INSANITY AND THE LAW: A LEGAL PERSPECTIVE

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DECLARATION

I, hereby declare that the dissertation entitled INSANITY AND THE LAW: A LEGAL PERSPECTIVE is based on original research undertaken by me and it has not been submitted in partially or fully or otherwise in any university for any degree or diploma.

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CHAPTER 1 INTRODUCTION

An open question in Indian criminal law is the validity of insanity as a defence. But it does bring up some interesting issues that need to be thoroughly examined. This is why the clinical picture of incarcerated patients has been the subject of so little research. A forensic psychiatry study conducted in 2011 analyzed 5024 inmates using a semi-structured interview method. The results indicated that 4002 (or 79.6%) of the participants may have been diagnosed with a mental or substance use disorder. Section 84 of the Indian Criminal Code, which is based on Mc Naughten's 1843 Rule in England, provides an exemption for mentally ill offenders from criminal responsibility. This provision may be based on the functional limitation of retributive and dissuasive theories of punishment.

Supporters of the necessity to rationalize the method of referral, diagnosis, treatment, and certification point to other Indian research that paints a rather bleak picture of forensic psychiatry patients.

The old adage goes something like, "Actus Non Facit Reum Nisi Mens Sit Rea," which, taken at face value, indicates that an offender cannot be held responsible for their actions unless they have a guilty conscience. An essential component of a crime is the offender's intent or guilty mind (Mens Rea). When a person commits an act without fully comprehending the gravity of the situation, the legal defence of insanity might provide some relief. The criminal must be so mentally unstable that they are utterly unable to comprehend the gravity of their crime. It is not enough to show that the person is mentally sick; evidence of insanity must also be present. The "Mc'Naughten's Rule" is the basis for Section 84 of the Indian Penal Code, 1860, which incorporates the insanity defense under Indian law. It is always the defendant's responsibility to prove their case, and they must do it beyond a reasonable doubt. Despite the Law Commission of India's best efforts, no changes were made to Section 84 in its 42nd report.

Statement of Problem:

The intersection of insanity and the law in India poses significant challenges. The legal system struggles to adequately differentiate between medical and legal insanity, often relying on outdated principles like McNaughton Rule. This results in inconsistencies in applying Section 84 of the Indian Penal Code, which exempts legally insane individuals from criminal responsibility. Furthermore, the lack of standardized procedures and specialized forensic psychiatry training exacerbates the problem, leading to potential

miscarriages of justice. Reform is needed to update legal definitions and ensure accurate, fair assessments of an accused's mental state during criminal proceedings.

Literature Review:

"The Insanity Defense: Multidisciplinary Views on Its History, Trends, and Controversies" by Mark D. White

- This book delves into the historical development of the insanity defense, tracing its origins from the McNaughten Rule to modern applications. White critically analyses the evolution of legal standards and their implications for justice and mental health.

"Law and Mental Disorder: A Comprehensive and Practical Approach" by Hy Bloom and Richard D. Schneider

- Bloom and Schneider offer a detailed examination of the legal frameworks governing mental disorders. They discuss the practical challenges of applying the insanity defense in courtrooms, emphasizing the need for updated legal criteria and better forensic psychiatric practices.

"Principles of Mental Health Law and Policy" by Lawrence Gostin and Peter Bartlett

- This book explores the broader implications of mental health law, including the insanity defense. Gostin and Bartlett argue for a more nuanced understanding of mental health issues within the legal system, advocating for reforms that align legal standards with contemporary psychiatric knowledge.

"Insanity: Murder, Madness, and the Law" by Charles Patrick Ewing

- Ewing's work focuses on high-profile cases where the insanity defense played a pivotal role. Through case studies, he illustrates the complexities and controversies surrounding the defense, providing a critical perspective on its application and effectiveness.

Research Objective:

The primary objective of examining the intersection of insanity and the law is to understand, evaluate, and improve the legal standards and procedures related to the insanity defense. This includes:

1. **Clarifying Legal Standards**: To analyse and clarify the distinctions between legal insanity and medical insanity, ensuring that legal definitions are consistent with contemporary psychiatric understanding.
2. **Ensuring Fair Trials**: To ensure that individuals who genuinely suffer from severe mental illnesses are treated justly within the legal system, without being wrongfully convicted or punished for crimes they could not comprehend or control.
3. **Preventing Misuse**: To prevent the misuse of the insanity defense by individuals who do not meet the criteria, thereby maintaining the integrity of the legal system and ensuring that justice is served.

4. **Promoting Mental Health**: To advocate for the humane treatment of mentally ill individuals within the criminal justice system, promoting their access to appropriate medical care and rehabilitation instead of punitive measures.
5. **Reforming Legal Frameworks**: To suggest reforms in the legal frameworks governing the insanity defense, making them more effective, just, and aligned with modern psychiatric practices.
6. **Enhancing Forensic Psychiatry**: To emphasize the importance of forensic psychiatry in legal proceedings involving the insanity defense, ensuring that evaluations are thorough, accurate, and reliable.
7. **Protecting Human Rights**: To uphold the human rights of individuals with mental illnesses, ensuring that they are not subjected to unjust treatment due to their condition.
8. **Educational Outreach**: To educate legal professionals, including judges, lawyers, and law enforcement, about the complexities of mental illness and the appropriate application of the insanity defense.

By achieving these objectives, the legal system can more effectively balance the need for public safety with the rights and needs of individuals with mental illnesses, fostering a more just and humane approach to criminal justice.

Hypothesis:

1. Lack of specialized forensic psychiatric expertise leads to inconsistent legal outcomes.
2. The current legal framework in India inadequately distinguishes between genuine insanity and exploitation of the insanity defense.
3. Reforming **Section 84** of the Indian Penal Code to incorporate modern psychiatric insights is necessary.

Methodology:

The methodology adopted in this research is doctrinal. The word doctrine is derived from the Latin noun 'doctrina' which means instruction, knowledge or learning. It is a methodology commonly used in the field of legal studies. It involves the analysis, interpretation, and synthesis of existing legal principles, statutes, cases, and other legal authorities to understand and explain the law.

1.1 Origin of the Rules on the Plea of Insanity

The insanity law as a defence has been in existence from many centuries. But it took a legal status from the last three centuries. The history of the law of insanity can be traced back to the 1700s.

The first case which dealt with the law of insanity was ***R v. Arnold*** (1724), in which Edward Arnold attempted to kill and even wound Lord Onslow and was tried for the same. The evidence clearly showed that the accused was suffering from a mental disorder. Tracy, J. observed:

"If he was under the visitation of God and could not distinguish between good and evil, and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever."

As stated in the aforementioned case, a person can demand immunity if, due to his unsoundness of mind, he was incapable of distinguishing between good and evil and did not know the nature of the act committed by him. This test is known as the "Wild Beast Test."

The second test evolved in ***Hadfield's case*** (1800). Hadfield was discharged from the army on the ground of insanity and was tried for high treason in attempting to assassinate King George III. The counsel of the accused, Lord Thomas Erskine, defended him and proved in front of the judge that Hadfield only pretended to kill the King and is not guilty, on the ground of insane delusion from which the accused was suffering.

Erskine stated that insanity was to be determined by the fact of fixed insane delusion and that such delusion under which the defendant acted is the main reason for his crime. This test was known as the "Insane Delusion Test."

Finally, the third test was formulated in ***Bowler's case*** (1812). In this case, Le Blanc, J. stated that the jury has to decide when the accused committed the offence, whether he was capable of distinguishing right from wrong or under the control of an illusion. After the Bowler's case, the courts have placed more emphasis on the capacity of the accused to distinguish right from wrong, though the test was not that clear.

1.2 McNaughton Rule

There have been several tests from time to time, like the Wild Beast Test, Insane Delusion Test, etc. But the most important is the "Right and Wrong Test" formulated in McNaughton case.

The hearing of McNaughten and his release was a topic of discussion in House of Lords, and as a consequence, they called upon fifteen judges to decide on the question of criminal liability in the cases where the accused is incapable of understanding the nature of the act and also answered the questions advanced. Fourteen judges had the same answers. The view of

the majority was given by Tindal C.J., these answers to the questions are known as McNaughton's Rule. The following principles were cited:

- A person can be held accountable for their actions regardless of whether they were fully aware or suffering from partial delusions.
- The premise is that every guy is rational, acts responsibly, and knows what he's doing.
- It must be proven that the accused was in a state of mind where he could not have known what he was doing in order to establish an insanity defence.
- It is for the jury to decide and decide upon the questions, not someone with enough medical understanding or a medical man familiar with the sickness of insanity, thus they cannot be questioned for their opinion.

1.3 English Law on the Defence of Insanity

The defence of insanity is recognized in English criminal law. According to the McNaughton's Rules, a person is considered insane if... Medical definitions of insanity are not the subject of these regulations. The judges in the case of McNaughton's established the following principles of insanity:

- All are presumed to be sane and to have enough reason, until proved contrary, to be responsible for their crimes.
- It must be clearly demonstrated in order to establish the defence of insanity that at the time of the act, the accused was working under such a defect of reason, from mental illness, as
    - He didn't know the nature and the qualities of the act he was doing, or
    - He did not know what he was doing was wrong.

The burden of proof lies with the accused to establish, by evidence, that he was afflicted with a mental disorder that rendered him unable to comprehend the gravity of his conduct or to perceive the wrongfulness of his deeds. This is known as insanity.

1.4 Indian Law on the Defence of Insanity

According to **Section 84** of the Indian Penal Code, a person can claim insanity as a defense under Indian law. On the other hand, "insanity" isn't defined in this clause. A person's "mental soundness" is a crime in India. The insanity defence, often known as the defence of mental insanity, is based on McNaughton's rule and is thus codified in the code.

The Indian Penal Code states in **Section 84** that no one is guilty of an offence if they are either mentally incapable of understanding the gravity of their actions or if they violate the

law because of their mental illness. However, it's worth mentioning that the IPC's drafters choose to use the phrase "insanity of mind" rather of the word "insanity." The mental insanity encompasses a vast domain, in contrast to the narrow domain of insanity.

For this defence, the following elements are to be established-

- The accused was in a state of unsoundness of mind at the time of the act.
- He was unable to know the nature of the act or do what was either wrong or contrary to the law.

The term ‘wrong’ is different from the term ‘contrary to the law’. If anything is ‘wrong’, it is not necessary that it would also be ‘contrary to the law.’ The legal conception of insanity differs significantly from medical conception. Not every form of insanity or madness is recognized as a sufficient excuse by law.

1.5 Distinction between Legal and Medical Insanity

As a legal accountability test, the Indian Penal Code lays out the criteria in Section 84. The medical test and this exam are distinct. The lack of determination stems from a sick mental condition as much as from a lack of intellectual development. From both a medical and legal perspective, this mental illness offers an escape from criminal culpability. From a medical perspective, it is likely accurate to state that every individual committing a criminal act is insane and should be exempt from criminal responsibility. On the other hand, from a legal standpoint, an individual is presumed to be equal so long as he or she can differentiate between right and wrong and is aware that the act they performed is illegal.

The burden of proof for "mentally ill" or psychopath defendants to prove they were insane at the time of the crime is with the prosecution, according to a Supreme Court ruling. Thus, in actuality, not all persons suffering from mental illness are absolved of criminal responsibility. The concepts of medical insanity and legal insanity must be differentiated. “ArijitPasayat and the Bench of Justices, DK Jain, stated while upholding the life conviction of a man who cut off his wife’s head. The mere abnormality of mind, partial delusion, irresistible impulse or compulsive behaviour of a psychopath does not provide protection from criminal prosecution as provided by the apex court held **Section 84** of the Indian Penal Code (IPC). The Bench stated that Section 84 of the IPC, which provides immunity from criminal prosecution to persons of unsound mind, would not be available to an accused, as the burden of proving insanity would lie with them, as provided in **Section 105** of the Indian Evidence.

