

# Unsoundness of Mind in Contract

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*The aim of this paper is to discuss in detail the unsoundness of mind in contract law. This paper attempts to see whether the premise and assumption that Indian contract law and English contract law have identical positions with respect to unsoundness in contract and whether this hypothesis is validated in the course of the research. Moreover, it would also attempt to test the hypothesis that the definition of a “mentally disordered person” as defined under the Mental Health Act of 1987 is comprehensive enough to accommodate a complete understanding of mental disability under which a contract can be rendered void.*

The general theory of the law in regard to contracts made by parties affecting their rights and interests is that there must be full and free consent in order to bind the parties. Consent is an act of reason combined with deliberation. It is upon the ground that there is a lack of rational and deliberate consent that transactions of persons of unsound mind are held to be void<sup>1</sup>.

To constitute a valid and binding contract, a party contracting must have the capacity to arrive at a reasoned judgment, as to the consequences of the transaction he is entering into. This does not mean that he must necessarily be suffering from lunacy to disable him from entering into a contract. To all appearances, a man may behave in a normal fashion, but he may really be incapable of understanding a bargain or transaction, and of forming a rational judgment as to its effect upon his interests<sup>2</sup>.

Mental incapacity, arising out of any reason deprives a person not only of a full understanding of a transaction, but also of the awareness that he does not understand it. This distinguishes it from lack of ability arising out of illiteracy and unfamiliarity with the language<sup>3</sup>.

Unsoundness of mind is another circumstance which renders a contract void. To constitute a valid and binding contract, a party contracting must have the capacity to arrive at a reasoned judgment, as to the consequences of the transactions he is entering into<sup>4</sup>. This does not mean that he must necessarily be suffering from lunacy to disable him from entering into a contract. A man incapable of looking after his affairs and judging the consequences of the contract he enters into ought not to be held bound and responsible for his contracts<sup>5</sup>.

In order to be competent to contract, a person must be of sound mind. A person of unsound mind is one who is suffering from temporary or permanent mental derangement.<sup>6</sup>

There is generally a presumption in favour of sanity. Sanity implies capacity to understand and of forming a rational judgment as to the person's own interests<sup>7</sup>. What is a sound mind for the purpose of contracting is provided for in Section 12 of the Indian Contract Act. Accordingly, “a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.<sup>8</sup>” Section 12 emphasises the need for such a sound mind for the purpose of a person entering into contract. Soundness of mind is an essential precondition for capacity to contract.<sup>9</sup>

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This section lays down that a person who is lacking in mental capacity may not make a contract, when he is of unsound mind. Such incapacity may result from insanity, from idiocy, from senile dementia, or any other mental defect, whatever its cause. To render a person incapable of contracting, his infirmity need not be so great as to dethrone his reason, nor amount to entire want of reason<sup>10</sup>. But, it must be something more than mere weakness of intellect, whether he is an idiot or imbecile, or suffering from some form of lunacy; the state of his mind must be such as to render him incapable of comprehending the subject of the contract, and its nature and its probable consequences<sup>11</sup>.

### **Test of Unsoundness of Mind**

The test of unsoundness of mind is whether a person is incapable of understanding the business concerned and of forming a rational judgment as to its effect upon its interest<sup>12</sup>. Unless a person is adjudged as of unsound mind by inquisition, there is always a presumption of sanity. Therefore, a person who alleges unsoundness of mind must prove sufficiently enough to satisfy his case. Mere weakness of mind is not sufficient proof of unsoundness of mind<sup>13</sup>. Temporary forgetfulness is not a sufficient test of unsoundness of mind<sup>14</sup>. Where a person is usually of unsound mind, then the burden of proving that at the time of contract he was of sound mind lies on the person who affirms it. It is not that the lunatic remains continuously in state of unsoundness of mind, but once it is established that a person is of unsound mind, the onus is on the person who alleges the execution of a document during lucid interval<sup>15</sup>. Although it is necessary to prove utter mental infirmity or congenital idiocy in order to constitute unsoundness of mind, yet it is for the Plaintiff to establish that the person was incapable of understanding business and of forming a rational judgment as to its effect<sup>16</sup>. If a person has been adjudged to be of unsound mind on inquisition, the presumption is that he continues to be of unsound mind and it is for the person who wants to take the benefit of the contract made with such person to establish that he was of sound mind at the time when he made the contract. Only proof of loss of memory is not sufficient because such loss of memory would not by itself render a person unfit for the management of his affairs. With the increasing old age there results a loss of vigour and even mental energy and the extreme old age brings about vacuity of mind, but it cannot be said that the person of old age has not become of unsound mind until it can be proved that his mind has become completely blank. When it is alleged that due to extreme old age, the person has become incapable of understanding his own business and of forming a rational judgment as to its effect upon his interest, the onus to prove unsoundness of mind lies upon the person who alleges such unsoundness of mind.<sup>17</sup>

