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Insanity as a Defence in the Indian Penal Code: "Need for Reforms"

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Abstract

Insanity is a recognized and affirmative defense in criminal law and it absolves a person from alleged criminal liability. But how to determine the insanity of the person has always been a question of fact. To hold a wrong doer criminally liable a test of his mastery of mind was considered suitable ie whether that person was in position to differentiate between good and the evil acts and if he was able to do that then holding him liable for his criminal acts was considered good and legal but not otherwise. Thus determination of intellectual ability of a person was important to hold him liable for his acts made punishable by law. Traditionally insanity has been measured by a cognitive test. Under this test the "inquiry" is whether the troubled mind was so deranged as to render the person wholly and absolutely incompetent to comprehend the nature and quality of the act done by the person. This criterion was formulated when the psychiatric knowledge was quite primitive. But it failed to account for one who by reason of mental illness was unable to control his conduct even though his cognitive faculty seemed impaired. When this test was evolving it was thought that all the mental faculties were simultaneously affected by mental illness. This research paper will tries to find out the situations of insanity with the help of case laws and tries to differentiate between right and wrong in doing the criminal act by the accused and take the benefit of defence under section 84 of the Indian Penal code.

Introduction

Insanity is a recognized and affirmative defense in criminal law and it absolves a person from alleged criminal liability. But how to determine the insanity of the person has always been a question of fact. To hold a wrong doer criminally liable a test of his mastery of mind was considered suitable ie whether that person was in position to differentiate between good and the evil acts and if he was able to do that then holding him liable for his criminal acts was considered good and legal but not otherwise. Thus determination of intellectual ability of a person was important to hold him liable for his acts made punishable by law. Traditionally insanity has been measured by a cognitive test. Under this test the "inquiry" is whether the troubled mind was so deranged as to render the person wholly and absolutely incompetent to comprehend the nature and quality of the act done by the person. This criterion was formulated when the psychiatric knowledge was quite primitive. But it failed to account for one who by reason of mental illness was unable to control his conduct even though his cognitive

faculty seemed impaired. When this test was evolving it was thought that all the mental faculties were simultaneously affected by mental illness.

A decision as to an individual's mental condition may utilize expert testimony, and such testimony frequently produces conflicting opinion. Psychiatrists complain that the law speaks as if insanity were a specific disease. Actually, insanity is not a disease but a state of mind that may be arrived at by various medical and legal routes. Although there is agreement between psychiatrists and lawyers that the severely emotionally disturbed person should be protected against the consequences of wrongful act but there is no common consensus about how to reach that conclusion.

Insanity is a legal term denoting that the individual is so confused and deranged as a result of mental illness that he should not be held legally responsible for his actions which otherwise are punishable in law. For such deranged state of mind, mental health professionals use the term "abnormality" instead of insanity; and they use it in a much broader sense than it is used by lawyers and refer to almost anything from simple anxiety to dementia (which is interpreted as synonymous with gross mental deterioration). The medical science relies on the illness perspective, in which the idea is to classify all known mental diseases in a logical and consistent manner. The law is concerned with the question of liability rather than the type of distress a person is in. The prevailing test of law is not "Is this a paranoid or mania?" but, "Did the accused know from wrong?" Another test is whether a person who knows that the act is wrong, but does it anyway compulsively, on an "irresistible impulse". [1]

(A) DEVELOPMENMT OF LAW RELATING TO INSANITY UP TO Mc' NAUGHTON RULES

The earliest case on law of insanity is of Rex v *Arnold*[2] . Edward Arnold was tried for wounding and making an attempt on the life of Lord Oslow. There was enough evidence of the mental derangement of the accused. Tracy J in directing the jury made the following observation:

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. On the other side we must have cautious approach that it is not every kind of frantic humor, or something unaccountable in a man's action, that points him out to be such a mad man as is exempted from punishment; it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing , no more than an infant , than a brute or wild beast. Such a one is never the object of punishment.

Thus, the wild beast test was evolved and emphasized by Tracy J. in year 1724

In *Lord Ferrers*[3] case Earl Ferrers was tried before the House of Lords for the murder of his steward, having deliberately shot him in revenge for some time imaginary wrong. In defence he alleged his insanity. The House of Lords had relied their decision that if there be thought and design; a faculty to distinguish the nature of

[1] Subash Chandra Singh "Insanity Defence: the Psychiatry Neglected"99 *Criminal Law Journal* 65 (1993).
[2] (1724) 16 St. Tr. 695 .
[3] (1760) 19 St.Tr. 885

actions; to discern the differences between moral good and evil; then, upon the fact of the offence proved, the judgment of the law must take place. The Earl was found guilty by the House of Lords.

