or mental condition - that is, it cannot be generalised, for example, that a hypoglycaemic man would always be a solus automaton. Such determination is dependent on the factors unique to the particular case. This marks a major point of departure from the common law distinction of internal and external automatism, where hypoglycaemia would always be considered a cause of internal automatism. It is possible, that hypoglycaemia in one case may result in the determination that the actor was a solus automaton, while in another, the courts may declare him a non-solus automaton.

An illustration would make the point crystal. A hypoglycaemic man who has himself induced low blood sugar by manipulating his course of medication, without any external stimuli, forcing him to do so can be considered a solus automaton, as certain subjective processes have prompted him to undertake said decision in solus. There is no stimulus external to the actor, and thus, substantial contributing factors could pose a probable risk of uninitiated reoccurrence. In contradistinction, if a third party induces hypoglycaemia in the automaton by forcefully or deceitfully

administering insulin, that would amount to non-solus automatism, as the substantial contributing factors are external to the actor himself.

In other words, automaton behaviour induced by such hypoglycaemia would not reoccur when the actor is in solus.[20] Thus, while the distinction drawn between solus and non-solus automatism, akin to external and internal automatism, seeks to analyse the *cause* of automaton behaviour, it does so not by looking at whether the effect of such behaviour is caused by internal or external *processes*, but by internal or external stimuli. Moreover, it also factors in the risk of reoccurrence, unlike the common law distinction.

The next sections would discuss the alternate wording of certain key phrases in Section 84, which would inhibit the section from blanketly treating all automatons under the framework of 'unsoundness'. While the unamended Section 84 has been produced above, the amended Section 84A is as follows:

B. SECTION 84A – DEFENCE OF AUTOMATISM

(1) Non-Solus Automatism: *Nothing is an offence in the absence of a willed or conscious act/omission occurring from a loss of control over one's action, if such act:*

a. resulted from third-party action, with substantial contributing factor(s) being involuntary to the actor, and

b. poses no risk of uninitiated reoccurrence.

(2) Solus Automatism: *Nothing is an offence done by a person who, at the time of committing the act, suffered from a mental-incapability leading to loss of control over one's action, to the extent that the person:*

a. did not appreciate the consequences of his act

b. could not control his conduct or its uninitiated reoccurrence.

[20] Defence of Automatism, *supra* Note 7, at 47, 50, 52.

Explanation: mental-incapability excludes impairment from temporary intoxicators. If the intake of such intoxicants were involuntary, Section 84A(1) shall apply, and if not, Section 85 or Section 86 would apply.

The next sections elucidate and justify the prime changes made above.

C. REPLACING 'INCAPABLE OF KNOWING' WITH 'COULD NOT APPRECIATE'

Inspired from Section 16 of the Canadian Criminal-Code, that states '*no person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong*'.[21], Section 84A(2) replaces 'incapable of knowing' used in Section 84 with 'could not appreciate'. This makes the most sense, as the automaton is not acting from an incapacity of knowledge. The use of 'knowledge' indicates the existence of *mens rea*, even if to the minimum extent of 'bare awareness'.[22]

Such a presumption is erroneous, since it is possible that an automaton's faculties of bare awareness do not comprehend the act he/she attempts to commit. This completely negates the purpose of adjudicating the existence of knowledge, for, if one is put in a state where his faculties could not have *accessed* the knowledge, we presume they have and act according to what that 'knowledge' says, there lies little logic in punishing them for contravening it.

In such cases, the purpose of presuming knowledge falters; even bare awareness cannot be logically attributed to the automaton. On the

[21] Criminal Code, RSC 1985, c C-46 (1985) (Canada), §16(1).
[22] Jai Prakash v. State (Delhi Administration), 1991 SCR (1) 202 (India).

other end, there are multitudes of situations where the automaton would be well capable of *knowing* that his actions could have drastic consequences, but at the time of committing the act, could not *appreciate* or *understand* the nature of his act. In other words, an automaton may or may not lack the capacity of knowing, but more often, lacks only the capacity of acting on such knowledge. This makes it necessary to replace 'incapable of knowing' with 'could not appreciate'.