In the case of ***Hari Singh Gond v. State of Madhya Pradesh***[1], the Supreme Court observed that **Section 84** sets out the legal test of responsibility in cases of alleged mental insanity. There is no definition of 'mind soundness' in IPC. However, the courts have mainly treated this expression as equivalent to insanity. But the term 'insanity' itself does not have a precise definition. It is a term used to describe various degrees of mental disorder. So, every mentally ill person is not ipso facto exempt from criminal responsibility. A distinction must be made between legal insanity and medical insanity. A court is concerned with legal insanity, not medical insanity.

In the case of ***Surendra Mishra v. State of Jharkhand***[2], It was pointed out that 'every person suffering from mental illness is not ipso facto exempt from criminal liability.' Furthermore, in the case of ***Shrikant Anandrao Bhosale v. State of Maharashtra***[3], the Supreme Court, in determining the offense under **Section 84** of the IPC, held that' it is the totality of the circumstances seen in the light of the recorded evidence' that would prove that the offense was committed.' It was added: "The unsoundness of the mind before and after the incident is a relevant fact."

1.6 Unsoundness of mind must be at the time of the commission of the Act.

The first thing a court to be considered when defending insanity is whether the accused has established that he was unsound at the time of committing the act. The word "insanity" is not used in **Section 84** of the penal code.

In ***Rattan Lal v. State of M. P***[4], it was well established by the court that the crucial point of time at which the unsound mind should be established is the time when the crime is actually committed and whether the accused was in such a state of mind as to be entitled to benefit from Section 84 can only be determined from the circumstances that preceded, attended and followed the crime. In other words, it is the behaviour precedent, attendant and subsequent to the event that may be relevant in determining the mental condition of the accused at the time of the commission of the offense but not those remote in time.

In ***Kamala Bhuniya v. West Bengal State***[5], the accused was tried for her husband's murder with an axis. A suit was filed against the accused, she alleged to be insane at the time of the incident, the investigating officer recorded at the initial stage about the accused's mental insanity. The prosecution's duty was to arrange for the accused's medical examination, it was held that there was no motive for murder. The accused made no attempt to flee, nor made any attempt to remove the incriminating weapon Failure on the part of the prosecution was to discharge his initial responsibility for the presence of *mens-rea* in the accused at the time of

the commission of the offence. The accused was entitled to benefit from Section 84. And hence accused was proved insane at the time of the commission of the offence and was held guilty of Culpable Homicide and not of Murder.

1.7 Incapacity to know the nature of the act

The word "incapacity to know the nature of the act" embodied in **Section 84** of the Indian Penal Code refers to that state of mind when the accused was unable to appreciate the effects of his conduct. It would mean that the accused is insane in every possible sense of the word, and such insanity must sweep away his ability to appreciate the physical effects of his acts.

1.8 Incapacity to know right or wrong

In order to use the defence of insanity under the latter part of Section 84, namely "or to do what is either wrong or contrary to the law," it is not necessary that the accused should be completely insane, his reason should not be completely insane, his reason should not be completely extinguished. What is required, is to establish that although the accused knew the physical effects of his act, he was unable to know that he was doing what was either "wrong" or "contrary to the law." This part of Section 84 has made a new contribution to criminal law by introducing the concept of partial insanity as a defence against criminal insanity. However, as a practical matter, there would probably be very few cases in which insanity is pleaded in defence of a crime in which the distinction between "moral" and "legal" error would be necessary. In any crime, insanity can undoubtedly be pleaded as a defence, yet it is rarely pleaded except in murder cases. Therefore, in a case, this fine distinction may not be very useful for the decision. The Indian penal code has advisably used either "wrong or contrary to the law" in Section 84, perhaps anticipating the controversy.

1.9 Irresistible Impulse as a defence

Irresistible impulse is a sort of insanity where the person is unable to control his actions even if he has the understanding that the act is wrong. In some cases, the Irresistible Impulse Test was considered to be a variation of McNaughton rule; in others, it was recognized to be a separate test. Though the Irresistible Impulse Test was deemed to be an essential corrective on McNaughton selective perception, it still had some criticisms of its own.

1.10 Under English Law

In 1884, the irresistible impulse test was introduced by the legislation. By 1967, this test was applicable in 18 states out of 51 states of the U.S.A. Irresistible impulse when, attributable to a diseased mind, appears to have been identified as a legitimate excuse in some English cases.

Irresistible impulse as a defence was developed in the famous case of Lorena Bobbit (1993), on June 23rd, 1993, the defendant took a knife from her kitchen and wounded her husband by cutting off his penis while he was sleeping. Her lawyers contended that she had been suffering from domestic violence, which was perpetrated by her husband during her marriage, and his husband even raped her before she committed this act. Though she was well aware of the consequences, she was not able to control her actions and demanded that she was subject to an irresistible impulse. The state of Virginia was the first state which used this defence in its original form. It was held that she's not guilty as she was suffering from temporary insanity.

1.11 Under Indian Law

Usually, when there is adequate capacity to distinguish between right and wrong, the mere presence of an irresistible impulse would not excuse liability. Irresistible impulse is not incorporated under insanity because it does not fall within the ambit of Section 84 of the Indian Penal Code.

In the case of, ***KannakunnummalAmmed Koya v. State of Kerala***[6] (1967), it was held that to claim an exemption under **section 84**, the insanity has to be proved, at the time of the commission of an act, mere losing of self-control due to excitement or irresistible impulse provides no defence under Indian law even if this is proved in a court of law.

In another case, ***Ganesh v. Shrawan***[7] (1969), it was observed that the mere fact that the murder is committed by the accused on an irresistible impulse, and there is no identifiable motive for the commission of the act, can form no grounds for accepting the defence of insanity.

1.12 Durham Rule

The Durham defence is also known as the "Durham rule," or the "product test" was established in the case of, ***Durham v. United States***[8] (1954), the defendant was guilty of breaking into a house and demanded the plea of insanity in his defence. The existing tests, which were the McNaughten Rule and the irresistible impulse test, were declared to be

obsolete by the Court of Appeal. But later on, it was understood that both these tests could still be employed, and the Durham rule can be used in addition to these tests.

This defence has two main components:

First, the defendant must possess a mental disease or infirmity. Although these words are not explicitly explained in the Durham case, the language of the judicial view indicates an effort to rely more on objective, psychological standards, rather than focusing on the defendant's subjective cognition.

The second element has to do with causation. If criminal behaviour is "caused" by the mental disease or defect, then the conduct should be exempted under the circumstances.

This test is currently accepted only in New Hampshire, considering it has been regarded too broad by other jurisdictions.

1.13 Concept of Diminished Responsibility

The Doctrine of Diminished Responsibility was introduced by the Homicide Act of 1957, as a defence to murder. If this defence is established, it will entitle the offender to be found guilty of manslaughter (culpable homicide) instead of murder.

Section 2 of the Act clearly states that:

Where a person kills someone or is a party to killing, he will not be guilty of murder if he was suffering from some abnormality of mind and is mentally incapable of taking responsibility for his acts.

A person who would be liable under this section, whether as a principal or as an accessory, will be convicted of manslaughter instead of being convicted of murder.

Ratan Lal v. State of Madhya Pradesh[9]

The appellant was caught setting fire to the grass in an open land of Nemichand, when he was asked why he did it, he replied; 'I burnt it, do whatever you want.' The appellant was charged under Section 435 (mischief by fire with intent to cause damage) of the Indian Penal Code. According to the psychiatrist, he was a lunatic in terms of the Indian Lunacy Act, 1912. The report explicitly stated that the accused is:

- Remains depressed,
- Doesn't speak,

- He is a case of lunatic depression and psychosis, and
- He requires therapy.

The trial court held that the accused was not liable to be punished. An appeal was filed by the state, and the High court reversed the findings of the trial and held the accused liable for the offence. Afterward, the Supreme Court allowed the appeal, and the conviction was set aside based upon two major factors:

- Medical evidence provided and,
- According to the behaviour of the accused on the day of the occurrence.

These factors indicated that the accused was insane within the meaning of **Section 84**, IPC.

SeralliWali Mohammad v. State of Maharashtra[10]

The offender was charged under Section 302 of the Indian Penal Code for causing the death of his wife and daughter with a chopper. The Supreme Court rejected the plea of insanity because the mere fact that there was no motive proved, or that he did not attempt to run, was not sufficient enough to prove that he did not have the mens rea for committing the act.

ShrikantAnandraoBhosale v. State of Maharashtra[11]

In this case, the accused was a police constable. The wife was hit on the head with a grinding stone by the accused, and she was immediately taken to the hospital but was found already dead. After investigation, the appellant was charged for the offence of murder. Insanity was pleaded as a defence. The appellant had a family history where his father also suffered from mental illness. The reason for such an ailment was not known. The appellant was undergoing treatment for this mental disease. It was observed that the motive for the murder was quite weak. After killing his wife, the accused did not attempt to hide or run away.

Based on the above-stated facts, it was held that the accused was suffering from paranoid schizophrenia, and he was incapable of comprehending the nature of the act committed by him. Therefore, he was not guilty of murder and will be given the benefit of **section 84**, IPC.

Jai Lal v. Delhi Administration[12]

Here, the appellant killed a small girl with a knife and even stabbed two other people, was convicted under **Section 302** of the Indian Penal Code. It was pleaded by the accused that he was suffering from insanity within the ambit of **Section 84**, IPC.

It was observed that the accused, after being arrested gave normal and intelligent statements to the investigating officers. Nothing abnormal was noticed in his behaviour. Considering all these findings, the Supreme Court held that the appellant was not insane at the time of the commission of the act and was well-aware of the consequences of his acts. He was held guilty for murder under **Section 302**, IPC.

1.14 Misuse of Insanity as a Defence

In the present scenario, there are very high chances that the defence of insanity can be very well abused as it is a very strong weapon to escape the charges of an offence. It is impossible to prove that the person was incapable of understanding the nature of the act. Defence lawyers can use it to free the culprits of intentional unlawful acts.

Here the courts play an important role as they have to make sure that a sane person doesn't absolve himself by wrongfully using the defence in his favour. In many jurisdictions, this defence has been abolished completely, e.g., Germany, Thailand, Argentina, etc.

1.15 Role of psychiatrist

A standard evaluation procedure is necessary for all patients who support the defence of insanity. It is a pity that to date there are no standardized procedures in our country. Psychiatrists are often called to conduct mental health assessments and treatments. In addition to treatment, courts can also request various certifications. This includes:

Certify the presence or absence of psychiatric illness if the defendant requires a reason for insanity (the mental state of the defendant when the alleged crime occurred);

Evaluation of the suitability to be judged in cases where the mental illness is incapable of the cognitive, emotional and behavioural faculties of an individual that cause a serious impact on the ability to defend the case (the current mental state of the accused and their competence during the award).

The psychiatrist should consider the admission admitted for a global evaluation of the accused. The psychiatrist has to educate the court, clarify psychiatric problems and provide an honest and objective opinion based on concrete data and sound reasoning. This NIMHANS Detailed Workup Proforma for Forensic Psychiatry Patients-II is used in the Institute since many decades for semi-structured assessment of forensic psychiatric cases. This proforma is modified periodically as per the clinical evaluation and legal requirement.

