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**THE BATTERED WOMAN AND THE XYY SUPERMALE: DEVELOPING CONTOURS OF  
CRIMINAL BEHAVIOUR IN CRIMINAL DEFENCES AND THEIR ANALYSIS IN THE LIGHT  
OF THE DEFENCE OF INSANITY IN INDIA.**

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**TABLE OF CONTENTS**

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ABSTRACT:.....	5
INTRODUCTION TO THE PARADOX OF CRIMINAL CULPABILITY AND CRIMINAL BEHAVIOUR:.....	5
DEFENCE OF INSANITY IN INDIA AND THE EXISTING JURISPRUDENCE: .....	8
SUPREME COURT VIEWS ON DEFENCE OF INSANITY: .....	9
THE XYY SUPERMALE SYNDROME AND ITS VIABILITY AS A CRIMINAL DEFENCE: 9	
THE BATTERED WOMAN SYNDROME AND ITS VIABILITY AS A CRIMINAL DEFENCE: .....	12
RELEVANCE AND THE NATURE OF EVIDENTIARY STANDARDS: .....	14
CONCLUSION:.....	15
BIBLIOGRAPHY: .....	16

**ABSTRACT:**

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One of the basic tenets of the Criminal culpability in any legal system at present is the mens rea requirement standard which symbolizes a conscious self control on the criminal conduct of a person. And that is the reason why the presence of a disorder especially which is mental or psychological in nature that prompts a person to perpetrate a crime negates the possibility of existence of mens rea. As a result, a defence like that of Insanity exists in Indian criminal law. In this light, there have been ceaseless debates and attempts to bring the two most debated syndromes of criminal behaviour under the umbrella of criminal defences. One being the Battered Woman Syndrome which is psychological in nature and applicable to woman; and the other being XYY Supermale abnormality which is biological in nature and is applicable to men. The aim of this research paper is to delve deep into the debate and examine if and whether these syndromes can be projected as defences under Indian criminal law and in what circumstances.

**INTRODUCTION TO THE PARADOX OF CRIMINAL CULPABILITY AND CRIMINAL BEHAVIOUR:**

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It is quite difficult to define what is criminal or to distinguish a crime from a tort. One cannot even declare that crimes are always more serious in their effects either on the individual or on the society as a whole. Let's take the example of the negligent manufacturers. These manufacturers market a product which turns out to be dangerous and the impact of this product may be far more injurious to the society and individuals both than the theft of a pen or a rubber, yet the former would be grouped in the category of tort and latter would be a crime. Although both are same in certain senses i.e in both the cases involve wrong and both are a breach of a legal obligation. Then what is the difference? Well, the best way to approach is to see if that particular wrong has criminal consequences attached to it, then it will be seen as a crime. So, crime is something which the law of the land calls a crime and uses criminal sanctions and prosecutions to deal with it. In effect, no matter how immoral or reprehensive or damaging a particular conduct is, it will not be called a 'crime' unless the law calls such a conduct a crime.

In India and in most of the jurisdictions worldwide, there is common consensus as to the constituents of a crime and criminal conduct. The fundamental principles of criminal law are founded on the rules of equity, justice and fair play. These principles present satisfactory guidelines for the formulation of rational punitive guidelines and also guarantee smooth and indiscriminate dispensation of justice to litigants. The basic requirement of crime is to be found in the legal maxim '*Actus non facit reum nisi mens sit rea*' which means that an act to be called a crime requires two aspects-physical aspect which is the 'actus reus' (the physical act in question) and the 'mens rea' (the mental aspect).<sup>1</sup> The point to be noted here is that, no act shall be called a crime without mens rea or guilty mind of the doer.<sup>2</sup> Another important principle in the criminal law paradigm is the principle that mistake of law is not an excuse and affords no defence but according to some jurists, it is a good evidence of the mental condition of the wrong doer. The reason for non admissibility of mistake of law as a viable defence is that if it were so, everyone would plead it and criminal law administration would be reduced to mere farce.<sup>3</sup>