### **Insanity**

A disposition by lunatic is completely void under the English law<sup>18</sup>. But mere existence of dilution in the mind of a person is not enough to avoid a contract even though the dilution is connected with the subject matter of disposition or contract. The real question of determination is whether the dilution affected the disposition or contract<sup>19</sup>. If a genuine consent were necessary to the formation of every agreement it would naturally follow that a mental patient could not make a valid contract<sup>20</sup>. The first question in all such cases is whether the party at the time of contracting was suffering from such a degree of mental disability that he was incapable of understanding the nature of the contract<sup>21</sup>. But, if it is proved that the party making the contract was suffering from such a degree of mental disability that he was incapable of understanding the nature of the contract, then under the English law the contract is not void, but voidable at the mental patient's provided that his mental disability was known or ought to have been known by the other contracting party.<sup>22</sup>

## **Drunkenness**

When a person owing to drunkenness and debauchery was quite incapable of understanding the contract made by him and of forming a rational judgment as to its effect upon his interest is held to be of unsound mind and such a contract under the Indian law in view of Section 11 must be held to be void contract<sup>23</sup>. But the onus is upon the person who alleges that due to extreme drunkenness, he was incapable of understanding the contract made by him. The fact that the Sub-Registrar had accepted the document from an executant and had duly registered it, is held to be the *prima facie* proof that the person executing the document was not in an intoxicated state when he presented the document for registration.<sup>24</sup> A person in complete drunkenness has no agreeing power in mind.

## **Mental Idiocy**

An idiot or a natural fool is a person that has no understanding from his infancy. Contracts entered into by an idiot other than those for necessities are void. In the case of *Keolapati v. Amar Krishna Narain Singh*<sup>25</sup>, it was held that when a person is imbecile, a document executed by him during the period of imbecility and bearing his signature does not by itself have conclusive force.

## **Old Age**

With increasing old age there must be a loss of vigour and even mental energy. So when any particular transaction is made, there is that infirmity of mind which disabled the man of old age from understanding what he is doing. Only then can a contract made by that individual deemed to be void at the option of the man<sup>26</sup>. Extreme old age has often been contended to negate sound mind. Courts have found loss of vigour and mental energy with age a natural process. It does not without more factors negate capacity.<sup>27</sup> It has been held that a loss of memory and absent mindedness is not inconsistent with the acts of a sane man. Therefore, even an old man with declining strength of mind and body would be declared capable if he could exercise an independent and intelligent mind over what he is doing<sup>28</sup>. Temporary forgetfulness would not indicate lack of mental capacity if the donor himself writes the gift deed and then gets it registered<sup>29</sup>.