1.16 Review of accompanying documents

It is the duty of the psychiatrist to review all the accompanying legal documents and determine the reference authority, the reason for the report, the date and time of the report and the time available to issue the opinion. A careful history of all possible sources should be compiled, such as the accused, the companion, the FIR, the post mortem report and the autopsy, the crime scene photographs, the behaviour observation report, the member interview of the family and the psychiatrist in the past.

1.17 Assessment of history of presenting illness

The defendant should be interviewed as soon as possible in time for the crime, even if in practice, this is not always feasible. At the beginning of the evaluation, the accused must be informed of the purpose of the evaluation and the lack of confidentiality. A complete survey should be made of the history of the presentation of the disease, of the history, of the family history, of the personal history and a premorbid personality. The psychiatrist should never forget to evaluate substance use in the past and present.

1.18 Few other roles of a psychiatrist

Assessment focusing on mental state at the time of the offence

The psychiatrist must make an effort to assess the mental state of the accused at the time of the infraction. The psychiatrist must make an effort to assess the mental state of the accused at the time of the offence. You should try to get a detailed description of the incident through open questions. It would be prudent to ask the accused to provide a detailed report of their behaviour, their emotions, their biological, professional and social functioning from 1 week before the crime and to be informed up to 1 week after the crime. Psychiatrists should also examine the defendant's behaviour before, during and after the commission of the crime, which may provide clues about the patient's complete mental state.

Evaluation of mental status and cognitive functioning

The mental state test should be done without important questions. The psychiatrist must ask open-ended questions and must refrain from asking important questions. The inexperienced psychiatrist can easily fall into the trap of the sick. Therefore, it is advisable to admit the patient and perform a serial examination of the mental state and serial observations in the ward.

Diagnosis

Considering the nature of the evaluation and the law assumes that everyone is healthy unless proven otherwise, it is prudent to begin the evaluation in the same direction. The psychiatrist must initially resist the definitive diagnosis. The diagnosis should be kept open or the temporary diagnosis should be considered. After collecting information from all possible sources, depending on the series mental state examination, the observation of the serial department, psychological tests and laboratory investigations, the psychiatrist must make an objective and honest evaluation and give his or her opinion on the diagnosis of the patient's life and current mental state. You must also make a sincere effort to oppose the defendant's mental state during the commission of the crime.

It is suggested that there should be a well-defined definition of the term 'mental insanity' to avoid the various controversies and confusions that arise in understanding and differentiating between the 'mental disease' and the actual insanity of mind sought by the Code or the so-called 'legal insanity' in order to make the defence available to the accused.

Section 84 of the Code should be amended to incorporate the partial defence of diminished responsibility for murdering insane persons. This change shall be made on an equal footing with the defence of diminished responsibility as accepted under the defence of insanity as specified by English criminal law.

The scope of Section 84 should be expanded to incorporate the defence of automatism under the defence of an unhealthy mind, just as it is recognized by the English criminal law system.

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[1](2008) 16 SCC 109
[2] (2011) 11 SCC 495
[3] (2002) 7 SCC 748
[4] JT 2002 (7) SC 627
[5]2006 (1) CHN 439, 2006 CriLJ 998
[6]1967 CriLJ 494
[7](1969) 71 BOMLR 643
[8]214 F.2d 862 (DC Cir. 1954)
[9]Ratan Lal v. State of Madhya Pradesh 1971 AIR 778, 1971 SCR (3) 251
[10]AIR 1972 SC 2443
[11]Appeal (Crl.) 180 of 2000
[12]1969 AIR 15, 1969 SCR (1) 140

CHAPTER 2 ENGLISH LAW & INDIAN LAW: BRIEF COMPARISON BETWEEN THEM

The law of insanity provides protection to persons with insanity. It plays a vital role in giving protection from criminal liability to such persons who cannot understand the nature of their acts due to their insanity. The basis of law of insanity lies in the maxim "*Actus non facitriem, nisi men sit rea*" which means that no man can be proved guilty unless he has guilty mind. Whenever an insane person commits crime due to the effect of his insanity, he does not have a guilty mind to understand that what he is doing is something prohibited by law. Thus, in such a situation, the insane persons stand in a position which is even worse than that of an infant. The considerable population of the world comprises of people with mental abnormalities. Though the essence of defence of insanity can be traced back to the ancient times but the present-day law on this is based on the McNaughten Rule. The English criminal law system has adopted the McNaughten Rule the way it is. The Indian criminal law system has laid down the defence of insanity under section 84 of Indian Penal Code. This defence is based on the McNaughten Rule but there are some differences. Therefore, this paper will critically discuss the law relating to the defence of insanity under the English criminal law system and the Indian criminal law system and will examine the similarities and differences in both the laws.[1]

The acts and omissions in violation of Criminal Law are regarded as crime and are backed by penal sanction. Thus, the person who does such violation of Criminal Law is liable for punishment. The Criminal Law before it can hold a person responsible for any act or omission, presumes that he has the knowledge of the consequences and nature of his acts. However, this principle is not absolute and there are certain exceptions to this General Rule and thus in spite of having committed the crime, a person can be excused. In certain situations, a person may be excused due to the fact that he holds a prestigious position whereas in certain other situations a person may be excused for not having a guilty mind. As it is the cardinal principle of Criminal Law which says that, a man is not guilty unless he has a guilty mind, this principle is based on the Latin maxim of "***Actus non facitriem****, nisi men sit rea*"1, it can be said that in order to commit a criminal offence, mens rea is generally taken to be an essential element of crime. The maxim, "***furiosusnullavoluntasest***", indicates that, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For committing a crime, the intention and act both are taken to be the constituents of the crime. It is believed and presumed that, every normal and sane human being possesses some degree of reason to be responsible for his conduct and acts

unless contrary is proved, but a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behaviour.

The persons of unsound mind are of vulnerable nature. There is a complete chance of their exploitation in a situation where no protection is sought to them. The law which protects a person of unsound mind, and provides a defence from the criminal liability to the person of unsound mind is known as the Law of Insanity. Whenever an insane person commits crime due to the effect of his insanity, he does not have a guilty mind to understand that what he is doing is something prohibited by law. The law of insanity has proved to be of practical importance in understanding the situation and mental position of insane person and has granted them exemption from criminal liability under certain reasonable circumstances.

In the modern times, the standard for claiming a defence of 'not guilty by reason of insanity' has changed through the years from strict guidelines to a more lenient interpretation, and back to a stricter standard again. Although definition of legal insanity differs from place to place, generally a person is considered insane and is not responsible for criminal conduct if, at the time of the offence, as a result of a severe mental disease or defect, he was unable to appreciate the nature and quality or the wrongfulness of his acts. This reasoning is, because wilful intent is an essential part of most offences, a person who is insane is not capable of forming such intent. Mental disease or defect does not alone constitute a legal insanity defence. The defendant has the burden of proving the defence of insanity by clear and convincing evidence.

In most criminal jurisdictions, insanity is one of the defences that exempt a person from the criminal liability. This is because of the basic principle of the criminal law, according to which every person is presumed to be sane and to possess a sufficient degree of reason to be held responsible for his crimes. Thus, a person who lacks the rational capacity of thinking and understanding in certain circumstances is recognized by the criminal law as not being liable for his criminal acts and thus is excused from convictions. The principle or presumption of rational capacity operates as one of the preconditions and prerequisites for fixing the criminal liability. The defence of insanity is thus based on the principle that a mad man cannot be punished for his criminal acts, as he did not possess the required ***mens rea*** to constitute a crime. The English and Indian criminal law systems accept the defence of insanity which is very much based on the principle of ***non-compose mentis***.4 As both of these criminal law systems have validly incorporated this defence on the similar footings, it can be said that there are certain similarities and as well as certain differences in the law governing this defence.[2]

The history of law of insanity can be traced from the European Countries in their criminal law system. The law relating to the defence of insanity is based on the M'Naghten'sRule, this rule has been established and propounded in the year 1843 by the judges of Queen's Bench in the Courts of England. The M'Naghten Rule thus has served to be the basis of the defence of insanity under the English Criminal law system and it has been subsequently accepted by some other jurisdictions and the Common wealth countries. In the recent years due to the advancement of scientific knowledge of mental functioning has created new variations. Yet, in spite of these alternative formulations, the M'Naghten Rules continue to form part of English law and some other Commonwealth jurisdictions including India.

According to the M'Naghten's Rule '*To establish the defence of insanity, it must be clearly proved that at the time of committing the act the accused was labouring under such a defect of reason due to the defect of mind as not to know the nature and quality of the act he was doing, or if he knew it, then did not know that he was doing was wrong*'6 This explanation cannot be taken as a full proof definition, because it fails in explaining various aspects of insanity.

Therefore, it is imperative to note that the terms 'insanity' has a highly specific meaning in criminal law. It is not necessarily used in its medical sense but it shall be understood in its legal meaning. Thus legally, insanity as a defence refers to legal insanity and not medical insanity. The term 'legal insanity' refers to certain requirements that need to be satisfied by the accused person in accordance with specific rules set by the law. Legal insanity is a concept narrower than medical insanity. Because the analysis put forward by law and medical are not similar always. The legal and medical concept of insanity may overlap, for example, certain mental diseases such as schizophrenia, paranoia or lunacy are classified as medical insanity and can also come under the defence of insanity or unsoundness of mind provided the other conditions are satisfied to meet the criteria of legal insanity.

2.2 English Law on defence of insanity

The English criminal law regards insanity as a valid defence from criminal responsibility. The basic definition for insanity is based on the M'Naghten Rules. These rules are not concerned with medical definitions of insanity. In the case of M'Naghten, the judges had stated the principles relating to insanity as follows:

1. Everyone is presumed sane and to possess a sufficient degree of reason to be responsible for their crimes until the contrary is proved.

2. To establish the defence of insanity it must be clearly proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as

(a) Not to know the nature and quality of the act he was doing, or

(b) If he did know it, not to know what he was doing was wrong.

Therefore, the accused person in order to plead insanity as a defence, must prove on the basis of the facts that he was suffering from a defect of reason, arising from a disease of the mind, due to which he either did not know the nature and quality of the act, or he did not realize that his actions were wrong.[3]

2.3 Indian Law on defence of insanity

Insanity as a defence under the Indian Criminal law is provided under section 84 of the Indian Penal Code. The term 'insanity' however is not used under this provision. The Indian Penal Code uses the phrase 'unsoundness of mind'. Under the code the defence of insanity or which can be also called as the defence of unsoundness of mind, derives its source from the M'Naghten's Rule.

Section 84 of Indian Penal Code provides for an 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.'

It is important to note, however, that instead of the word 'insanity' the makers of the code have preferred the expression 'unsoundness of mind.' This has been deliberately done. 'Insanity' has a very limited scope whereas 'Unsoundness of mind' covers a much wide area. Any kind of mental derangement caused by any reason whatever may be unsoundness of mind but the same may not be insanity always.

Following elements are to be established for this defence: -

1. The accused was in a state of unsoundness of mind at the time of doing the act.

2. He was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.[4]

The term 'wrong' is different from 'contrary to law'. If anything is 'wrong'; it is not necessary that it would also be 'Contrary to law'. The legal conception of insanity differs

considerably from the medical conception. It is not every form of insanity or madness that is recognized by law as a sufficient excuse.

2.4 Defence of insanity in England and India: Comparative Analysis

Looking at both provisions relating to the defence of insanity, researcher has subtly made an attempt to compare between English law and Indian law considering respective criminal justice system. The defence of insanity and defence of unsoundness of mind are the terminologies which has different significance as well as approach in English law and Indian laws respectively.[5]

1. Presence of insanity:

Both Indian and English criminal laws state that if the accused wants to plead insanity or unsoundness of mind as a defence then he is required to prove that he was insane at the time of doing or committing the offence. Though the phrase used is different in both the laws, "at the time of committing the act" is used under the M'Naghten's Rule and "at the time of doing the act" is being used under the Indian Penal Code, it has the same legal implication and meaning. Thus, the prime requirement is that the accused person must be insane at the time of doing the criminal act or during the commission of the offence. This is a very significant test for legal insanity, as opposed to medical insanity.