Out of the aspects of crime discussed above, the actus reus element seems to be a comparatively easy element to examine. While on the other hand, the element of guilty mind has always been subject of intense studies. This is because of the subjectivity of this element. Sometimes, and in fact in most of the circumstances, intention or the mens rea is determined through circumstances as the modern legal system approves the understanding that 'even though facts may lie but circumstances will not'.<sup>4</sup> But there are certain situations of criminal behaviour which are themselves allowed to take the advantage of vindication. For example-the defence of Insanity in Indian criminal jurisprudence speaks a lot about it. The persons who are insane or not capable of understanding the nature and consequences of their actions are vindicated from the liability of their criminal actions. But, why? The reason is simple. They lack the required "guilty mind". Hence the notion of guilty mind has been subject to a lot of contestation and a lot of attempts have been made to define it or identify certain situations when a person can be tagged as being devoid of any guilty mind, because

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<sup>1</sup> See, R v. Tolson (1889 23 QBD 168); See also, Nathulal v. State of Madhya Pradesh (A.I.R. 1966 S.C. 43).

<sup>2</sup> See, D.P.P. V. Smith (1960 3 WLR 56); Shaw v. D.P.P. (1961 2 All ER 446).

<sup>3</sup> See Austin's Jurisprudence, Vol 1, 3<sup>rd</sup> Edition, pg 408.

that is the simplest way to get rid of the criminal punishment even though the act in question is very clear about the criminal nature as mentioned in the concerned penal code.

It must be emphasized at this juncture that, the crime is its related concepts being the subject matter of Criminology are essentially concerned with human behaviour. And since human behaviour cannot be identified or defined in clear terms, opinions as to criminological views are bound to differ. This is evident from the fact that certain criminologists treat criminals as a socially deviant person while other would consider him the victim of his own circumstances who needs humanitarian consideration. So as of result of ever increasing studies on criminal behaviour, many scholars started to come up with their theories as to the criminal behaviour identification and these theories also helped building a nexus between such behaviours and the crimes. One of the earliest of these theories was the biological theory which considered that criminals are persons which typical and peculiar biological characteristics. Out of most of the biological theories, a great deal of attention went to the XYY syndrome model which proved to certain extent through an empirical research that males with a particular genetic code are more likely to commit heinous crimes. This biological theory received a lot of attention but went into dungeons because the sociological and psychological theories putting focus on the circumstances of the offender became popular. But a matter of fact was that this biological theory did have had factual evidence to justify its argument. On the same lines, another theory which became very popular in relation to females was the Battered Woman Syndrome which proposed a psychological model whereby woman subjected to a lot of suppression and oppression over a long period of time were likely to commit crimes because of their psychological situation. Both of these criminological theories received a lot of attention. The debate that surrounded both the syndromes pertained to the assumption that since both the syndromes involve the absence of conscious self control, can the person suffering from either of these syndromes and committing a crime be vindicated of it as the element of 'guilty mind' is not present? The answer to this question is not that easy and hence requires a detailed theoretical and consequential analysis.

## DEFENCE OF INSANITY IN INDIA AND THE EXISTING JURISPRUDENCE:

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The rules recognizing the defence of Insanity in criminal law were first laid down in 1843 in the historic *M' Naghten's Case*.<sup>5</sup> Their Lordships in this case observed that “*every man is presumed to be sane and to possess sufficient degree of reason to be held responsible for his crime until contrary is proved. In order to establish a defence on the ground of insanity, it must be clearly proved that at the time of the commission of the act, the accused was labouring under such a degree of reason from ‘disease of mind’, as to not know the nature and quality of the act he was doing, or if did know it, as not to know what he was doing was wrong*”.<sup>6</sup>

Similar issues were raised in the case of *Durham v. United States*, where also it was held that “*a person would not be held for his criminal conduct because that act was the product of his mental depravity*”.<sup>7</sup>