In *Hadfield* [4] case Hadfield was charged for treason in attempting the assassination of King George III. The case was tried before Lord Kenyon. The attorney general who prosecuted the case, insisted upon the old test namely "the total deprivation of understanding and memory"; but the counsel for the accused insisted that insanity was to be determined by the fact of fixed insane delusions, and that such delusion under which the defendant suffered were the direct cause of his crime. He pointed out that besides persons wholly deprived of their understanding, whether permanently or temporarily which overpowers the faculties of their victims, there were others where the delusions were circumscribed and did not overpower all the intellectual faculties of the sufferers.

The eloquence of Erskine was successful in obtaining the verdict of "not guilty" from the jury and the accused was acquitted. Thus, in this case the delusion test was evolved. The former tests regarding the principle of liability were held to be wide.

In *Bowler's*[5] case Le Blanc J observed that it was for them to determine whether the accused when he committed the offence was incapable of distinguishing right from wrong, or was under the influence of any illusion in respect of the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit. This is the first time the test of "distinguishing right from wrong" was formulated by the judge. The accused was convicted and executed.

In ***Bellingham's***[6] case accused was charged of murder and a plea of insanity was set up by the accused. Lord Mansfield C.J. who tried the case at the Old Bailey used both the phrases namely, "right or wrong" and "good and evil" synonymously. He observed;

The single question was whether when he committed the offence charged upon him , he had sufficient understanding to distinguish good from evil , right from wrong and that murder was a crime not only against the law of God but against the law of the country.

In ***Regina* v *Oxford*** [7] case accused was tried for treason wherein he had discharged a loaded pistol at Queen Victoria. The learned CJ charged the jury that, upon the whole question was whether the evidence showed that the prisoner was insane at the time the act was done, whether the evidence proved a disease which made him quite incapable of distinguishing right from wrong . Oxford was acquitted on grounds of insanity.

Thus it is found that ever since Bowler's[8] case, the courts had laid more stress on the test of right and wrong though they had not yet definitely formulated this test in clear terms.

In ***Daniel Mc'Naughton***[9]*also called* ***M'Naghten*** the delusion test formulated in *Hadfield's* case and the knowledge of right and wrong test evolved in the latter cases thus afforded two tests for insanity. An advance

[4] (1800) 27 St.Tr. 128.
[5] (1812) 1 Collinson Lunacy 673.
[6] (1812) 173E.R.94
[7] (1840) St. Tr. 847.
[8] *Supra* note 5.
[9] (1843) 4 St. Tr.847.

was made further in the law of insanity in this well-known case of M'Naghten, a Scotsman who in 1843 was tried for the murder of Edward Drummond ,the Private Secretary to Sir Robert Peel , the then Prime Minister of England . Daniel M'Naghten was under an insane delusion that Sir Robert Peel had been persecuting him and mistaking Drummond for Sir Robert Peel he shot and killed him. He was tried in London before Tindal C.J. and two other judges and was defended by Mr. Cockburn who later on became the Lord Chief Justice of England. The accused pleaded insanity in his defence and the medical evidence produced showed that the prisoner was labouring under a morbid delusion which carried him away beyond the power of his own control. The Chief Justice in his charge to the jury said that the question for them to be determined was whether at the time of committing the act he had or had not the use of his understanding so as to know that he was violating the laws of God and man. The jury acquitted the prisoner on the ground of insanity.

The trial of M'Naghten and his acquittal caused considerable sensation and was made the subject of debate in the House of Lords and as result the House of Lords called on the fifteen judges to lay down a law on the subject of criminal responsibility in cases of alleged lunacy in answers to questions propounded by them. This course appears to have taken with a view to some legislation then contemplated on which actions seems to have been taken. Fourteen of the judges united in their answers. Maule J. returned separate answers which, however did not materially differ from his colleagues. The opinion of the majority was delivered by Tindal C.J. These questions and answers are known as the M'Naghten Rules which form the basis of the modern law on insanity.

1. That every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to the satisfaction of the jury or the court.
2. 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 or from disease of mind, as not to know the nature and quality of the act he was doing, or he did not know it, that he did not know that what he was doing was wrong.
3. 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 of the land, he would be punishable.
4. A medically qualified person, who has not seen the accused before the trial, should not be asked to stand as witness and say whether, on evidence, he thinks that the accused was insane.
5. 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 was doing, he will be under the same degree of responsibility as he would have been on the fact as he imagined them to be.

(B) CRITICISM OF THE M'NAGHTEN RULES

The assumption of the rule that a person who intellectually apprehends the distinction between the right and wrong of a given conduct, must be held criminally liable, was soon attacked not only by eminent lawyers but also medical scientists on the ground that "insanity does not only, or primarily affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and the emotions". In the light of modern psychiatric developments, criminological science and changing conceptions of guilt, the

criticism and discussion have assumed great significance in recent years. According to Professor Sheldon Glueck the rules proceed upon the following questionable assumptions of an outworn era in psychiatry.

a) That lack of knowledge of the "nature or quality" of an act (assuming the meaning of such terms to be clear) or incapacity to know right from wrong , is the exclusive or most important symptom of mental disorder**;**

b) That such knowledge is the sole instigator and guide of conduct , or at least the most important elements therein , and consequently should be the sole criterion of responsibility; and

c) That capacity of knowing right from wrong can be completely intact and can function perfectly even though a defendant be otherwise demonstrably of disordered mind.[10]

(C) SUGGESTED ALTERNATIVES TO THE M'NAGHTEN RULES

(1) Irresistible Impulse

The answers given by the judges in M'Naghten Case have been the subject of much consideration and criticm by legal and medical writers ever since their birth. One of the common criticisms labeled 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.