2. Defect of reasoning capacity

The second point to be taken into consideration is with regards to the defect of reason. The M'Naghten's Rule states that a person must have suffered a defect of reason from disease of the mind at the time of committing the crime whereas the Indian Penal Code, on the other hand requires a person to be in a state of unsoundness of mind at the time of doing the criminal act. Thus, we have to take into consideration the exact meaning of the term 'disease of mind' and 'unsoundness of mind'. In English law, the concept of disease of the mind, it can be said that the law is not concerned with the brain, but with the mind. What is important is that there shall be some derangement of the mental faculties affecting the functioning of the mind and it shall result in the impairment of the mental faculties of reasons, understanding and memory. The concept of disease of the mind is certainly wider than disease of the brain. Thus, it can be said that the defect of reason must be caused by the disease of the mind. This indicates that the defect must result from some internal degenerative or damage causing factors and not due to the impact of external factors and thus it must be more than that of a temporary nature.

But comparatively, as noted earlier, the phrase used in the Indian Penal Code is 'unsoundness of mind', and not 'insanity'. Whereas insanity according to the English criminal law is referring to the defect of reason from disease of the mind, but, the terminology of unsoundness of mind under **section 84** is not being defined and thus it can be said that it does not carry the same meaning as insanity. However, it refers to a more comprehensive term as compared to insanity, covering not only persons who are suffering from the defect of reason resulting from the disease of the mind, but those who are incapable of knowing the nature of the act or those who do not know either the act is wrong or contrary to the law. After the analysis of the Section 84 it can be said that the unsoundness of mind is a relative concept. A person is considered unsound if his mental faculties have been impaired and has become destitute of reason, intelligibility and coherence of thought. The unsoundness of mind may occur due to varied reasons and degrees.

3. Inability to know nature of act

It is important requirement in the English criminal law for an accused raising the defence of insanity to establish that he did not know the nature and quality of his act, or he did not know that the act is wrong. Indian law also requires that the accused must by reason of unsoundness of mind, be incapable of knowing the nature of the act or he did not know whether the act is wrong or contrary to the law. At this point, there is a significant difference between the phrase "incapable of knowing" under the Indian Penal Code, and the phrase "did not know" under the M'Naghten Rules.[6]

It appears here that the capacity to know a thing is quite different from what a person knows. Thus, if a person has a capacity to know the nature of his act, he cannot be protected under the Indian Penal Code. Under the English law, the question is simply whether the accused knew what he was doing. This shows that the test of unsoundness of mind under section 84 of the Indian Penal Code is stricter than that under the English Criminal law.[7]

4. Wrong vs. Contrary to law:

However, if the accused at the above stage is still aware of the physical nature or quality of his act, he may have to satisfy the next element to plead insanity defence or defence of unsoundness of mind. The other condition is that he did not know what he was doing was wrong. This is the position in M'Naghten's Rule. Under the Indian Penal Code, the phrase used is that 'he is doing what is either wrong or contrary to law.' It can be said that the term 'wrong' under the Section 84 cannot mean 'contrary to law' since the alternative phrase 'contrary to law' is given in the section.[8]

However, it can be said that, both clauses in M'Naghten's Rule and the Indian Penal Code are providing a saving clause to the accused to defend himself under insanity or unsoundness of mind. Thus, under the English criminal law although the accused may know the nature and quality of his act, yet if he did not know that his act is legally wrong, he can be exempted from his criminal responsibility. Whereas for Indian Penal Code, the accused has an alternative to prove, that either he did not know the act was wrong or he did not know the act was contrary to the law. The term 'wrong' can be interpreted to mean moral wrong because of the presence of the term 'contrary to the law'. Thus, under the Indian Penal Code the accused has to prove that he due to the unsoundness of mind did not either know that his acts were either morally or legally wrong.

5. Position of Diminished Responsibility:

Diminished responsibility has a very close relationship with the offence of insanity since it involves the mental state of the accused. This defence has been emphasized by the English criminal law particularly under the Homicide Act, 1957 but it is to be noted that this defence is only applicable to the offence of murder, whereas insanity is a defence to any criminal charges. **Section 2** of the Homicide Act 1957 provides for diminished responsibility as a defence to murder, which entitles the accused not to be acquitted altogether, but to be found guilty only of manslaughter.

Unlike insanity, it is not a general defence but it may only be pleaded in a defence to a charge of murder, and is not required for other offences apart from murder. Most defendants would prefer a conviction for manslaughter on the ground of diminished responsibility to an acquittal by reason of insanity, so the importance of M'Naghten Rules has been greatly reduced since 1957. Unlike the plea of insanity, it is immaterial whether or not the accused understood what he was doing and could know that it was wrong. If he succeeds in his defence, he will be found not guilty of murder, but guilty of manslaughter.[9]

Unlike the English law, Indian criminal law does not have any statutory defence of diminished responsibility. This is apparent from the **Section 300** of the Indian Penal Code relating to the offence of murder. There are five special exceptions for the offence of murder but none of them refers to the plea of diminished responsibility. Therefore, it is submitted here that whenever an accused while killing someone is suffering from an abnormality of mind as to impair his mental responsibility for his acts, the same defence of unsoundness of mind under section 84 shall be pleaded by him. The situation is different from the English criminal law because the provision of diminished responsibility under the English Homicide

Act 1957 gives the alternative to the accused person either to plead diminished responsibility or insanity as a defence. It will depend on the degree of seriousness of the abnormality of mind suffered by the accused person. Since the Indian Penal Code only provides the general rule for unsoundness of mind, perhaps it could be said that the abnormality of mind in diminished responsibility is one of the types of unsoundness of mind if it is proved medically and legally. Therefore, under the Indian criminal law, there is no way that an unsound person if it is established, can be found guilty of manslaughter, but he shall be acquitted and be dealt with under the provisions of the Criminal Procedure Code. Thus, the researcher suggests that there is a need to amend the section 84 of the Indian Penal Code in line with the English law to include the defence of Diminished responsibility under its ambit.[10]

6. Defence of Automatism

Generally, the criminal law provides a defence for the illegal acts and omissions of the person, only when such acts and omissions are involuntarily done by him. Involuntary acts are those which are beyond the control of the person accused. Automatism is in form of involuntary acts. Whenever a defensive insanity has been pleaded by the accused and is being rejected due to insufficiency of evidence regarding the mental stage of the accused then in such a situation the accused can raise an alternative defence of automatism. Automatism can also be raised in certain rare circumstances in which insanity is not pleaded as a defence. In cases of automatism accused is required to produce some evidence regarding his state of mind proving that he was under the influence of automatism at the time when he committed crime. The English law classifies Automatism into non-insane automatism and insane automatism. Under the non-insane automatism, the law grants a direct acquittal of the accused without any special provisions for state intervention after the acquittal, whereas the acquittals under the defence of insane Automatism are followed by the state interventions in form of the medical care of the accused. However, it is important to note that the defence of automatism is recognized only under the English law.[11]

The Indian Penal Code has not expressly recognized the concept of voluntariness and its subset of automatism. Thus, the researcher suggests that the Parliament shall introduce legislative amendments to the Indian Penal Code, with an objective of expressly incorporating the basic principle of the criminal law, that a person is not guilty of a crime unless his or her conduct was voluntary. Based on this the legislation would need to define an ‘act’ as meaning willed conduct and shall amend the **section 33** of the Indian Penal Code14. It would also need to add volitional incapacity to the cognitive ones presently mentioned in the defence of unsoundness of mind under Section 84, and of intoxication under Section 85.

7. Irresistible Impulse:

Irresistible impulse is a form of insanity. It is in form of mania which generally coexists with complete sanity. Irresistible impulse is commonly known as impulsive homicidal maniac. Its prime characteristics are the complete absence of motive. Generally, the person under irresistible impulse targets and makes his near and dear ones the victim of his excessive impulse. For an impulse to be the irresistible impulse it is very important that such impulse is the one which cannot be resisted and simply not the one which was not deliberately resisted. There are certain situations in which a person gets struck by severe impulse and if it is possible for him to resist such an impulse then he shall resist it because in such a case such resistance becomes his legal duty.

The criminal law recognizes insanity as a defence, however only legal insanity is accepted and the person suffering from medical insanity while he committed an offence cannot claim the defence of such a nature. In order to derive the protection available under section 84 IPC, it is necessary that the accused due to the reason of unsoundness of mind was incapable of knowing the nature of his acts or he was unable to know that, that what he was doing was either wrong or contrary to law.[12]

Thus, the irresistible impulse is not recognized as a ground of exemption in Courts of England and India because the crimes committed under irresistible impulse does not fall within the scope the legal insanity as is required under the M'Naghten's Rule and the Section 84 of Indian Penal Code. It can be said that if the accused person had committed a crime under the influence of irresistible impulse, then it is no defence if he committed the crime after knowing that what he was doing was either wrong or contrary to law. Thus, the mere fact that the accused had acted on basis of some sudden impulse without any concrete motive, will not in general afford a basis for plea of insanity. The circumstances of any act being motiveless are not a ground on the basis of which the existence of an irresistible influence can be inferred. Thus, it can be said that the decision of the law makers to keep the irresistible impulse out of the scope of the ambit of the defence of insanity or defence of unsoundness of mind, as given under the M'Naghten's Rule and the Section 84 Indian Penal Code respectively is appropriate and justified in not recognizing irresistible impulse as a criminal defence.[13]

2.5 Conclusion

Thus, the researcher intends to conclude by saying that, in order to mold the age old M'Naghten's rule to suit the modern-day scientific study of human mind and its functioning, it shall be modified and amended to incorporate the conceptions of volitional and emotional aspects of the mind, because according to the modern psychology and psychiatry the mind cannot be split up into water tight, unrelated and autonomously functioning compartments. The mind and body are one unit in which each part influences, and is influenced by the whole. Every case of insanity of mind cannot therefore be fitted into the straight jacket formula of the legal definition prescribed in the M'Naghten's Case. Thus, it can be said that there is a great need to modify and rectify the M'Naghten's Rule. With regards to the defence of the unsoundness of mind under the Indian Penal Code it can be said that there is a need to amend the law as specified under the **Section 84** of the Code. The researcher thus suggests some changes which shall be incorporated under Section 84 to make it stand on a parallel footing with the law of insanity defence as it is under the English criminal law system.

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[1]'Actus nan facitreum, nisi mens sit rea' it means that an act does not make a person legally liable unless the mind is legally blameworthy. This maxim forms the basis for defining the two elements that must be proved before a person can be convicted of a crime, the actus reus which means the guilty act and mens rea which means the blameworthy mind

[2] 'Furiousinullavoluntasest' it means a mad man has no free will. There must be as an essential ingredient in a criminal offfence, some blameworthy condition of mind, and such condition of mind cannot justly be imputed to mad men who are under a natural disability of distinguishing between good and evil.