Lack of capacity is inferred only if, due to age, the mind has become vacuous and delusory.<sup>30</sup> A 70-year-old man gifted some property to his daughter. He offered the delusion that he possessed thousands of acres of land when in fact he possessed only 15 to 20 acres of land in India. It was held that he could not assess the effect of the gift on his own interests and so was found to lack contractual capacity.<sup>31</sup>

## **Burden of Proof**

In every case, the initial onus of proving unsoundness of mind is on the person who alleges it, for the normal presumption is that a person is of sound mind. It has already been indicated that when the person has been adjudged under the Lunacy Act to be of unsound mind or if when sufficient evidence is led that a person had been of unsound mind, then the onus shifts on to the person who alleges soundness of mind. The onus is really heavy and is not discharged by mere proof that at the time when the Deed was executed the executants did not show any sign of insanity or incompatibility<sup>32</sup>. When a lunatic on being released from a mental hospital executed a power of attorney on the ground of unsoundness of the mind of executants, it was held that the executants not having been discharged from the mental hospital under

Section 34 of the Indian Lunacy Act of 1912, he must be held to be of unsound mind and the onus to prove that when he executed the document during parole, he was of sound mind or was in the period of lucid interval is on the person who alleges it<sup>33</sup>.

According to the Madras High Court, in the case of senile dementia of an old man it is reasonable to presume that it is continuing and when the initial onus is discharged by the person alleging such senile dementia, then the onus is shifted on to the other party to uphold the transaction that is not vitiated on the ground of his incapacity<sup>34</sup>. It is always a question of fact to be proved by evidence and does not merely depend on the belief or disbelief of the witnesses before the Court, but on inferences to be drawn from evidence<sup>35</sup>.

The party alleging unsoundness of mind from which an inference of mental incapacity of the person executing the Deed at the time of the execution could be drawn<sup>36</sup>. The Court has to consider the totality of the whole evidence with reference to the pleadings of the parties and the previous statement and conduct of the parties and to assess from cumulative effect thereof to come to the finding as to whether the executants of the Deed was of sound and disposing mind or not at the time when the contract was entered into<sup>37</sup>. It has to be remembered that the questions of undue influence and incapacity by reason of unsoundness of mind should not be mixed since they involve different issues.

It has been held by the Privy Council that where it is reasonably established that the Deed executed was the free and intelligent act of a person alleged to be of unsound mind, then it must be held that the person relying on the Deed has discharged the onus which rests upon him.<sup>38</sup>

When the family member of the vendor deposed of the mental imbalance of the vendor, the conduct of the vendor also indicated that he was not mentally sound and capable of executing the sale deed. There is no evidence on the side of the vendee to show that at the time of execution of the sale deed the vendor was in sound disposal of mind. On the contrary, the evidence on the side of the defendant clearly indicated that the vendor was having improper mental condition<sup>39</sup>. All these facts taken together would indicate that the vendor was not mentally sound at the time of the execution of the sale deed and the sale deed executed by him did not confer any right, title and interest on the vendee.<sup>40</sup>

### **Indian Contract Law v. English Contract Law**

The Indian Contract Act was evolved from its English counterpart. Here it is going to be distinguished as to what extent the English model differs from that of the Indian one.

There are of course, under the English law, degrees of mental disability. English contract law recognises three categories. First, there are those whose mental state is such that their affairs are under the control of the court, by virtue of Part VII of the Mental Health Act of 1983. Since the court effectively takes over the individual's power to make contracts, any contracts purported to be made by the individual will be unenforceable against him or her.

Secondly, there are those whose mental state is such that, although they are not under the control of the court, they are unable to appreciate the nature of the transaction they are entering into. Contracts made by people in such a condition will be enforceable against them (even if the contract may in some sense be regarded as "unfair"), unless it is proved that the other party was aware of the incapacity<sup>41</sup>.

The third category consists of those people who are capable of understanding the transaction, but who are, as a result of some mental dilatability, more susceptible to entering into a disadvantageous contract. Contracts made by such people are considered to be binding, unless affected by the rules of “undue influence”.<sup>42</sup>

In English law, a person of unsound mind is competent to contract, although he may avoid his contract if he satisfies the court that he was incapable of understanding the contract and the other party knew it. The contract is voidable at his option then. It becomes binding on him only if he affirms it.<sup>43</sup> In this case, Lord Esher said that a lunatic (now a mentally disordered person) can only set aside a contract entered into with a person of sound mind in the following circumstances:

“When a person enters in to a contract and afterwards alleges that he was so insane at the time that he did not know what he was doing, and proves the allegation, the contract is in binding on him in every respect, whether it is executor or executed, as if he had been sane when he made it, unless he can prove further that the person with whom he contracted knew him to be so insane as not to be incapable of understanding what it was about.”<sup>44</sup>

As regards the general effect of mental incapacity on the contractual competence of a person, *Halsbury's Laws of England* states the following:

“...Consent is an act of reason and of volition or choice, and it is on the ground that there is a want of rational and deliberate consent that the contracts of mentally disordered persons may be invalidated. A valid contract cannot be made by a person suffering from such incapacity of mind as not to understand the nature of what he is doing.”<sup>45</sup>

In *Campbell v. Hooper*<sup>46</sup>, where a mortgagee sought a decree directing repayment and foreclosure in default of such repayment and where there was evidence that at the time the mortgage was executed, the mortgagor was a lunatic, it was held by the Judge, VC Stuart, that even at law the contract of a lunatic in English law is not necessarily void. Moreover, one had to be certain that the Plaintiff knew it and took advantage of it and not just the establishment of the fact that the person was of unsound mind.<sup>47</sup>

In India, on the other hand, the agreement of a person of unsound mind is that of a minor – absolutely void.<sup>48</sup> Moreover, a person who is usually of unsound mind may make a contract when he is of sound mind. But a person who is usually of sound mind may not make a contract when he is of unsound mind under the Indian Contract Act.

Moreover, under the English law, under the Sale of Goods Act of 1979, the rule as to contracts for necessary goods made by those who “by reason of mental incapacity...incompetent to contract” as it does to minors. Thus, the mentally incapacitated individual is liable to pay a reasonable price for goods sold and delivered. It must also be assumed, although there is no recent authority that rules equivalent to those which apply to minors will operate in relation to necessary services.<sup>49</sup>

Under the English law, the contracting capacity of a drunken person is the same as that of one who is mentally afflicted; such contract is not altogether void, but is voidable at the instance of the person who entered into the contract in such a state of drunkenness as not to know what he was doing and if this fact is appreciated by the other contracting party<sup>50</sup>. However, such a contract may be ratified by a drunken person when he regained sobriety. So a contract with a person so seriously afflicted by drunkenness must always be voidable one, for, unlike the case

of insanity, it is almost inconceivable that the condition of his intoxication can be unknown to the other party<sup>51</sup>.

Those who as a result of drunkenness, whether voluntary or involuntary, are “incompetent to contract” are, by virtue of Section 3 of the Sale of Goods Act liable to pay a reasonable price for necessary goods “sold and delivered”. No doubt, the same rule would apply to persons intoxicated by drugs other than alcoholic drinks, either by a broad interpretation of “drunkenness”, or at common law.

But under the Indian Contract Act, such an agreement would be void and therefore unenforceable. A drunken person is liable for necessaries supplied to him while suffering from incapacity to contract. A similar approach would be taken of agreements made under the influence of other intoxicating substances<sup>52</sup>.

In terms of issues concerning mentally disordered persons, English and Indian laws differ to a certain extent. Though the India law developed what constitutes a “mentally disordered person” (Mental Health Act of 1987) from its English counterpart, Mental Health Act of 1983, the positions are quite different.

In *Imperial Loan Co. v. Stone*<sup>53</sup>, where this rule was stated, the action was on a promissory note and it was argued in appeal that “if a man becomes so far insane as to have no mind perhaps, he ought to be deemed dead for the purpose of contracting.” But some judges felt that the contracts of a person *non compos mentis* may be avoided only when this condition can be shown to have been known to the Plaintiff<sup>54</sup>. The reason why the law insists that the other contracting party should have known the mental condition is since “No man of full age shall be received in any plea by the Law, to stultify and disable his own person.”

These principles were applied in the case of *Broughton v. Snook*<sup>55</sup>, where in an action for specific performance of a contract for sale of land, against the executors of the vendor, it was pleaded that one of the contracting parties the vendor was 80 years old and that his mental condition was such to render him incapable of transacting business. The court held that before this defence could be upheld, it should be both pleaded and proved that the mental condition was known or should have been known to the other party to the contract.