The Indian Penal Code has also accepted insanity as a defence to a charge of crime. Section 84 of the IPC gives immunity from criminal liability to “*a person, who by reason of ‘unsoundness of mind’ is unable to understand or know the nature of the act or unable to know what he is doing, is either wrong or contrary to law*”.<sup>8</sup>

This provision in the IPC is based on the Naghten’s principles and also considers only ‘legal sanity’ and not ‘medical sanity’. This approach has been analysed in great detail in the 42<sup>nd</sup> Law Commission of India report. The law commission report cites the report of the British Commission published in the year 1953 which noted that the Naghten’s rule was not only criticized by the Doctors and medical experts by also by many lawyers as the conception of insanity as stipulated in the Naghten’s case is skewed.<sup>9</sup> According to the British Commission

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<sup>5</sup> See, *R. v. M' Naghten* (1843 10 CL & F 200).

<sup>6</sup> See, *Kenny's Outlines of Criminal Law*, 19<sup>th</sup> Edition, pp. 82-83.

<sup>7</sup> See, *Durham v. United States* (1954 94 US App D.C. 228).

<sup>8</sup> Section 84 of the IPC reads as “Act of a person of unsound mind.—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.”

<sup>9</sup> See, the Report of British Royal Commission, 1953.

report, insanity not only affects cognitive or intellectual abilities of a person but also has a great deal of impact on the personality and emotions of the person concerned. Hence, according to those medical experts, an insane person may sometimes also know the nature of the act which is unlawful, yet he may commit the crime owing to the mental disease he is suffering from.<sup>10</sup> The Law commission of India report also mentions that the notion of insanity as such may also include the situations of delusion, irresistible impulse but the Indian courts have not interpreted the ambit of ‘unsoundness of mind’ to include mental insanity which covers irresistible impulse, delusion, emotions, fit of anger, obsessive compulsive disorder etc. However, there are countries whose penal codes also stipulate the situations like irresistible impulse a criminal defence, for example-Tasmanian Criminal Code.<sup>11</sup>

All in all the discussion above shows that the notion and ambit of insanity under the Indian Penal Code, 1960 is quite narrow and does not include medical insanity conditions.

### **SUPREME COURT VIEWS ON DEFENCE OF INSANITY:**

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The Supreme Court in *Hari Singh Gond v. State of Madhya Pradesh*<sup>12</sup> held that Sec 84 of Indian Penal Code sets the legal test of accountability in cases of alleged crime done by a person with mental illness. There is no explanation of “unsoundness of mind” in the IPC. The courts have, however, principally treated this expression as comparable to insanity. But the term “insanity” itself has no particular definition, carries different meaning in different environments and describes varying notches of mental illnesses.

### **THE XYY SUPERMALE SYNDROME AND ITS VIABILITY AS A CRIMINAL DEFENCE:**

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An example of an early biological theory is actually quite recent, when compared to the work of Lombroso and Goring<sup>13</sup>. Although the initial publication linking XYY males to crime

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<sup>10</sup> Ibid.

<sup>11</sup> See, The 42<sup>nd</sup> Law Commission Of India Report on ‘Indian Penal Code’, June 1971, Ministry of Law, Government of India.

<sup>12</sup> 2008, 16 S.C.C. 109 (India).

<sup>13</sup> Lombroso and Goring were the earliest proponents of the Biological theory of criminal behavior.

appeared in 1965, the Supermale phenomenon is included here because like early other theories, it supposedly identifies a single, direct and immutable cause of crime. This theory involves a particular chromosomal abnormality. Each human has 23 pairs of chromosomes. The last pair of chromosomes determines the sex of the child. For males, the normal chromosome is XY while for females it is XX. Some individuals however have more unusual combinations.