D. Replacing 'nature' with 'consequence'

The controversial phrase '*nature of the act*' is used in both, M'Naghten's rules and Section 84 ('*incapable of knowing the nature of the act*').[23] Since Section 84 does not clarify or define the meaning of the 'nature of the act', it provides excessive scope for judicial manoeuvring and interpretation. This creates problems, as it is unclear whether 'knowing the nature of the act' is limited to knowing/appreciating the act itself, or also extends to knowing/appreciating its *consequences*. If the latter is untrue, then the defence of automatism is not complete, as an automaton may be thoroughly capable of *knowing* the nature of what he is doing, but incapable of *appreciating* the *consequences* of such action (e.g., notwithstanding her somnambulistic (sleepwalking) state, it is possible that Pappathi Ammal knew she was drowning her child, but could only appreciate the consequences of such action when not fully-awake, but fully-moving. Thus, replacing 'nature' with 'consequence' would represent the automaton's state of mind better, and also limit judicial interpretation.

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[23] M'Naghten [1843] UKHL J16.

E. REMOVING 'WRONG OR CONTRARY TO LAW'

Section 84 states, that a person must be 'incapable of knowing' that his actions are '*either* wrong or contrary to law'. The usage of 'either' and 'or' would hint that 'wrong' and 'contrary to law' have varying meanings. Since 'contrary to law' could only mean illegal, 'wrong' could only refer to actions deemed morally wrong. Thus, the accused could use Section 84 if the accused knows that his act would be deemed wrong, either legally, or morally. However, the court in *Geron Ali v. Emperor,*[24] held that Section 84 cannot be invoked unless the actor knew his actions were wrong, *both* legally and morally. In contradiction, the latter case of *Ashiruddin Ahmed v. King* held that knowing only the former (that the act is contrary to law), is sufficient to invoke Section 84.[25]

By removing the phrase 'either wrong or contrary', Section 84A(2) circumvents this whole issue of statutory interpretation. Moreover, the clause 'morally wrong' would have a redundant presence in cases of automatism; since it does not matter if the automaton understands the wrongness in his act (be it legal/moral). As mentioned, it is very well possible for an automaton to understand the nature of his act, know it is contrary to law, and still be unable to control himself, while it is also possible, that he is stripped of his bare stage of awareness. Thus, adjudicating whether he understands the act or not, as mentioned above, is irrelevant.

[24] Geron Ali v. Emperor, AIR 1941 Cal 129 (India).
[25] Ashiruddin Ahmed v. King, 1949 CriLJ 255 (India).

V. CONCLUDING REMARKS

Section 84A also saliently supports two modern initiatives: *first,* the move towards declaring voluntariness a prerequisite to criminal liability and *second,* the stress on having subjective analysis at the centre of criminal adjudication.

It would take considerable amounts of judicial ingenuity and legal gymnastics to read voluntariness and automatism into the IPC.[26] Instead, it is efficient if the legislature introduces amendments incorporating the principle of voluntariness into the code. Section 84A is a step towards the same.

Derived from Justice Winn's judgement in *Watmore v Jenkins*, the phrase 'loss of control over one's actions' repeats itself in both sub-sections, highlighting the crucial facet of voluntariness, hitherto absent under the unamended Section 84.[27] Nevertheless, if such involuntary condition arises from voluntary acts of the actor, or his own fault (e.g., uncontrolled inebriation), he shall not be acquitted, as the 'substantial contributing factor' would not be 'involuntary to the actor' anymore under Section 84A(1)(a).

Secondly, the move towards having a subjective-centric approach to criminal adjudication[28] is also reflected in Section 84A(2)(a) through the usage of the words 'did not'. Such phrasing inherently requires a subjective approach, as it does not ask whether the subject *could not* understand the consequences, or if he had no *knowledge* of the same. It simply pushes the

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[26] CHAN, WRIGHT AND YEO, *supra* note 3, Chapter 10, 11.

[27] Watmore v. Jenkins [1962] 2 QB 572.

[28] THOMAS WEIGEND, SUBJECTIVE ELEMENTS OF CRIMINAL LIABILIT, OXFORD HANDBOOK OF CRIMINAL LAW (Oxford University Press, 2014).

accused to prove, that *he did not* appreciate the consequences of his action, and not that any other man in his shoes *could not have* appreciated the consequences.

Thus, this paper attempts to draft Section 84A - a proposed amendment to Section 84 of the Indian Penal Code to introduce automatism as a defence into the code. Such an addition would save an accused, to whom no moral fault can be imputed, from the unhappy choice of pleading insanity, or pleading guilty.