[3] J. W. Cecil Turner, Kenny's Outlines of Criminal Law, (9th edn, 2002, Universal Law Publishing) 28,29

[4]Defense Of Insanity, https://www.legalserviceindia.com/legal/article-3140-defense-of-insanity.html (Last visited on April 25.2021)

[5] William Glanville, The Text Book of Criminal Law, (2nd edn, 3rd Indian Reprint, 2009, Universal Law Publishing Company Private Limited) 634

[6] R v. Daniel M'Naghten, (1843) 8 Eng Rep 718

[7] Andrew Ashward, Principle of Criminal Laws, (6th edn, 2009, Oxford University press) 320,321

[8] Indian Penal Code 1860, s 84

[9] N. S. Modi, Modi's Book of Medical Jurisprudence and Toxicology, (14th edn, 1963, Tripathi Private Limited Publications) 394,395,396

[10] Card, Cross and Jones, Criminal Law, (18th edn, 2009, Oxford University Press) 630

[11]Dr. Hari Singh Gour, The Penal Law of India, (9th edn, 1980, Allahabad Law Publishers) 183

[12] Sutherland, Reid and Thompson, 'Discussion Paper on Insanity and Diminished Responsibility'(2003) 122, Scottish Law Commission, Edinburg University Press

[13]Indian Penal Code 1860, s 33. Act and Omission- The word 'act' denotes as well a series of acts as a single act; the word 'omission' denotes as well a series of omissions as a single omission.

CHAPTER 3 LANDMARK CASES AND LAW COMMISSION REPORTS

3.1 Introduction

According to Black Law Dictionary, insanity means any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility. Medical conception of insanity can be defined as a mental abnormality due to various factors existing in varying degrees. In wider connotation, it includes idiocy, madness, lunacy, mental derangement, mental disorder and every other possible form of mental abnormality known to medical science.

It recognizes sudden and uncontrollable impulse driving a man to kill or to cause injury within the scope of insanity. In law, insanity means a disease of mind which impairs the cognitive faculty i.e., the reasoning capacity of a man to such an extent so as to render him incapable of understanding the nature and consequence of his act. Emotional and volitional factors are excluded from the purview of legal concept of insanity.

Since fourteenth century, the defence of insanity has been recognized in English courts, when complete madness was considered as a defense to a criminal charge. By 1518, it was well established that the lack of guilty mind and intellect meant a lack of criminal responsibility. By the eighteenth century, the complete madness definition had evolved into the wild beast test. It was the first test to check insanity that was laid down in the case of Arnold Case in 1724.[1]

Justice Tracy, a 13th century judge in King Edward's court, first formulated the foundation of an insanity defence when he instructed the jury that it must acquit by reason of insanity if it found the defendant to be a madman which he described as a man that is totally deprived of his understanding and memory, and do not know what he is doing, not more than an infant, than a brute, or a wild beast, such a one is never the object of punishment

Later in the year 1800, the landmark trial of Hadfield set a new standard. The test laid down in this case is 'the ability to distinguish between good and evil' (Popularly known as Good and Evil Test or Insane Delusion Test). This decision was a landmark because it rejected two concepts previously held by the court.

First, it is not necessary for acquittal on the ground of insanity that be must be completely deprived of his mental faculties; second, it severed the tie between insanity and ability to

distinguish between right and wrong. In Bowler's case the House of Lords formulated the test of capacity to distinguish between right and wrong. However, this position of law was substantially modified by the McNaughton decision which formulates the basis of the present defense of insanity.

3.2 McNaughton Rule

The verdict of Daniel McNaughton became a legendary precedent for the law concerning the defence of insanity since it laid down an assertive test for determining the defence of insanity. The facts of the case narrate that Daniel McNaughton was charged for the murder of Edmond Drummond, Private Secretary of Sir Robert Peel, the then Prime Minister. McNaughton was suffering under an insane delusion that Prime Minister Sir Robert Peel was the only reason for all his problems.

He mistook Drummond for Sir Robert and accordingly, shot and killed him. During the trial, the accused pleaded not guilty on the grounds of insanity. The court after conducting due trial and upon the jury's report acquitted McNaughton on the ground of insanity.

The test prescribed that:

The accused in order to get exemption from criminal responsibility on the ground of insanity, must prove that, owing to a defect of reason due to a disease of mind, he did not know the nature and quality of his act, if he did know this, that he did not know that he was doing wrong.

The public outrage after his acquittal prompted the creation of a strict definition of legal insanity which is known as the McNaughton Rules. The wrath generated and criticism levelled against the judgment compelled for a debate in Parliament. Consequently, it was decided to take the opinion of the judges of the House of Lords with a view of getting the law clarified on the point.

Thus, accordingly on 19th June 1843 the judges were requested to give their opinion to the five questions put to them.

The extraction of the five questions is summarized as follows:

The first question was: What is the law respecting alleged crimes committed by person afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of

insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?

The second question was: What is the proper question to be submitted to the jury, where a person alleged to be afflicted with insane delusion respecting one or more particular subjects or person is charged with the commission of a crime, and insanity is set up as a defence?

The third question was: In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

The fourth question is: If a person under an insane delusion as to existing facts commits an offence inconsequence thereof, is he thereby excused?

The fifth question was: Can a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?

The following proposition may be drawn from the answers given by the judges:

Every man is presumed to be sane and to possess sufficient degree of reason to be responsible for his crimes, until contrary be proved to the satisfaction of the jury or the court.

To establish defence on ground of insanity it must be clearly shown that at the time of committing the act, the accused was labouring under such a defect of reason from disease of mind that he did not know the nature and quality of the act he was doing was wrong.

If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law, he would be punishable.

A medical witness who has not seen the accused previous to the trial should not be asked his opinion whether on evidence he thinks that the accused was insane.

Where the criminal act is committed by a man under some insane delusion as to the surrounding facts, which conceals from him the true nature of the act he is doing, he will be under the same degree of responsibility as he would have been on the facts as he imagined them to be.[2]

3.3 Irresistible impulse

This is a peculiar form of insanity. Its commonest form is impulsive homicidal maniac. Cases of this kind are very numerous, their chief characteristic being an entire absence of motive. The victims are usually those who are nearest and dearest to the person who is assailed with this violent temptation to say, who in many cases knows that the temptation is coming on and begs those around him to have him confined until the impulse has passed away. An impulse to be irresistible must be one which cannot be resisted, not merely one which is not resisted.[3]

The answers given by the judges in McNaughton Case have been the subject of much consideration and criticism by legal and medical writers ever since their birth. One of the common criticisms levelled against them is that they make no allowances for irresistible impulse, a species of insanity according to medical experts, which affects the will. According to them, insanity affects not only a man's belief but also, and indeed, more frequently his emotion and will. In such cases, according to them, although he was aware of the nature and quality of his act and knew it to be wrong, if he is irresistibly impelled to do what he did, he should be exempted from criminal responsibility.[4]

3.4 Durham Rule

In ***Durhum v. United State Durhum***[5] was charged of house breaking and he pleaded insanity in his defence. The Circuit Court of Appeals declared that the existing tests of criminal responsibility are obsolete and should be superseded. The existing tests included both the McNaughton Rule and the Irresistible Impulse test.

In this case the court evolved a new test, namely, simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. Mental disease and mental defect were defined.[6] Only because the accused was suffering from a mental disease or mental defect at the time, he committed the act in issue would not suffice. He would still be responsible for his unlawful act if there was no casual connection between such mental abnormality and the act.[7]

3.5 Indian laws on insanity

The law relating to insanity is laid down in the Indian Penal Code (IPC), which in substance is the same as McNaughton Rule. But, section 84 uses a more comprehensible term unsoundness of mind instead of insanity.

Section 84 of IPC states:

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 that he was doing or that it was wrong or contrary to the law.

To be exempted under this section only proof of insanity is not enough. It should be clearly proved that:

The accused was of unsound mind

He was of unsound mind at the time of the commission of the act, not before or after and,

He, by reason of insanity, was incapable of knowing the act and that what he was doing was wrong and contrary to the law. It is not sufficient to prove merely the presence of mental derangement or psychotic illness. The accused must prove that his cognitive faculties were so impaired that he was deprived of understanding the nature of the act or distinguish right from wrong; wrong here means moral and not legal wrong.

For want in this section, unsoundness of mind is used to describe only those conditions that affect the cognitive capacity of an individual. So, every person who is mentally ill is not relieved from his responsibilities. Here the law makes distinction between medical and legal insanity. Another requirement under law is that this unsoundness of mind should exist at the time of commission of the act. It is only the presence of insanity at the time of the act which matters and' not before or after that.

If insanity exists at the time of trial, it can only lead to postponement of trial but not to acquittal of the accused. Lastly if accused did not know the nature of the act, he was committing then he is not responsible for it. Similarly, if he knew the nature of the act but did not know whether it was wrong or contrary to the law, he is not liable. On the other hand, if the person did not know the nature of the act but knew that it is wrong as contrary to law, he is held responsible.

This section does not confer immunity from criminal liability in every case of insanity of the accused. Coupled with the insanity of the accused there must be the additional fact that at the time of the commission of the act, he is in consequence of the insanity, incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. It is settled principle that every person is sane unless contrary is proved and the onus of proving insanity is upon who is pleads it as a defence.

However, this requirement of proof is not heavy as on the prosecution to prove the offence and is based on balance of probabilities. Thus, the section not only recognizes the unsoundness of mind that makes the person incapable of knowing the nature of the act, or that the act was contrary to law or that the act was wrong but emphasis is laid on the fact that such incapacity must exist at the point of time when the alleged act was committed.

Previous conduct and conduct at the time of committing the offence and subsequent conduct are relevant under section 84. Prior and subsequent incapacity will not be taken into consideration while judging the defence of insanity but however such prior and subsequent incapacity would form part of relevant facts in recording of evidence.

The procedure for the trial of insane person is laid down in Chapter XXV of the Code of Criminal Procedure, 1973. Sections 328 to 339 of the Code of Criminal Procedure deal with the examination of an insane person by a medical officer, postponement of the trial of the case, released on bail, detaining in safe custody, resume the inquiry after the person concerned ceases to be of unsound mind or having capable of making his defence, acquittal on the ground of unsoundness of mind at the time of committing the offence and sending to a public lunatic asylum.

3.6 Burden of proof

According to 105 of the Indian Evidence Act, 1872, the burden of proof in a case where insanity is set up as a defence in a criminal charge is said to rest upon the accused person. In respect of criminal cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts.

This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution and accused is entitled to the benefit of every reasonable doubt.

Section 84 requires that if the plea of insanity put up by the accused is to be sustained, the accused has to establish by positive evidence that not only was he insane generally, but the fact that insanity existed at the crucial point of time when the offence was committed.

In the case of State of ***Madhya Pradesh v. Ahamadullah***[8], it was observed that burden of proof is on the accused to prove that he was suffering from unsoundness of mind at the time when he did the act.

The Supreme Court also upheld the principle in the case of ***S.W. Mohammed v. State of Maharashtra***[9] and said that the accused have to prove that he is insane. However, this requirement of proof is not heavy as on the prosecution to prove the offence and is based on balance of probabilities.

The apex court in ***ShrikantAnandraoBhosale v. State of Maharashtra (2002)7 SCC 748***, The burden of proving the existence of circumstances bringing the case within the purview of Section 84 lies upon the accused under Section 105 of the Indian Evidence Act. Under the said section, the Court shall presume the absence of such circumstances. Illustration (a) to Section 105 is as follows:

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

The apex court in ***Sudhakaran v. State of Kerala (2010) 10 SCC 582***, while referring to ***Dahyabhai v. State of Gujarat AIR 1964 SC 1563*** held as follows:

Thereafter, upon further consideration, this Court defined the doctrine of burden of proof in the context of the plea of insanity in the following propositions:

The prosecution must prove beyond reasonable doubt that the appellant had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

There is a rebuttable presumption that the appellant was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the appellant may rebut it by placing before the court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.