The British Scientist Patricia Jacobs found that the incidence of the XYY disorder was 20 times higher among the inmates in a Scottish prison than in the general Scottish population. She also reported that the double Y chromosome caused males to be unusually tall, aggressive and violent. On the basis of this, these supermales were believed to be prone to extremely violent and heinous crimes. In the 1960s, a number of violent cases came to the attention of the world. Murder cases in Australia, France, Scotland, West Germany and the United States featured XYY offenders. For example the case of Richard Speck<sup>14</sup> was a major influence in the study of this syndrome. In 1966, Richard Speck brutally murdered 8 student nurses in Chicago. He had a lengthy criminal record and the physical stigmata associated with the chromosomal pattern. Immediately, the XYY theory gained prominence.<sup>15</sup>

The XYY abnormality was for the first time projected as the foundation of a defence in 1968, at the Paris trial of Daniel Hugon. The accused was charged with a murder after strangling an elderly prostitute. His advocates had claimed the issue of XYY chromosome abnormality in relation to his fitness to stand trial. The court fixed a panel of experts to establish the fitness of the accused and it was established that Hugon was fit to stand trial. He was convicted of murder, but sentenced to only seven years imprisonment owing to the mitigating state of affairs. The experts appointed by the court denied that the extra Y chromosome made men "born killers" but considered that it brought on "troubles of comportment and humour".<sup>16</sup> Similarly, there were many cases reported in various newspapers and journals where the

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<sup>14</sup> See, New York Times, April 22, 1968 at 43, col. 2; Teller, Are Some Criminals Born That Way? 34 TiNK 24, 26 (1968); New York Times, May 6, 1969 at 93, col. 5.

<sup>15</sup> Patricia A. Jacobs et al., Aggressive Behavior, Mental Sub-normality and the XYY Male, 208 NATURE 1351, 1351 (1965).

<sup>16</sup> Richard G. Fox, XYY Offender: A Modern Myth, The, 62 J. Crim. L. Criminology & Police Sci. 59 (1971)

offender had the extra Y chromosome. In this light it is pertinent to examine as to whether the defence of insanity can be taken and in what circumstances.

## **THE XYY AND THE DEFENCE OF INSANITY IN INDIA: A CRITICAL ANALYSIS:**

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Within the domain of Indian criminal jurisprudence, the viability of XYY syndrome must be analysed in relation to Section 84 of the IPC, the underlying principle of which is at the heart of the Mc Naghten's rule. It must be understood that this Mc Naghten's rule takes into account only cognitive disabilities.<sup>17</sup> Even the defence of Insanity under Section 84, IPC is based on cognitive aspect of Insanity i.e it does not include medical insanity. Hence the employment of XYY syndrome as patent defence would be dependent on whether the defendant is able to prove the Naghten's cognitive aspect and if XYY abnormality is a mental disease.

With respect to the latter, i.e the mental disease aspect, if there is an evidence that sufficient proves the mental condition of the defendant as to a mental disease, then the relevant evidence is admissible and there is not much difficulty attached to proving mental disease. But since Indian penal code recognises only the cognitive aspect of it, i.e pertaining to the 'knowledge' of the act, then it must be mentioned that unless and until a strong bond of relationship is not established between the XYY syndrome and the cognitive disability of the defendant, the presence of XYY syndrome in itself would constitute a valid defence as the very element of 'knowledge of the nature of the act' was not fulfilled.<sup>18</sup>

Secondly, absence of conscious self control would typically not indicate the absence of cognitive abilities and hence would also not qualify for the defence of insanity in India. Similarly, as the Indian criminal jurisprudence does not recognize any form of medical insanity i.e for example irresistible impulse, delusion etc, there is no scope for co-relating XYY syndrome with the medical insanity concerns.

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<sup>17</sup> See M' Naghten's Case, 8 Eng. Rep. 718 (H.L. 1843).

<sup>18</sup> Susan Horan, The XYY Supermale and the Criminal Justice System: A Square Peg in a Round Hole, 25 Loy. L.A. L. Rev. 1343 (1992) also available at: <http://digitalcommons.lmu.edu/llr/vol25/iss4/14>.