The understanding required to uphold the validity of a transaction will depend on the nature of the particular transaction and there is no fixed standard. If the contract was made by the mentally disordered person during a lucid interval it will be binding upon him notwithstanding that the other party had knowledge of his disability.<sup>56</sup>

The Indian law regarding the contractual capacity of mentally disordered persons is however different. Where a person imbalanced in mind executed a sale deed, the transferee cannot acquire any right, title or interest. In *Jyotindra Bhattacharjee v. Sona Bala Bora*<sup>57</sup>, late Bhagirath Bora executed a sale deed in favour of the Plaintiff transferring the house property. It was alleged by the wife and sons of late Bora that at the time of execution of sale deed, the executant was imbalanced in mind and his mental sickness deteriorated so much that he instituted a criminal case against his family members and therefore, the sale transaction was done surreptitiously and fraudulently. It was held that the conduct of the executants indicates that he was a normal person and mentally unsound at the time of execution of the sale deed and, therefore, did not confer any right, title and interest on the Plaintiff.

As a logical corollary of the Privy Council decision in *Mohori Bibi's* case of a minor's incompetency, it naturally follows that a lunatic's contract must also be void under Indian law.

Where, however, a person supplies necessaries for a lunatic, he is entitled to be reimbursed out of the property of the lunatic under the provisions of Section 68 of the Indian Contract Act<sup>58</sup>.

Overall, it is quite evident that the Indian and English concerns in contract law with respect to unsoundness of mind are similar apart from a few exceptions. However, in English law, unsoundness as a concept does not exist but it comes under the ambit of incapacity to contract which includes other ancillaries like Public Corporations and Minority. But in the Indian context, unsoundness is limited to mental disability, intoxication, senility and idiocy.

A lunatic or *non compos mentis* (a mentally disordered person) is one who has had understanding but, by disease, grief or other causes, has lost the use of his reason. A mentally disordered person or person of unsound mind is normally bound by the contract unless he shows that by reason of his mental condition he did not understand what he was doing and that the other party was aware of his incapacity. If these two conditions are satisfied, the contract can be made voidable at his option.<sup>59</sup>

A person who suffers from delusions may do acts uninfluenced by such delusions and in such cases the court has to evaluate the evidence as to whether the delusions affected the contract and if so, to what extent.<sup>60</sup>

The capacity of such “mentally ill person” to contract during a lucid interval must be judged under the provisions of this section.<sup>61</sup> The adjudication of a person as a “lunatic” or “mentally ill person” under the law relating to mental health would only shift the burden of proof upon the person who alleges sanity.

Where unsoundness of mind is proved by definite medical evidence, the fact that the person was in a lucid interval when he made the contract must also be proved as strong and as much demonstrative evidence. The question may arise whether a lunatic adjudged can contract during intervals of sound mind<sup>62</sup>. Illustration (a) to the section suggests that a lunatic in a mental asylum can contract during a lucid interval. In England, a lunatic not so found, or before he is so found, by inquisition, is not by reason of that fact absolutely incapable of contracting, though the burden of proof in such a case is on the party maintaining that he is not insane, or that the contract was made during a lucid interval<sup>63</sup>, and the same is the law in India.

One needs to analyse as to what extent the Mental Health laws have been successful in objectively determining as to what constitutes mentally unsound people for the nullification of a contract. At first, the breadth of the English paradigm would be taken since the Indian one is practically an emulation of the English concept.

In England, an individual is classified to be “mentally disordered” if he/she satisfies the definition as espoused under the Mental Health Act of 1983. According to this Act, under Section 2, a person suffering from a “mental disorder” means “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind”<sup>64</sup>.

Secondly, a person may be admitted under Section 3 of the Act, if he or she is suffering from one of four specific forms of mental disorder, that is mental illness, severe mental impairment, mental impairment (“a state of arrested or incomplete development of mind and impairment of intelligence and social functioning”) and psychopathic disorder (or a “persistent disorder or disability of mind resulting in abnormally aggressive or irresponsible conduct”).<sup>65</sup> However, mental illness is not defined in the Act. This is a rather elusive concept because it bears no agreed definition.