(2) Durhum Rule

In ***Durhum v. United States***[11] Durhum was charged of house breaking and he pleaded insanity in his defense. 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 *M'Naghten 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. 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 causal connection between such mental abnormality and the act.

[10] K.M Sharma "Defence of Insanity in Indian Criminal Law "335 *The Journal of the Indian Law Institute* (1965).
[11] (1954) 214 F. 2d. 862.

(3) Report of Royal Commission on Capital Punishment

The Royal Commission on Capital Punishment (1949-53) recommended in their report with one dissenting opinion, that if the law were to be changed by extending the scope of the M'Naghten Rules, a formula on the following lines should be adopted:

The jury must be satisfied that at the time of committing the act, the accused, as a result of disease of the mind or mental deficiency (a) did not know that it was wrong or (b) was incapable of preventing himself from committing it.

On the other hand , a smaller majority of the Commission urged the total abrogation of the M'Naghten Rules, leaving the jury" to determine whether at the time of the act the accused was suffering from disease of the mind (or mental deficiency) to such a degree that he ought not to be held responsible".[12]

(4) **The Model Penal Code Formulation**

The American Law Institute, in its Draft Model Penal Code, preferred a formulation of the rule along the lines of the minority view of the Royal Commission, but they also introduced the notion that the rest should be substantial incapacity, thus getting away from the idea of total incapacity required by the M'Naghten Rules. "Nothing makes the inquiry into responsibility more unreal than limitation of the issues to some ultimate extreme of total incapacity, when clinical experience reveals only a gradual scale with marks along the way".[13]

(5) **The Homicide Act, 1957**

The outcome of the Report of the Royal Commission was the Homicide Act, 1957. , Section 2(5) of the Act provides a means of bypassing the difficulties surrounding the M'Naghten Rules, through the doctrine of diminished responsibility

Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent cause, or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omission in doing or being a party to the killing.

This provision purports to save the judge from having to pass a formal sentence of death in a case of insanity outside the M'Naghten Rule, where the sentence would not in any case be carried out, and also give a measure of recognition to mental abnormality short of insanity. On a verdict of diminished responsibility, resulting in a conviction of manslaughter, the judge may award such term of imprisonment or other punishment or treatment as he deems appropriate .The doctrine of diminished responsibility poists a reduction of culpability and punishment because of a reduced capacity to form all the required mental elements.[14]

It is thus evident from the foregoing discussions that the M'Naghten Rules have met severe criticism even in the country of their origin and various attempts have been made in England and the United States to mitigate their harshness. The courts in India may, however, find it difficult to ignore these rules in view of the Section 84 of the Indian Penal Code.

[12] *Supra* note 10 at 337.
[13] *Supra* note 10 at 338.
[14] *Ibid*.

(D) SUBSTANTIVE LAW OF INSANITY IN INDIA

The defense of Insanity in criminal cases is to be found in section 84 of the Indian Penal Code, 1860, which is reproduced below:

"Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is in capable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

This section embodies a fundamental maxim of criminal jurisprudence, viz. that an act does not constitute a crime unless it is done with a guilty intention. In order to constitute a crime, the intent and the act must concur. The section[15] fastens no culpability on insane persons because they can have no rational thinking or the necessary guilty intent.

1 Semantic Selection

Section 84 uses the expression "unsoundness of mind" to include "insanity", "madness" or "lunacy" for the definition of each of these may differ in degree and kind. These terms are often used synonymously. Whether the "unsoundness of mind" is temporary or permanent, natural or supervening, whether it arises from disease, or exists from the time of birth, it is included in this expression. Thus an idiot, a person *non compos mentis* by sickness, a lunatic who had lucid intervals of reason, a person naturally mad and/ or delirious and one whose reason is clouded by alcohol, all are persons of "unsound mind", provided that their unsoundness makes them oblivious to the nature and criminality of an act: their unsoundness must reach that degree which the latter part of this section requires.