**THE BATTERED WOMAN SYNDROME AND ITS VIABILITY AS A  
CRIMINAL DEFENCE:**

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The introduction of the concept of Battered woman syndrome was intended to aid in explaining the rationality of a woman's actions in self-defence or arising out of Insanity against her abuser. This concept was pioneered by Dr. Lenore Walker, and was further developed to permit experts to give evidence at trials, most commonly where a woman was on trial for killing her batterer, and was alleging self defence or a general defence. The expert, through the help of this concept, can explain how a battered woman who is actually the victim of cruelty, had familiarity of the imminence of an attack on the batterer, along with the reasons why retreat was not a reasonable alternative. In other words, the expert explained the reasonableness of the woman's actions in a situation in which most jurors would probably not be familiar.

In the beginning, it was perceived as "learned helplessness," i.e. a condition of victim to be unable to protect herself against the batterer's violence. Another formulation of this concept attributed to the continuous cycle of abuse and violence, which put forth the dynamics of the batterer's behaviour. This theory explains why the abused woman chooses to stay in the relationship despite being abused due to the change in the behaviour of the abuser post the violence. More recently, battered woman syndrome has been defined as post-traumatic stress disorder (PTSD), a psychological condition that is the outcome of exposure to severe trauma. PTSD may be relevant in establishing how, affected and incited by flashbacks of experiences of abuse, the battered woman tends to take such a drastic step and reacts the way she does. Dr. Walker recognized BWS as comprising two separate components: (1) a cycle of violence and (2) learned helplessness.<sup>19</sup>

The cycle of violence refers to a three-stage, repetitive cycle that is a continuous occurrence in the relationship. The initial stage is where minor abusive incidents take place. This stage is

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<sup>19</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, U.S. Department of Health and Human Services, National Institute of Mental Health, The Validity And Use Of Evidence Concerning Battering And Its Effects In Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act ( Oct 10, 2018, 11:00a.m.) available at <https://www.ncjrs.gov/pdffiles/batter.pdf>.

followed by an acute battering and violent stage where the women are subjected to a violent battering. Then, comes the stage where the batterer's behaviour inclines towards a more apologetic one and shows care and love towards the battered woman as a consequence of his violence. This change in behaviour encourages the victim to believe that the batterer has reformed and thus acts as a cause for her to stay in the relationship. Walker identified this third phase as the one that most victimizes women psychologically, because inevitably the cycle of violence recurs.<sup>20</sup>

The second component of Walker's theory is learned helplessness. This phenomenon explains the psychological paralysis that acts as a cause or reason for the women to not walk out of the relationship. This particularly happens in a domestic violence situation where the battered woman is under constant fear of her safety due to the unpredictable behaviour of the batterer. Over time as the violence increases the woman is assured of the fact that there is no possible escape from all the violence she is subjected to. This fear is usually reinforced by the batterers' intimidation that if they attempt to leave or even seek help, he will subject them to even greater abuse or kill them and their children. As a result of such threats the woman is forced to isolate herself from friends and family to protect herself and her children. In this light it is pertinent to examine as to whether the defence of insanity can be taken and in what circumstances.

## **THE BATTERED WOMAN AND THE DEFENCE OF INSANITY IN INDIA: A CRITICAL ANALYSIS:**

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When the claim of self defence doesn't fit right, the battered women try resorting to the defence of insanity. Under this claim, they try to establish loss of mental faculty at the time of doing the act as opposed to what they try claiming under self defence, where stress is laid on the fact of immediate threat and a response to that threat being reasonable. This insanity defence is referred to legally as "defence of excuse" rather than a defence of justification.

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<sup>20</sup> Ibid.