In the Indian model, a “mentally ill person” has been defined as a person who is in need of treatment by reason of any mental disorder other than mental retardation.<sup>66</sup> This is the Indian example which has also been dealt with very arbitrarily and narrowly.

As Hoggett points out, the approach to the identification of mental illness can be made reliable by the adoption of standard criteria, but this does not answer the question of validity where there is a lack of agreement between the three schools of thought which she identified: (1) the belief that all mental illnesses have an organic cause, though not all have yet been discovered; (2) the psychotherapeutic approaches that are “aimed at the patient’s individual psyche or at its interaction with family or societal pressures”; (3) the behavioural school which concentrates upon the identification of deviant behaviour<sup>67</sup>.

There are obvious dangers with all these schools, not only the problem that there is not necessarily a common ground upon which the all might agree, but also the fact that the organic school fails to allow that the patient’s perceptions and rationality have a role to play; and finally labelling through these methods allows for the imposition of treatment on “socially inconvenient people”. The lack of agreement means that the ascription of the label “mental illness” relies heavily upon the professional judgment and understanding of a psychiatrist, which may be highly subjective and vary from one psychiatrist to another in a way which would not have been acceptable to other doctors. However, it can be replied that this anti-psychiatry approach fails to recognise that some people are really ill and need care and treatment<sup>68</sup>.

The reliability of the identification of the mental illness can be achieved by all professionals using the various symptom descriptions provided by one of two manuals developed for statistical uses: the Diagnostic and Statistical Manual of the American Psychiatric Association or the International Classification of Diseases and Disorders of the World Health Organisation. Reliability, however, may not avoid the identification of some people as being mentally ill, for instance, on appropriate cultural or racial grounds<sup>69</sup>.

The Act cannot be deployed to achieve the detention of an individual against his/her will merely because their thinking process is unusual, even apparently bizarre or irrational and contrary to the view of the overwhelming majority of the community at large. It cannot be used as a justification for detention for mental disorder and deem the person to be unsound for the purposes of entering into a contract.<sup>70</sup>

Does the lack of a clearly agreed definition of mental illness mean the compulsory hospitalisation of people should not be made possible? However, it does mean that, while mental illness is generally recognised as existing, great care must be taken in ensuring that compulsory hospitalisation is carried out only when necessary and with sufficient precautions being taken to avoid its usage on discriminatory or other unacceptable grounds<sup>71</sup>.

What the legislators could do would be to introduce a new simplified definition of mental disorder to make the Act easier to use so that it more straightforwardly covers all disorders and disabilities of the mind<sup>72</sup>. This would give a comprehensive view of the different possibilities of unsoundness of mind that a patient could suffer from making the contract void at the option of the Plaintiff. Arbitrary definitions as the one given in the Mental Health Act of 1987 is not at all comprehensive and all encompassing and it risks the danger of being misused for discrimination against the old, aged and weaker sections of society like the women.

## **Conclusion**

As can be seen from the research, there were two hypotheses drawn out at the outset. The first assumption that was tested was whether the Indian and English positions in contract law with regard to unsoundness was identical or not. After having studied the two paradigms separately, it can be concluded that the Indian model was heavily borrowed from its English counterpart and the basic structure and edifice is based on English common law notions. However, the English model comes off as being far wider encompassing in its ambit since it deals with the issue of unsoundness under the section of incapacity which includes public corporations, minority apart from intoxicated persons and mentally ill people. In this aspect, the English law is different.

The second supposition adopted at the beginning was that the definitions of “mentally ill” and “mentally disordered” persons under the Mental Health Acts of England and India were not comprehensive enough to include all types of mental illnesses. After the research, this hypothesis seems validated, especially in the Indian context, where attempts have not even been made to remedy this problem unlike its English counterpart, who has appreciated the need to change the provisions and define the term in a more all-inclusive manner.

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