2 Test of Insanity

Section 84 embodies two mental conditions, which exempt a man from responsibility for his wrongful act, namely,

1) That his unsoundness of mind was such that he was " incapable of knowing the nature of the act ," or
2) That it had precluded him from understanding that the act he was doing was wrongful.[16]

Of these the first seems to refer to the offender's consciousness of the bearing of his act on those who are affected by it, the second to his consciousness of its relation to himself. These two elements need not be simultaneously present in each case, nor indeed, are they invariably so present. The absence of both or either

[15] Two minor differences in section 84 and answers 2 and 3 of the M'Naghten Rules may be noticed. These rules refer to the "nature and quality" of the act, whereas section 84 does not use the word "quality". Likewise, the expression "contrary to law" appearing in section 84 is not in the M'Naghten Rules. These distinctions are , however , of little consequence, for

(1) there is no distinction between the two words ," nature and quality": both refer to the physical character of the act (*R* v *Codere* (1916) 12Crim.App.R.21) , and
(2) "wrong", has been held to be include and even to mean, "wrong in law". If the accused knows that the act was morally wrong, knowledge as to the illegality of the act will follow because knowledge of law is presumed (*R* v *Windle* (1952) 2 Q.B 826.)

[16] *Pancha* v *Emperor* AIR 1932 All. 233., *Rustam Ali* v *State* AIR 1960 All. 333.; *Karma Urang* v. *Emperor* AIR 1928 Cal 238.; *Bazlur Rahman* v. *Emperor* AIR 1928 Cal 1

relieves the offender from liability to punishment. Situations like automatism, mistake and simple ignorance such as can occur only in gross confusional state are covered by the first category , whereas the second category embraces cases where mental disease has only partially extinguished reason.[17]

3 Test of Insanity Devised by the Calcutta High Court

The Calcutta High Court has tried to formulate a third test in ***Ashiruddin Ahmed v. The King***[18] It was a case where the accused, according to his version, in his dream was commanded by someone in paradise to sacrifice his five year old son. On the next morning the accused took his son, to a nearly mosque and killed him by the thrusting a knife in his throat. Then he went straight to his uncle, but finding a village chowkidar nearby, took to the uncle to a tank at some at some distance, and then narrated the whole story to him. On trial, the accused retracted his confession but the evidence was not seriously challenged. On these facts, the court laid down that in order to get the benefit of section 84 the accused should establish any one of the following three elements[19], namely,

1. That the nature of the act was not known to the accused
2. That the act was not known to him to be contrary to law.
3. That the act was not known by him to be wrong

The court held on evidence that the third element was established by the accused. He believed that his dream was a reality; though he knew the nature of the act and knew that, it was contrary to law .This was evident from his conduct of not saying what he did in front of the chowkidar. According to the court, the accused was clearly of unsound mind because acting under delusion of his disease he made this sacrifice believing it to be right.

If this formulation of three exclusively independent tests is accepted to be correct, it will lead to serious consequences, because of the following reasons.

First: An accused will be thus privileged to plead in every case that he had seen a dream enjoining him to do certain criminal act and believing that his dream was a command by a super natural power, he was impelled to translate the dream into action, and he would thus be protected by section 84. The court will have no

[17] *Supra* note 10, at 341

[18] AIR 1949 Cal 182.

[19] ***Kanbi Kurja v. State*** AIR 1960 Guj. 1 has also approved three test theory. The accused considered himself to be a pure –blooded Suryavanshi and Arjuna of the Mahabharat and regarded his wife Jamna as Bhangdi, and his eldest son Natha as Karna , the inveterate enemy of Arjuna. Suffering from these delusions and hallucinations, the accused killed his wife Jamna and his son Natha believing that Natha was Karna and he being Arjuna there would be nothing wrong in causing the death of his inveterate enemy Karna. Likewise, he did not consider killing his wife Jamna as anything wrong, as he was suffering from a delusion and hallucination that she was a woman who had given birth to an illegitimate son and was therefore contemptible and regarded her and in fact called her Bhangdi. Immediately after killing them, he openly told the Sar Panch addressing the latter as Bhisma Pitamaha, again a famous and significant name in the Mahabharat, that he had killed Bhangdi, meaning his wife, and Karna meaning his son. There was a complete lack of motive in this brutal act of killing his own wife and son with whom the accused had not been on any hostile or unfriendly terms. He indicated neither repentance nor remorse over his conduct. On the contrary, he openly boasted, in the presence of many, that he had caused the death of his wife and his son and, even after this proclamation, made no attempt to abscond from the village or to conceal the incriminating item of evidence. Evidence disclosed the eccentric and unusual behaviour on his part. The cumulative effect of all these circumstances clearly indicated that the accused was suffering from the infirmity of mind, by reason of his being subject to the aforesaid hallucination, in consequence of which he was not in a position to realize that what he was doing was either wrong or contrary to law.

independent means of ascertaining the truth of the accused's statement. The defence of the insanity is likely to be misused.

Second: The court's interpretation that "wrong" or "contrary to law" are two interdependent tests runs counter to its earlier interpretation put forth in ***Geron Ali v. Emperor***[20] , where it found "wrong" or "contrary to law" as forming one test only It is really embarrassing to note that Mr. Justice Roxburg a member of the division bench in both the above cases did not observe or clarify these obviously conflicting decisions. One would have expected a more reasoned and elaborate judgement from the Calcutta High Court, particularly in view of the fact that it represented a departure from its earlier decision on the point.