The Madras High Court in***. Maruthu v. State (2013) 2 MWN (cri)447(DB)*** observed that,

The Judgments, commencing from ***Bhikari v. State of UP***.[10] (supra), have been followed consistently by the Hon'ble Supreme Court and the law stands well settled on the following aspects:

The burden of proving commission of an offence is always on the prosecution and that the same never shifts. Equally well settled is the proposition that if intention is an essential ingredient of the offence alleged against the accused, the prosecution must establish that ingredient also.[11]

The burden of proving that he was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law is upon the accused.[12]

The standard of proof, which the accused has to satisfy for the discharge of the burden cast upon him under section 105 of the Indian evidence act, 1872, is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in his favour.[13]

The Madras High Court in ***Chellathurai v. state 2012 SCC Online Mad 891***, observed that the burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1872 and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding

The apex court in ***Hari Singh Gond v. State of Madhya Pradesh, (2008) 16 SCC 109, AIR 2009 SC 31*** held as follows:

The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.[14]

The onus, however, has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act

3.7 Critical analyses of laws on insanity in India

To invoke the benefit of **section 84**, it must be proved that at the time of commission of the offence, the accused was insane was of such a degree as to fulfil one of the tests laid down in section 84. These two tests are:

The accused was incapable of knowing the nature of the act,

The accused was incapable of knowing that the act was wrong or contrary to law.

The insanity should be of such a nature that it destroys the cognitive faculty of the mind to such an extent that a person is incapable of knowing the nature of his act or what he is doing

is wrong or contrary to law. The Calcutta High Court in ***Geron Ali v. King***[15] recognized the twin test of insanity under section 84. The court held that the accused gets the defence if he was incapable of knowing the nature of the act or when he did not know that what he was doing was either wrong or it was contrary to law.

He, however, does not get the defence if he knew that what he was doing was wrong. Again, the Calcutta High Court in ***Ashiruddin v. King*** allowed the defence of insanity though the accused had sacrificed his son of five years while acting under the delusion of a dream, believing it to be right, though he knew what he did was contrary to law in as much as he tried to conceal his act from the watchman.

Later the Allahabad High Court in ***Laxmi v. State***[16] did not agree with the view of Calcutta High Court and held that if the cognition and reason are found to be still alive and vibrant, it will not avail a man to say that at the crucial moment he had been befogged by an overwhelming cloud of intuition which cast deep dark shadows over his mental faculties.

In ***Hazara Singh v. State of Punjab***, the Punjab High Court observed that in order to earn immunity from criminal liability the disease, disorder or disturbances of mind must of degree, which should obliterate perceptual or volitional capacity. A person may be a fit subject for confinement in a mental hospital, but that fact alone will not permit him to enjoy exemption from punishment.

Crotchetiness of cranks, feeble mindedness, any mental irresponsibility, mere frenzy, emotional imbalance, heat of passion, uncontrollable anger or jealously, fits of insensate hatred, or revenge , moral depravity, dethroning , reason , incurable perversions, hypersensitive excitability, ungovernable fits of temper, stupidity, obtuseness, lack of self-control, gross eccentricity and idiosyncrasy and other similar manifestations, evidencing derangement of mental functions, by themselves, do not offer relief from criminal responsibility.

The Supreme Court in ***DayabhaiChhagan Bhai Thakkar v. State of Gujarat***[17] held that the crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of section 84 of IPC can only be established from the circumstances which preceded, attended and followed the crime.

In ***Sheralli Wali Mohammed v State of Maharashtra***[18] the Supreme Court held that the law presumes every person of the age of discretion to be sane unless the contrary is proved. The mere fact that no motive has been proved why the accused committed an offence, would not

indicate that he was insane, or that he did not have the necessary mens rea for the commission of the offence.

The Supreme Court in ***Shrikant Anandrao Bhosale v. State of Maharashtra***[19] held that when a plea of legal insanity is set up, the crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of section 84 of the IPC can only be established from the circumstances which preceded, attended and followed the crime. Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception.

Crucial Point of Time:

The Supreme Court in ***Shrikant Anand Rao Bhosale v. State of Maharashtra***[20] held that:

when a plea of legal insanity is set up, the crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of section 84 of the IPC can only be established from the circumstances which preceded, attended and followed the crime. Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception.

The Hon'ble Madras High Court in ***Velan v. State*** observed:

When a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

The apex court in ***Mariappan v. State of Tamil Nadu***[21], observed that it is now well settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the [appellant].

As concluded, we also reiterate that at the time of commission of offence, the physical and mental condition of the person concerned is paramount for bringing the case within the purview of Section 84.

3.8 Medical Insanity V/s Legal Insanity

The apex court in ***Hari Singh Gond v. State of Madhya Pradesh***, held as follows:

Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of unsoundness of mind in IPC. The courts have, however, mainly treated this expression as equivalent to insanity.

But the term insanity itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A court is concerned with legal insanity, and not with medical insanity.

The apex court in ***Surendra Mishra v. State of Jharkhand***, opined that an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity.

Expression unsoundness of mind has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability.

The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

As observed by the apex court in in ***Sudhakaran v. State of Kerala***, Insanity in medical term is distinguishable from legal insanity. Where the offender is suffering from the disease of schizophrenia, the medical profession would -----=undoubtedly treat the appellant herein as a mentally sick person (mentally insane). However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act (legally insane).

s3.9 Law commission report

The report highlighted the issues of Section 84 of IPC and stated that as soon as the test of insanity in the case of M'Naghten was established, it attracted criticism. The commission also considered the law of Australia, the USA, France, etc. and asked certain questions like:

Should the existing laws of insanity be amended or modified?

The test relating to the offender's mental capacity to know the act is wrong or to his incapacity to know that it is punishable?

Should the defence of insanity be available to cases where the offender was although aware of the wrongful acts yet still did such acts due to mental condition?

The commission answers the above questions:

Amending the existing laws will create more dependency on medical opinion and whether medical experts will be available throughout the country,

The majority held no change concerning the test relating to insanity. However, a few held that test should be knowledge of what is wrong and others that it should be knowledge of what is punishable by law,

To include "irresistible impulse" within the ambit of Section 84 of IPC, very little support was witnessed and the main objection was that it will make the trial more difficult for judges.

While holding the above-mentioned reasons, the commission did not find it fit to amend Section 84 of IPC.

3.10 Conclusion

The legal concept of insanity widely differs from that of the medical concept. Every legal insanity is medical insanity but every medical insanity may not be legal insanity. The concept of legal insanity differs considerably from the concept of medical insanity and it is not every form of insanity or madness that is recognized by law as a sufficient excuse. The distinction between medical insanity and the legal insanity lies in the cognitive faculty of a man that affecting the will or emotions.

It is only the legal insanity that comes within the purview of section 84 of IPC. There are several types of mental ailments, but none is recognized in law, unless the elements of section 84 are satisfied. When a person is not insane but is imbalanced and excited, and is probably

labelling under some kind of obsession or hallucination, section 84 cannot be of any help to him.

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[1]Garner, B. A. (2008). Black's Law Dictionary. 8th Ed. p. 810
[2] (1812) 1 Collinson Lunacy 673
[3] R. v. Arnold, (1724) 16 St. Tr. 695
[4] R v Hadfield, (1800) 27 St. Tr. 128
[5] Durham v. United States, (1954) 214 F.2d.862
[6]LuvanaVaghumalKherajmal v. State, 1955 CriLJ 63 (Gujarat)
[7] R v. Daniel McNaughton (1843) Revised Reports Vol 59:8ER 718 (HL)
[8] AIR 1961 SC 998
[9] AIR 1972 SC 216
[10] AIR 1941 Cal 129
[11] AIR 1949 Cal 182
[12] AIR 1954 Punj. 104
[13] AIR 1959 All 534
[14] AIR 1972 SC 2443
[15] (2002)7 SCC 748
[16](2002)7 SCC 748
[17]2016 SCConline Mad 11707
[18]CDJ 2013 SC 232
[19](2008) 16 SCC 109mAIR 2009 SC 31
[20](2011) 3 SCC(Cri.) 232
[21](2010) 10 SCC 582

CHAPTER 4 MENTAL HEALTH AND ROLE OF PSYCHOLOGISTS

4.1 Introduction

For a criminal offence to occur, two main elements are required; 'Actus Reus' and 'Mens Rea' i.e. 'guilty act' and 'guilty mind'. Therefore, it is crucial for the mind to be at fault to constitute a criminal act. As the legal maxim goes; *Actus non facitreum nisi mens sit rea* which literally translates to:

An act does not make a person guilty unless there is criminal intent

The concept of insanity by defence has been in existence ever since the ancient Greek and Roman era. Few of the first recognitions of insanity as a defence to a criminal activity was recorded in the 1581 English legal treatise that stated:

If a natural fool, a madman, or a lunatic in the time of his lunacy kills someone then they cannot be held accountable for that crime. An act committed without a guilty mind cannot properly be called a crime, therefore a person who is of unsound mind is incapable of committing a crime as they lack the mental capacity to develop the required mental element. Criminal liability is excepted for such people as they don't have the mental capability to understand the wrongful nature of such act and are unaware of the legal consequences of their actions.

There are a number of tests that are conducted to determine the liability of such accused persons, including various psychiatric tests. Although this defence has many positive aspects to it such as preventing capital punishment for truly mentally ill people who are unable to understand the gravity of the situation, this defence is also often times misused by people to avoid punishment as many difficulties arise when determining the mental state of the accused when committing a crime.

Insanity pleas had a success rate of almost 17% in Indian High Courts in the last 10 years. The primary step of safeguarding persons of unsound mind is to determine if the accused are sane or not, that takes place in the form of elaborate legal procedures that involves the help of various medical professionals. This legal procedure that takes place under Sections 328-339 will be discussed in detail in this research paper.

4.2 What are the Various Tests Used to Determine a Person as Legally Insane?

According to the Code of Criminal Procedure, when a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing.

In such cases, the burden of proof lies on the accused to establish that he is suffering from 'insanity' or unsoundness of mind. In the case of ***Gurjit Singh v. State of Punjab***[1] where the accused was convicted of offences punishable under Sec. 498A of the IPC, the court stated that the plea of medical insanity must first be determined by recording medical evidence.

The assessment of legal insanity can be classified into sources of testimonies, mainly being lay testimonies from the defendant and testimonies from the psychiatrist. The McNaughton's Rule is an important concept upon which Section 84 of the IPC that deals with Act of a Person of Unsound Mind is based on. If to define the McNaughton Rule in the simplest form, it would mean that every man is presumed to be of sane mind and reasonable enough to be responsible for his own crime, unless proven otherwise.

Similarly, Section 84 of the Indian Penal Code states that Nothing is an offence which is done by a he who, at the time of committing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either contrary or wrong to law.

The essentials for a person to be declared legally insane under Sec 84 of IPC include:

- The person must be incapable of knowing the nature of the act
- The person must be incapable of knowing if the act he/she committed is wrong
- The person must be incapable of knowing that the act is contrary to the law

Similarly, under the McNaughton Rule, the accused is considered to be insane at the time of committing the act if they did not know right from wrong and did not understand the moral nature of the crime they were committing. It is important to note that mere 'medical insanity' is not enough to exempt a person from being legally prosecuted.

There is a distinct difference between medical insanity and legal insanity; A person can be considered medically insane if they suffer from any mental illness. On the other hand, when dealing with legal insanity, it is essential that the person not only suffers from a mental illness but also has losses of their reasoning power at the time of committing the crime.