For this defence to be applicable it is necessary to show that the defendant was undergoing some form of mental illness during the time of the criminal act. Needless to say, the legal standard for insanity is not wide enough as it only takes the possibility that the defendant's mental condition impaired her mental faculty to such a level that she did not comprehend the nature and consequences of her act or realize that it was wrong *prima facie*. This defence is not resorted to generally for spousal homicide cases, but when it is, testimony by experts can be offered to elucidate how BWS and its associated symptoms may have precluded the victim from knowing right from wrong or appreciating the consequences of her actions at the time of the criminal act.<sup>21</sup>

The reason why this defence is not invoked in such cases is that substantiating mental illness through clinicians and other experts is extremely difficult. Walker states that determining a mental condition that entail a loss of ability to understand the nature or consequences of what one is doing or the failure to appreciate right from wrong at the time the crime was committed is almost impossible. The court may not accept such a contention as a person may seem to be perfectly calm and composed on the outside and able to differ between right and wrong like any sound person when she is brought to the court and thus it becomes hard to assume that the woman lost this 'ability' only for that particular moment and after committing the criminal act, very conveniently goes back to being mentally sound. In addition some legal scholars claim such a claim for defenses requires a biological or medical basis which ends up creating judicial confusion and the court may end up perceiving the woman as undergoing 'learned helplessness'.

### **RELEVANCE AND THE NATURE OF EVIDENTIARY STANDARDS:**

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As we have seen in previous chapters, both the syndromes to a certain extent be claimed as a defence if they fulfil the Mc Naghten's test i.e mainly the component of cognitive disability must be fulfilled. For a battered woman to take the defence of Insanity, it must be established

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<sup>21</sup> Walker, L. E. A. (1992). Battered women syndrome and self-defense. Symposium on Women &the Law. *Notre Dame Journal of Law, Ethics & Public Policy*, 6(2), 321-224.

that the battering has resulted in temporary insanity or temporary cognitive disability of the woman causing her to commit a crime. In case of XYY syndrome, it must be established that there exists a strong bond of relationship between the presence of XYY genetic code and the cognitive disability of the accused.

The point here to be noted is that the opinion of the medical experts becomes the central point of reference for proving these claims as defences, be it partial or absolute. The component of absence of cognitive disability is something which can be proved only by an expert testimony. In such a situation, the courts need to frame guidelines in relation to the kind, standard and credibility of the medical expert evidence. This is necessary because even the expert testimony can be put to abuse by those who want a concession from criminal punishment simply on the pretext of claiming any defence including one of these. So how such expert testimonies are to be regulated is a big question. Because if there is a possibility of abusing such testimonies, then there is a possibility of abusing the battered woman and XYY defences. Even though, in India, there are guidelines in relation to medical experts' testimony, but since XYY syndrome and the battered woman syndrome require much more specifications and are quite delicate to handle, the guidelines are not sufficient and hence need to be revamped.

### **CONCLUSION:**

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There is a great deal of justification in accepting these syndromes as viable defences. The discussion made in all the chapters above indicates that the Battered Woman Syndrome can be claimed as a defence of temporary insanity and temporary cognitive disability and the XYY can also be claimed as general defence if the rules lay down by Mc Naghten's case. But the expert testimony involved must be of due credible standard.

On the other hand, there is no uniform agreement of academics, lawyers and even doctors on the point whether XYY should be even allowed to be taken as a defence. It must be noted that some academics have pointed that Crime and biology are outmoded theories and just because someone's genetic make-up is of particular code does not mean that person will in all probability commit crime. Also some experts speaking from the point of view of medicine

have pointed out that allowing XYY syndrome to be taken as a defence will lead to a lot of abuse of the defence as there were studies which also found that people having XYY did not commit a single crime in their life. As far as the relevance of battered woman syndrome concerns, there are cases in which such a syndrome has been accepted as a valid defence, be it partial but mainly in respect of self defence. There are indeed many other cases where the BWS has been claimed as an insanity defence but still the debate persists as to whether it should be allowed to exist under the paradigm of self defence or the defence of Insanity.

More importantly, as section 84 of the IPC does not recognize medical insanity as a valid defence, it is quite difficult to even establish irresistible impulse as a component of either of the syndromes. The only way in which these syndromes can be claimed as a defence of Insanity is to establish a strong connection between the concerned syndrome and cognitive disability.

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