Third: According to section 84 the accused should be "incapable" of knowing whether the act "being done" by him is right or wrong. In an Allahabad case Justice Beg criticized the Calcutta view and said:

The capacity to know a thing is quite different from what a person knows. The former is a potentiality the latter is the result of it. If a person possesses the former, he cannot be protected in law, whatever might be the result of his potentiality. In other words, what is protected is an inherent or organic incapacity and not a wrong or erroneous belief which might be the result of a perverted potentiality?[21]

The beliefs of an accused can hardly protect him if it is found that he possessed the capacity to distinguish between right and wrong. If his potentialities lead him to a wrong conclusion, he takes the risk and law will hold him responsible for his deeds. What the law protects is the case of a man in whom the guiding light that enables a man to distinguish between right and wrong and between legality and illegality is extinguished. Where such a light is found to be still flickering, a man cannot be heard to plead that he was led by his own intuition or by any fancied delusion which had been haunting and which he took to be reality.[22]

Nature of Unsoundness of Mind

What should be the nature of unsoundness of mind in order to attract exemption? Every form of the mental abnormality or derangement is not immune from criminal responsibility. So is every mental aberration or deviation from normal conduct. In order to get exemption from liability the insanity must be of a particular and appropriate kind. The following factors are considered before exempting an accused from the criminal liability on ground of insanity.

a. Degree of Insanity

It may be said that between the normal and the abnormal state of mind, there is only difference of degrees but not of kind. The mind may be unsound, if affected by disease, disorderly or disturbed or abnormal. These

[20] - AIR 1941 Cal. 129. The accused was a disciple of a pir. He was told by the pir's mistress whom he respected as a mother that he would go to heaven if he offered a human head in sacrifice on the auspicious first day of Ramzan. The accused cut off the heads of his own daughter and person and offered the same to the pir saying. "Father you asked me for human head: I present you with two ". On evidence it appeared that he was considering himself to do a meritorious act which qualified him for heaven and that his prior and subsequent conduct showed that his mind was disordered. The Court held that the accused did not know that what he doing was wrong or contrary to law and thus he was entitled to the protection of Section 84. "Wrong or contrary to law" was thus taken to be a single test.

[21] *Lakshmi* v *State* AIR 1959 All 534.

[22] *Supra* note 10 at 343.

factors must be of such degree, which renders the accused incapable of knowing the nature of his act or that what he is doing is either wrong or contrary to law. It should obliterate the perceptional or volitional capacity.[23]

In ***Hazara Singh v. The State***[24] the Punjab High Court said:

"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 , ungovernible fits of temper, stupidity , obtuseness, lack of self-control, gross eccentricity and idiosyncracy and other similar manifestations, evidencing derangement of mental functions, by themselves, do not offer relief from criminal responsibility".

In ***State v. Durgacharan Barik***[25] Justice S Barman said *" in order to render a person irresponsible for crime on account of unsoundness of mind, the unsoundness of mind should , accordingly to the law as it has been long understand and held , be such as to render him incapable of knowing right from wrong. The facts of each particular case must of necessity present themselves with endless variety and with every shade of difference in each case".*

In ***Barelal* v. *State***[26] accused threw his own child aged 2 years over the wall as a result of which it died. When his wife raises an alarm and people arrived on the spot he tried to run away with the body of the child. He had suspected the chastity of his wife and legitimacy of the child. He had fits of insanity a couple of months back .He used to abuse villagers, but he was held guilty.

b. **Impairment of Cognitive Faculties**

The cognitive faculties of mind are very much responsible for human conduct. Therefore to exempt from liability the cognitive faculties of the accused are considered. In other words, exemption is available when the insanity affects the faculty of understanding the significance of his act in its bearing on the victims and in relation to the accused person's own responsibility for the act.

In ***Queen Empress* v. *Kader Nasyer Shah***[27] Fire destroyed the house and property of the accused. This incident changed him a lot. He neglected his house, field and family. He made frequent complaints of head ache. One day he killed the boy to whom he was very much affectionate without sensible motive though he observed some secrecy after the act. While setting aside the acquittal the court said

"It may be our that law, like the England, limits non-liability only to those in which insanity affects the cognitive faculties; because it is thought that those are the cases to which the exemption rightly applies and the cases, in which insanity affects only the emotions and the will, subjecting the offender to impulses, whilst it leaves the cognitive faculties unimpaired, have been left outside the exception …. Whether this is the proper

[23] G Sadasivan Nair "Defence of Insanity: Need for Reform" 12 *Cochin University Law Review* 129 (1988).
[24] AIR 1958 Punj 104.
[25] AIR 1963 Ori 33.
[26] AIR 1960 M.P 102.
[27] (1896) 23 ILR Cal. 604.