4.3 Some other effective test to determine insanity include:

Wild Beast Test

This test came up in the 18thCentury in a British case of ***Rex v. Arnold***[2]]where the accused shot and wounded a British Lord. The court held that the defendant cannot be held accountable if they understood the crime no better than a brute, an infant, or a wild beast. To this day courts conduct tests based on the same principle and follow a similar logic.

Good and Evil Test

This test was originated from the case of ***R v. Madfield***[3] in which the accused was charged with treason for attempting to kill the king. The defended was acquitted on the basis that he could not distinguish between good and evil.

Durham Rule

This test came into prominence after a 1954 American case called ***Durham v. U.S***.[4] This test can be used in addition with the McNaughton Rule and the Irresistible Impulse Test. For this test to be valid, two essentials must be fulfilled; firstly, the accused must possess a mental illness or infirmity. Secondly, the criminal act must be caused by that mental illness or infirmity. Although currently this test is only limited to New Hampshire, in the near future courts in India could implement this case too.

Irresistible Impulse Test

The underlying concept of this test is that the defendant should not be held accountable for a criminal act if they could not control their actions despite knowing that the actions were wrong. Challenges occur in this test as it becomes difficult to prove whether the accused had any control of his/her actions.

4.4 What is the Legal Procedure Involving Insanity as a Defence?

The table displayed below provides an outline of the legal procedure that takes place in cases of the accused being suspected of insanity:

The provisions dealing with accused persons of unsound mind are under chapter 25 from Section 328 to 339 of the Code of Criminal Procedure, 1973.[5]

Section 328: Procedure in case of accused being a lunatic

Clause 1- When an enquiry is conducted by the magistrate and he believes that the examinee is unable to give his defence due to unsoundness of mind, then magistrate will enquire about the unsoundness of mind of the accused by directing a district civil surgeon or a medical officer to examine him/her. The medical office shall be considered a witness and the examination shall be reduced in writing.

Clause (1A): If the accused is found to be unsound mind, then the he/she shall be referred to a psychiatrist or clinical psychologist. The medical officer will then inform the magistrate if the accused is suffering from unsoundness of mind or mental retardation.

Clause 2: The accused may be dealt with the Magistrate in accordance with **Section 330** in pending inquiry and examination.

Clause 3: If such Magistrate is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under **section 330**. Provided that if prima facie case is found against the accused person, then he shall postpone the proceeding with the opinion of the psychiatrist or psychologist for the treatment of the accused.

Clause 4: If the accused is suffering from mental retardation, then he shall be examined whether he can defend himself. If the accused is found incapable then the Magistrate shall deal with the accused in the manner provided under Section 330.

Section 330*: deals with release of the person of unsound mind pending in trial or investigation.*

Sub section 1: Whenever a accused of unsound mind is found then he shall be released whether the offence is bailable or not. Provided that the accused is suffering from mental retardation or unsoundness of mind which does not require in-patient treatment and there is a

friend or relative who takes responsibility of that person will not cause injury to himself or any other person.

Sub section 2: If an offence is such that where a bail cannot be given then the Magistrate shall order such person to be kept at a place where he can get regular psychiatric treatment and report action taken to the State Government. Provided that no order of detention shall be given to such person in a lunatic asylum otherwise than in the accordance to the rules of the State Government under Mental Health Act,1987.

Sub section 3- When a person is found to be under Section 328 or Section 329, the Magistrate or the Court keeping in mind the nature of offence committed decide whether the accused has to be released or not. Provided that the Magistrate or Court on the opinion of medical specialist decide whether the accused should be discharged if such release may be ordered with sufficient security is given that the accused will not cause injury to any person or himself. If the Court or Magistrate cannot discharge the accused then he can transfer him to a residential place where the accused is provided with proper care and appropriate training and education.

Section 332: *Procedure of accused person appearing before Court or Magistrate*

Sub section: If the Magistrate or Court finds the accused person of being defending himself then the inquiry or the trail shall be proceeded.

Sub section 2: If the Magistrate or Court considers that the accused is being able to make defence then they shall act according to **Section 328** or **Section 329**. If the accused is of unsound mind and is not able to defend himself then they shall deal the accused according to the provisions of **Section 330**.

Section 338*: Procedure followed when a lunatic person detained is declared fit to be released.*

Sub section 1: If the accused is detained and the visitor or inspector general certifies that the accused will not harm himself or any other person then the State Government orders him/her to be released, to be detained in custody, and transferred to a public lunatic asylum. For sending the accused to an asylum there should be a commission that constitutes a judicial officer and two medical officers.

Sub section 2- Such commission shall make a formal inquiry into the state of mind of that person and take evidence that is necessary and shall report it to State Government, which may order him release or detention.

Section 339- *Delivery of lunatic to care of relative or friend*

Sub Section 1- Whenever any relative or friend of any person detained under the provisions of **section 330** or **section 335** desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall:

- be properly taken care of and prevented from doing injury to himself or to any other person
- be produced for the inspection of such officer, and at such times and places, as the State Government may direct
- in the case of a person detained under sub-section (2) of **section 330**, be produced when required before such Magistrate or Court,
- order such person to be delivered to such relative or friend.

Sub Section 2- If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the magistrate or Court, and, upon such production the magistrate or Court shall proceed in accordance with the provisions of **section 332**, and the certificate of the inspecting officer shall be receivable as evidence.

Ratan Lal v. State of Madhya Pradesh

In this case the appellant was accused of setting fire to grass in an open land in Nemichand and was charged under **Section 435** of the IPC. After being examined by psychiatrists, the report showed that he was suffering from lunatic depression and psychosis, and was termed as a 'lunatic' in terms of the Indian Lunacy Act of 1912.

The High Court found the accused guilty of the offence, however the Supreme Court later set aside the conviction on the basis of medical evidence and the unsound behaviour of the accused on the day of the crime. Therefore, indicating that the accused was insane within the meaning of Section 84 of the Indian Penal Code. Section

Shrikant's AnandraoBhosale v. State of Maharashtra[6]

In this case the accused, who was a police constable, hit his wife on the head with a stone after which she died on the way to the hospital. After investigating, the accused was charged with murder and insanity was pleaded as a defence. The court observed that the accused had a family history of mental illness and that he himself was undergoing treatment for a mental illness too. Along with supporting evidence that the motive for the murder was weak, the Court held that the accused was not guilty as he suffered from paranoid schizophrenia and did not understand the gravity of the crime that he committed, therefore giving him the benefit of **Section 48** of the Indian Penal Code.

4.5 The need to reform

Insanity as a defence has lost its real purpose and has now evolved as an instrument for criminals to get away from legal accountability and therefore the judiciary must revisit the concept of insanity and bring back the soul of the law.

Although the mechanism is doing efficient work to determine the illness of an individual, there are certain instances where an actual criminal gets acquittal and an insane person gets imprisonment. Therefore, these errors must be rectified and prevented.

The tests applied to determine insanity are very lenient and so obsolete that it often relieves a violent criminal from the punishment of crime he committed and places an actual insane person under detention and sometimes under imprisonment for a long duration of time.

The current mechanism instead of placing an insane person under medical assistance places such a person under police or judicial custody, which is a human rights violation of the ill

person. Since the Indian courts often take much time in reaching a decision, an innocent person stays in prison for no reason except for his mental illness.

The responsibility to administer mentally challenged persons shall be made mandatory by professionals belonging to the medical field since numerous persons may act as a threat to society and therefore such persons must be kept under observation until they recover.

When a person pleads the defence of insanity, the courts must, after determining the gravity of the offence, send a person under medical supervision for some time, and the court shall ask the medical fraternity to determine if such person is insane.

The need for psychiatrist hospitals must be encouraged, or a separate hospital for persons who plead the defence of insanity must be established where the doctors must be well versed with determining the actual mental capability of the accused. The medical assistance at such hospitals must be free of cost or nominal charges must be charged with the main aim of assisting the patient.

4.6 Conclusion

The defence of insanity is a serious issue in contemporary times since the defence is used as a tool by hardened criminals to get away from criminal liability. The defence of insanity has numerous issues like difficulty in determining the mental incapacity of an individual. The process to determine such insanity is also very slow. Therefore, it creates an issue not only for those who are liable for an offence but also for those who are innocent and have some mental disorder.

The current test to determine the insanity of a person is not very reliable since the court is concerned with only legal insanity which is determined by the acts of a person before, during, and after committing an act that is contrary to law.

The laws of insanity need to be amended or abandoned since it has caused many issues in the legal mechanism. The defence of insanity plays a significant responsibility in protecting the human rights of the individual who is suffering from some mental disorder and therefore the task of determining the insanity shall be performed with utmost accountability. The procedure dealing with accused who are of unsound mind is mandatory in nature and must be dealt with utmost care and perfection. Experienced medical professionals must be taken help of in determining the soundness of mind of an accused person. It is essential to be precise in determining the sanity of a person who is accused of a crime as incorrect reports may lead to terrible outcomes such as persons of unsound mind facing capital punishment. It is important

to understand that a person who is suffering from insanity that commits a crime is not a criminal. They do not deserve punishment, but instead require medical help and the Indian legal system must have a criminal procedure that ensures that happens.

[1]Gurjit Singh v. State of PunjabICL 2019 SC 1340: 2020 (1) JLJR 1: JT 2019 (10) SC 601: 2020 (1) PLJR 44
[2]Rex v. Arnold (1724) 16 How. St. Tr. 765
[3] R v. Madfield (1758) 97 ER 426, (1758) 1 Burr 517
[4]Durham v. U.S. 94 U.S. App. D.C. 228, 214 F. 2d 862 (1954)
[5]Code of Criminal Procedure (CrPc), s. 328(1)
[6]ShrikantAnandraoBhosale v. State of MaharashtraAIR 1959 Madhya Pradesh 203 (V 46 C 64)

CHAPTER 5 CONCLUSION AND SUGGESTIONS

Legal insanity is different from medical insanity because in legal insanity the court is concerned with the delusions which the accused suffered during the commission of the crime and that the accused is a person of unsound mind. Each person who is suffering from insanity cannot plead the defence of insanity in a court of law and only a person whose mental impairment made it impossible to judge if the acts committed by him are contrary to the law can plead the defence of insanity in a court of law.

In other words, a person who suffers from mental illness at all times is called mentally insane and a person who suffers from mental illness and who has lost his ability to understand the nature of the offence committed by him shall be referred to as legal insanity.

When a person is subjected to irregularities of mind, delusions or irresistible impulses, or any traits of a psychopath, all of these shall constitute medical insanity and a person will only get the benefit of Section 84 of IPC if he/she proves that he/she was suffering from any of such impairments at the time an unlawful act was committed.

In the case of ***Surendra Mishra vs State of Jharkhand***, 2011, the Supreme Court of India held:

Every person who is suffering from mental disease is not ipso facto exempted from criminal liability,

Section 84 *of the Indian Penal Code is to prove legal insanity and not medical insanity,*

The burden is on the accused but he is not required to prove the same beyond all reasonable doubt, but merely satisfy the preponderance of probabilities.

In the case of The ***State vs ChhotelalGangadinGadariya, 1957***, the court observes that they are only concerned with ‘unsound-ness of mind’ as defined in Section 84 of IPC and not with ‘unsoundness of mind’ as understood in the medical science. A similar view was taken by the court in ***Surendra Mishra v. State of Jharkhand***, 2011, and ruled that the accused who seeks pardon under Section 84 of IPC shall prove legal insanity and not medical insanity.

The issues with the defence of insanity

The misuse of the defence has led to many countries abandoning the defence of insanity. Countries like Germany, Argentina, and Thailand, have abolished the defence of insanity. The current understanding of insanity and understanding of neurology and absence of impulse contract, and then conducting rationality tests, is an obsolete manner of determining insanity.