view to take of the matter, or whether the exemption ought to be extended as well to the cases in which insanity affects the emotions and the will as to those in which it affects the cognitive faculties, is a question which is not for us to consider… our duty is to administer the law as we find it …. Where the will and emotions are affected by the offender being subjected to insane impulses, it is difficulty to say that his cognitive faculties are not effected. In extreme cases that may be true; but we are not prepared to accept the view as generally correct that a person is entitled to exemption from criminal

liability under our laws in cases in which it is only shown that he is subject to insane impulses, notwithstanding that it may appear clear that his cognitive faculties , so far as we can judge from his acts and words, are left unimpaired".

In ***Sarka Gundusa* v. *State***[28] Accused came out of his house brandishing an axe and gave a blow to a 3 old boy playing outside, on his neck. The boy died instantaneously and the accused ran away to the jungle close by and returned only the next day. Convicting the accused Justice G.K Mishra said,

"*Any and every type of insanity recognized in medical science is not legal insanity. Every minor mental aberration is not insanity. There can be no legal insanity unless the cognitive faculty of mind is destroyed as a result of unsoundness of mind to such an extent as to render the accused incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law.*

c. Insanity Medical and Legal Insanity

Every mentally diseased person is not *ipso facto* exempted from criminal liability. This is so because according to the courts, the legal definition of insanity differs considerably from medical definition. Medical insanity and Legal insanity differ in degree and standards. From the medical points of view, it is probably correct to say that every man at the time of the committing the criminal act is insane. He is insane in the sense that he is not in a sound, healthy and normal condition and therefore needs a treatment .But from the legal point of view, so long as he is able to distinguish between right and wrong and to know that the act done by him is wrong or contrary to law, he must be held to be sane. There are following factors for making the distinction[29] between legal and medical insanity

(a) Difference in Degree

In medical parlance, 'unsoundness of mind' would admit a variety of conditions of varying degree of severity. It is said that these conditions manifest far too many characteristics to justify any precise definition applicable to all cases. For the sake of precision and certainty, law exempts from criminal responsibility only that 'unsoundness of mind' which materially affects the cognitive faculties of mind. Persons whom medical science would pronounce as insane do not necessarily take leave of their, emotions and feelings, like fear, frustration, ambition and revenge. Fear and threat may have a deterrent influence on them. Insane person, in one sense would refrain from committing any acts of violence or mischief if more powerful men are present at the scene.

[28] AIR 1969 Ori 102.
[29] *Supra* note 23 at 147

Mad men may not have yielded to their insanity if a police man had been their elbow. One is insane in legal sense only if one could have still yielded to his not insanity in such circumstances and one is not aware of one's act and its consequences. The degree of unsoundness of mind for legal insanity is higher than that of medical insanity.[30]

(b)Time Factor

In the case of legal insanity, the mental condition referred to it in the Indian Penal Code must be established to have existed at the time when the act was committed. If a man is found to be insane before or after the commission of the offence it raises no presumption that he was of sound mind at the time of the commission of offence. The state of mind of the accused before or after the crucial time may become relevant to the fact that the accused was in such a state of mind as to be entitled to exemption, could be established from circumstances which preceded, attended and followed the crime of commission of the act.. Unsoundness of mind of an accused at the time other than the time of commission is only relevant to prove the state of the mind of the accused at the time of the commission of the crime, whereas , to medical insanity , that may be determinative in the sense that a man may be medically insane at anytime.[31]

(c) Proof of legal Insanity

For the purpose of legal insanity the degree of proof required is also greater than that required for proving medical insanity. A court will look for some clear and distinct proof of mental delusion or intellectual aberration existing immediately before, or at the time of, or immediately after the perpetration of the offence. Medical men recognize that there may be delusion or aberration, springing up in the mind suddenly, and not revealed by the previous conduct or conversation of the accused .Thus the criteria deployed by the medical men to detect insanity are different from those employed by the courts.

The fact that the person was conscious of the criminality of the act is immaterial for establishing medical insanity. The legal criteria for the existence of insanity are the act of the person and his consciousness of its criminality. To a lawyer insanity is 'conduct of a certain character' whereas to a physician it means 'a certain disease one of the effects of which is to produce such a conduct'. To men of medicine and psychiatry as to men of law motive is not decisive in determining insanity.[32]

Queen Empress v. Lakshman Dagdu[33] is case illustrative of the tests employed by lawmen and medical men to establish legal insanity and medical insanity. In this case, the accused brutally killed two of his young children. The reason given for the crime was curious. The accused was laid up with fever. The crying of the children annoyed him. The fever had made him irritable and sensitive to sound. Still it did not appear that he was delirious at the relevant time. True there was no attempt at concealment. There was a full confession. The accused showed no signs of sorrow or remorse. He had no previous symptoms of insanity. Taking the

[30] *Ibid*.
[31] *Supra* note 23 at 148.
[32] *Supra* note 23 at 149.
[33] (1886) 10 ILR .Bom. 512.

circumstances, into account, the court held him guilty of murder because the accused was conscious of nature of his act, and so he must be presumed to have conscious of criminality also.

Viewed from the medical point of view, there was no premeditation. The idea occurred to the accused suddenly. There was no precaution taken, no concealment or attempt to escape, no sorrow, or remorse, and the act was done with out the aid of an accomplice. The court had conceded that if the case had to be decided by medical tests, the accused would have to be acquitted.

In ***Kalicharan* v. *Emperor*** [34]the appellant, who had some ill feeling towards his wife struck four persons to death including, his wife, a boy and a two months old kid. He also injured two other persons in an atrocious manner. One of his victims he inflicted not less than 13 injuries. He used three weapons altogether to commit these multiple murders. In the trial court he said he remembered striking only his first two victims his wife and his brother- in- law's son. He did not take the plea of insanity in the trial court. No family history was disclosed there. Such a plea was taken in the High court for the first time. The High Court observed that a crime is not excused for his own atrocity. The court has to look outside the act itself for evidences as to how much the accused knew about it. Since these factors were found against the accused he was held guilty of the crime charged. Distinguishing between 'legal' and 'medical insanity' the court pointed out that exemption is applicable only to the former cases where the cognitive faculties of the accused are completely impaired making the offender incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law .I t could not be extended to cases where the accused acts without any motive and under sudden and overpowering impulse.

In *State of* ***Kerala* v. *Ravi*** [35] Accused was madly in love with the deceased girl aged 15 years .She belonged to a different community .The girl's family objected. The dream of the accused for the marriage could not materialize. Out of despair the accused stabbed the girl several times and killed her. His defence that it was in a fit of impulsive insanity that he killed her. It was such an irresistible impulse according to him, that he was so out of his power of self-control as not to know the nature of the act or that he was doing what was wrong or contrary to law. The plea was allowed by the trial court .On appeal the High court held him guilty because there can be no legal insanity unless the cognitive faculties of the mind are, as a result of unsoundness of mind, so completely impaired as to render the offender incapable of knowing the nature of the act or that he was doing what was either or wrong contrary to law. The character or enormity of the offence, manner of attack, absence of concealment or escape or the mere lack of motive will not in itself be conclusive of legal insanity.

Pancha* v. *Emperor[36] is a case of murder on a day of lunar eclipse. The eclipse was at its maximum. There was darkness all around. With lathi the accused attacked the victim who was sleeping on a char payee in front of his house. Several blows fell on the victim's head near and above the left eyebrow and fractured his skull completely resulting in his instantaneous death. The session s judge convicted the accused. The judge pointed out that the accused selected an opportunity and time for attack that all the blows were aimed at the head

[34] AIR 1948 Nag 20.
[35] 1978 KLT. 177.
[36] AIR 1932 All. 233.

indicating deliberation and that he ran away as soon as alarm was raised. This showed that he was capable of understanding the nature and consequence of the act. The conviction was affirmed by the High Court. Distinguishing between 'legal' and 'medical insanity' the court said.

"According to medical sciences insanity is another name for mental abnormality due to various causes and existing in various degrees. Even an uncontrollable impulse driving to kill or wound comes within the scope. But a man whom the mental science would pronounce as insane does not necessarily take leave of his emotions and feelings. Hope, ambition, revenge, etc., may still govern his mind. Fear may have exercised its influence over him, and threats may have a deterrent effect.

In ***Kesheorao,* v. *State of Maharashtra***[37] is a case where the appellant attempted to murder his daughter-in-law by inflicting not less than 16 injuries. He did it with a spear blade while nobody else was there in the house where he was living separately from the family of his son. Distinguishing between medical and legal tests of insanity the court held the appellant guilty. The court said that eccentricity or strange behavior or mental disorder not amounting to insanity as known to the law, would not absolve a person from the consequences of his act. The mere fact that on earlier occasions, a person had been subject to insane delusions or had suffered from derangement of the mind or had subsequently at times behaved like a mentally deficient person, is *per se* not sufficient to bring his case with in the exemption .The antecedent conduct and subsequent conduct of such a persons are relevant to show the state of his mind at the time of the act, but not conclusive evidence of legal insanity.

Indian Laws Lag Behind

Substantive law in India is based on the M'Naghten Rules where only the impairment of the defendant's faculties is taken into consideration. No enquiry is made into the degree to which the defendant's self control is impaired. Despite proved severe mental illness, the defendant will be convicted if he is aware of the nature of the act and its wrongfulness or illegality. Illustrative cases[38] reveal an immense gulf between psychiatric knowledge on mental illness and the legally recognized criteria for exonerating a person from punishment.