There are high chances of such defence being misused by the criminals since it is almost impossible to determine the insanity of a person based on acts committed by him/her and therefore the defence lawyer can take advantage of this defence to free the actual wrongdoer from imprisonment.

The insanity defence simply unsettles the foundation on which the law was built, i.e. to punish the wrongdoer, and this is done by misusing the defence of insanity in a court of law when a criminal gets acquittal by pleading insanity.

Proving insanity is a difficult task for the accused since the burden to prove insanity lies on the accused. To prove legal insanity is a difficult task unlike medical insanity since to establish legal insanity, the accused has to present concrete evidence and sometimes the accused fails to establish insanity and the court imprisons the accused and an innocent should be getting medical assistance undergoes imprisonment for a crime which he/she never intended to do.

Everything in a case concerning depends upon the understanding of facts and evidence before the judge, and if the judge is not satisfied, an actual insane person may suffer incarceration therefore, the understanding and knowledge of the judge is an essential part.

It can be concluded that the defence of insanity has lost its actual foundation and now it is either a way of getting away from the liability for a crime or may attract imprisonment which is not even lawful.

Criminal law aims to punish the guilty person who possesses ‘actus reus’ and ‘mens rea’ i.e. guilty act and guilty mind. However, in cases of insanity the accused usually does not possess the required ‘mens rea’ and therefore it is not justifiable to punish such a person.

The defence of insanity is often criticized after being confused between medical insanity and legal insanity; however, the courts are only concerned with legal insanity.[1] It is almost impossible to determine if the person was insane at the time of the commission of the offence by the physiatrist.

The Intent and motives that propel an individual to indulge in criminal activity are the centre of the study of criminal law and criminology. The nature of this intent and motive and the ability of its formation as such, is often not in question and a trial conducted for deciding the culpability of an accused is in most instances a matter of legal evidence. However, it is pertinent to note that the ability of an accused; affected by neurological and psychological limitations; to form black and white motives and intentions is debatable. Investigating a crime which involves a suspect with history of mental illness invites several grey areas which require the intervention of experts in the field.

Forensic psychiatric experts offer critical insight into deciphering the context to any criminal conduct and actions of a mentally implicated individual, thus paving a way to establish stronger evidence or weaking the evidentiary value of existing evidence. However, at the stage of investigation their involvement is limited and completely dependent on whether the investigating agency calls for their expertise.

The concept of responsibility and Mens Rea form the fundamentals of the Penalisation of convicted offenders and their possible rehabilitation. Punishing someone who is innocent or even someone who has a reasonable possibility of being innocent is a violation of basic human rights. The assessment of an individual's psychological makeup can be indicative of two directions of clinical evaluations, in either establishing that certain sub-psychotic tendencies aggravate the possibility of the commission of the crime or second that the individual is not capable of forming a rational and conscious decision to commit a crime3. In either case, in a criminal trial the question of if clinical psychological assessment is or should be called upon for commenting upon the psychological state of an accused and narrowing the purview of the trial, is mostly subject to the invocation of insanity defence under Section 84 of the Indian Penal Code, 1860 ("IPC").

Insanity defence has been in existence since many centuries; however, it took a legal position only since the last three centuries. There were various tests relied upon by Indian Psychiatrists used to declare a person legally insane such a Wild Beast test, The Insane Delusion test, and "test of capacity to distinguish between right and wrong." These three tests laid the foundation for the landmark Mc Naughten rule.

In India, barring the insanity defence outlined in **Section 84** of the Indian Penal Code, forensic psychiatrist experts are not often put under the spotlight in a criminal trial. However, the moment an accused invokes his defence under Section 98 of the Indian Penal Code, the forensic psychiatrist expert is empowered with influencing the evidence in his capacity as an expert witness before the court under **Section 45** of the Evidence Act, 1872 ("Evidence

Act"). The training for and the existing regulatory guidelines governing practice of forensic psychiatric experts in India is virtually non-existent. However, there are certain codes of conduct that have evolved over time which guide such experts in their conduct.

Under the Evidence Act an expert witness under Section 45 of the Act may testify to either a fact or to their opinion in a field of expertise. A forensic psychiatrist expert may either be aa fact witness or an expert witness. The role of the forensic psychiatrist is to "assist the trier of fact to understand the evidence or to determine a fact in issue." When a court trying an offence is faced with the questions revolving around the insanity defence it may call upon a forensic psychiatric expert to be an expert witness when it needs a deeper understanding and technical knowledge on the specific psychological subject. On the other hand, when the court requires the psychiatrist to testify as to the mental competence of the Accused persons or suspects, the psychiatrist has to opine as to such fact and is deemed a fact witness. Both testimonies only assist the court in reaching its own independent conclusion as to the culpability of an individual.

Indian Courts have always valued the expert opinion of a psychiatrist when it comes to opining upon the mental condition of an accused whose psychological health is in question. The Hon'ble Madras High Court in a case involving a convict accused of murder u/s. 302 and sentenced to life, while heavily relying upon the testimony of the psychiatric expert, acquitted the Accused and directed him to be placed in a mental health facility for treatment.

In another case of murder **u/s. 302**, the Hon'ble Bombay High Court acquitted the Accused, who according to the report of the Medical Officer at the Prison, was mentally infirmed. The Hon'ble High Court noted that the investigating officer failed to produce the report of the psychiatrist who had examined the accused and accordingly the benefit of the doubt favoured the Accused.

Mc Naughten rule and Section 84, Indian Penal Code.

The Mc Naughten Rules (the "Rule") stem from an age-old case of delusion and confusion marking a culmination in the development of law of insanity in common law. For the first time the court decided to employ an unusual procedure to ascertain the law on the subject. A summary of the same has been briefly set out as under;

Accused is sane unless otherwise proved

The accused must have been operating under the defect of his insanity at the time of commission of the crime

If the accused, at the time of commission of the crime, was aware of the fact that the act he is doing is in fact a crime, he is punishable

Partial delusion is to be treated as Clinical Delusion

Forming a vast based precedent in common law countries, primarily due to lack of any institutionalized alternatives, the McNaughten rules became the letter of the law at the time and also formed the basis of **Section 84** of IPC. Despite an attempt by the Law Commission of India to revisit the provision in its 42nd Report, the Provision remains unchanged and outdated. The section embodies the maxim 'Furiosinullavoluntasest" meaning that a person with mental illness has no free will.

The 'Forensic psychiatry assessment proforma' is the only tool of forensic assessment that features some degree of standardization and is utilized for the purpose of submitting psychiatric evaluations to the courts. The 'Detailed Workup Proforma for Forensic Psychiatry Patients-II' is a tool that has been utilized by the National Institute of Mental Health and Neurosciences for the purpose of conducting semi-structured evaluations of forensic psychiatric cases for a considerable amount of time. This is updated on a regular basis in order to conform to the ever-changing legal requirements.
In accordance with the norm and, by extension, **Section 84**, it is established that a person's guilt is frozen if they are able to differentiate between what is right and what is wrong. Nevertheless, according to the findings of a number of studies and the knowledge of a number of psychiatric and legal specialists, it is a well-known truth that "insanity does not only, or primarily affect the cognitive or intellectual faculties, but affects the entire personality of the patient, including both the will and the emotions".[2]

On the other hand, the focus of a court of law is not on medical insanity but rather on "legal insanity." Legal insanity is solely concerned with the mental state of the accused at the time of the commission of the offense; it does not take into account any other factors. On the other hand, when an accused person asserts his right to a defense under Section 84 of the Indian Penal Code, he brings a second component to the criminal proceedings, which is the demonstration of his incapacity. The burden of proof to prove that an accused person committed the act beyond a reasonable doubt lies with the prosecution. However, the burden of proof to prove that the accused person was incapacitated due to his insanity, which qualifies him under section 84, lies with the accused person. It is not the responsibility of the prosecution to disprove the insanity defense; rather, it is the responsibility of the accused to show with absolute certainty.

An approach that is based on evidence is becoming increasingly prevalent in the fields of psychiatry and law, as well as in the rest of the medical profession. What Sackett et al. mean when they say that evidence-based medicine is "the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individuals" is the definition of evidence-based medicine. Sackett and his colleagues emphasized the point that all clinical evaluations are, to a certain extent, individualized, and that this happens because of the specific elements that are present in each individual instance.

For all those who plead insanity, standard procedure is absolutely necessary, one which sadly does not exist in India. However, the evolved role and duties of forensic psychiatrists have come in to being through judicial rulings and guidelines which are detailed as follows:

- The psychiatrist has a duty to educate the court and clarify issues with all honesty and objectivity.
- The Psychiatrist must review all accompanying legal documents and ascertaining authority including all accompanying evidence.
- As in any forensic and clinical evaluation, the offender must be interviewed at the earliest stage. Expert must have a detailed note on the history of illness, substance abuse, trauma and child trauma.
- By employing open ended questions and specific incident-oriented hints the Accused must be aided to give the time-to-time account of the incident. The comprehensive inquiry should be done on his cognition, behaviour, emotions, and perception, prior, during, and immediately after the commission of the offense.

The most important deduction of this entire process is the formation of the opinion of whether the Accused could know if the act he was doing was in fact right or wrong, something which proves to be the most difficult task for a psychiatrist.[3]

Final diagnosis of the Psychiatric health of the defendant.

Suggestion

In contrast to the United States, the field of forensic psychiatry in India does not have any defined subspecialties or sub disciplinary areas of expertise. In addition, there is a lack of sources for the training of the same. A harsh reality in the Indian criminal justice system is that every case and investigation that involves a forensic psychiatric opinion is not without fault or grey areas. This is a fact that cannot be avoided. It is for this reason that the following suggestions are made:

- Revisiting the concept of criminal responsibility and thus amending Section 84 of the IPC, specifically to eliminate drawing the conclusion of "Right" or "wrong".
- In order to amend the Penal provision, there must be more reliance on Experts in forensic Psychiatry and Scholars with extensive research and Practice in the field.
- Experts in the field need to be trained in India. To adapt a formal manual compiled with Sociological and Psychological considerations which dissects every possible theoretical aspect of Forensic Psychiatry along the lines of the American Journal of Psychiatry and Law.

- To Develop Forensic Psychiatry Training centres to teach Legal, forensic as well as clinical considerations.
- Licensing certain niche psychiatrist who are experienced enough to provide an opinion, varying on the degree of severity of crime, the gradient of license must vary.

There is a great deal of ambiguity and darkness surrounding the landscape for forensic psychiatrists. For the purpose of constructing a robust system, there is a lack of a solid law, good research, and good sources. Given the extensive academic literature on the subject, the fact that numerous researchers have emphasized the necessity of revisiting the entire procedure, and the presence of substantial international material, it is time for sociologists and psychologists to combine their respective areas of expertise in order to establish a target precedent on the subject. This will provide assistance in reducing the uncertainty that is associated with determining the culpability of a suspect.

[1] Khushi Agrawal, Insanity as a defence under the Indian Penal Code *available at:* https://blog.ipleaders.in/insanity-defence-indian-penal-code/

[2]Aryan Kumar, Insanity Defence: A Loophole for Criminals *available at:*https://www.ijlmh.com/paper/insanity-defence-a-loophole-for-criminals/#:~:text=Section%2084%20of%20the%20Indian,then%20he%20may%20escape%20punishment.

[3]Waseem I. Pangarkar , Chirag Naik and Vaijayanti Sharma, The Interplay Of Insanity Defense And Forensic Psychiatrics In Indian Criminal Law *available at:*https://www.mondaq.com/india/crime/1124336/the-interplay-of-insanity-defense-and-forensic-psychiatrics-in-indian-criminal-law-

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