The common criticisms of the M'Naghten Rules are applicable to Indian law. Unsoundness of mind is as controversial as 'disease of mind' and is capable of different interpretation. It can have a lay man's meaning a medical meaning and a legal meaning. From a layman point of view it vaguely includes anything from eccentric conduct to raving madness. Medical men are not satisfied with the legal definition of 'unsoundness of mind' The courts also do not consider every kind of mental illness or unsoundness of mind as legally significant. The term is not an effective expression to describe accurately the state of mind of the offender at the relevant time. The expression should conceptualize or denote the particular kind, or degree, or mental abnormality. This kind or degree should fix up to legal responsibility in different grades. This particularly points to the imperative need

[37] 1979 Cri.LJ. 403.

[38] *Queen Empress v. Lakshman Dagdu* (1886) 10 ILR. Bom 512., *Pancha* v. *Emperor* AIR 1932 All. 233., *Kalicharan* v. *Emperor* AIR 1948 Nag 20.

to connect the medical diagnosis of the mental condition of the offender with the legal tests of criminal responsibility.

Present day psychiatry recognizes gradation of mental disturbances in a wide range from normalcy to abnormality. Juristic thinking is yet to fall in line with this development. Caught in the web of obsolete M'Naghten rules the Indian law on insanity still harps on the notions of the early nineteenth century psychology which conceived brain as bundles of functions, each working independently. This conception neglects volitional and emotional aspects of the mind. According to modern psychology and psychiatry the mind cannot split into water tight, unrelated and autonomously functioning compartments. The mind and body are one continuum in which each part influences , and is influenced by the whole .Every case of unsoundness of mind cannot therefore be fitted into the straight jacket of an old age old legal definition of insanity.

Conclusion

Having discussed the two tests of insanity adopted by the courts while interpreting section 84 of Indian Penal Code and the views pointed out as third test by the Calcutta High Court. I can be concluded that the Indian law still recognizes the traditional M'Naghten Rules where only the impairment of the defendant's 'knowledge' is taken into account; there is no enquiry into the degree to which the defendant's self-control is impaired. The defendant can be convicted despite a proved severe mental illness if he is aware of what he was doing and that his act was evil or a proscribed behaviour. An examination of some illustrative cases[39] has revealed that an immense gulf exists between mental illness as a medical test and legal insanity as a casuistic formula. No amount of moral, mental or educational impulse deficiency is permitted to excuse an offence, although in the more enlightened judgments of some High Courts it has served to mitigate punishment when the legal test was not satisfactorily met.

The above discussion and analysis show that the law of India needs a change. The commonplace criticisms of the M'Naghten rules referred to earlier apply with equal force to Indian law and need not be repeated. Only such of the problems as have specific relevance to Indian situations concern us here.

A basic standard is needed to measure and categorize mental disorders. This basic standard would, of course, be the normal mind. The obvious difficulty with this standard is that, this in itself is very little understood and is practically incapable of definition. Normalcy of mind is a kind of reasonable standard through which it is possible to determine whether the person concerned had acquired the ability to distinguish between right and wrong as a measure of all normal human action in a particular society.

The legal conundrum of "right and wrong" test of insanity is one of the most striking instances of conservatism of the law. These concepts distinctly belong to ethics and present no scientifically cognizable categories. Ethical principles, themselves being in a state of continuous transformation, hardly can be used as precise criteria for legal analysis of human behaviour. There is no universal standard of right and wrong, and hence of responsibility. It is a more difficult for an individual to distinguish right from wrong in the complex social context of today than it was in a simple, homogenous society of the past when cultural values were relatively

uniform. Except in cases of gross moral turpitude where there could be said to be social consensus on ethical evaluation, there is still a large part of human conduct in which the ethical assessment by the society is not clearly defined.

The defence of irresistible impulse is not recognized by section 84 of Indian Penal Code. If the accused commits a crime under an uncontrollable impulse resulting from mental disease, and which at the time and place of the alleged crime, exists to such a high degree that it overwhelms his reason, judgement and conscience, and his high power to properly perceive the difference between the right and wrong side of the alleged wrong act, this would be considered and recognized as suitable defence under insanity. But on the other hand, where the accused is sane enough to perceive the difference between right and wrong with respect to the act committed and knew that it was wrong then the mere fact that an alleged irresistible impulse or emotional impulse constrained him to commit the act shall not amount to defenses and should not be recognized as suitable defence under insanity.

It is felt that by looking to the magnitude of the problem a commission consisting of members from practicing law, the medical profession and the behavioral sciences should be set up to examine the possibility of introducing such changes in the existing law on insanity as would make it reflect the modern advances of medical knowledge. The old Shakespearean notion of a tragedy based upon "character is destiny" is only a poetic licence and should as far a possible, not colour thinking in criminal law. In order to fix the liability under criminal law the paramount objective should be to ascertain the offender's potential of being a danger to the society rather than his moral blameworthiness.