**COMMENT.—**

Where the accused is a child above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, and such non-attainment would have apparently to be specially pleaded and proved, like the incapacity of a person who, at the time of doing an act charged as an offence, was alleged to have been of unsound mind under this section it has got to be shown that the accused is not only under 12 but has not attained sufficient maturity of understanding. If no evidence or circumstance is brought to the notice of the Court, it will be presumed that the child accused intended to do what he really did. Thus, where a child of 12 or so used a sharp sword in killing a person along with his two brothers and no evidence either of age or immaturity of understanding was led on his behalf, it was held that he committed an offence at least under section 326, IPC, 1860.[81.] The Legislature is manifestly referring in this section to an exceptional immaturity of intellect.[82.] What the section contemplates is that the child should not know the nature and physical consequences of his conduct.[83.] The circumstances of a case may disclose such a degree of malice as to justify the maxim *malitia supplet octatem*.[84.] Where the accused, a boy over 11 years but below 12 years of age, picked up his knife and advanced towards the deceased with a threatening gesture, saying that he would cut him to bits, and did actually cut him, his entire action can only lead to one inference, namely, that he did what he intended to do and that he knew all the time that a blow inflicted with a *kathi* (knife) would effectuate his intention.[85.] In the prosecution of an 11-year-old child for throwing a brick at a police vehicle and then running away, the Court said that the justices were not entitled to conclude from his appearance that he was normal in respect of incurring criminal responsibility. The test is whether the child knew that what he was doing was seriously wrong and went beyond childish mischief. Running away was not by itself sufficient to rebut the presumption of *doli incapax*. A naughty child would run away from a parent or teacher even if what he had done was not criminal.[86.]

**[s 83.1] CASE.—Theft by child.—**

Where a child of nine years of age stole a necklace, worth Rs. 280, and immediately afterwards sold it to the accused for five *annas*, the accused could be convicted of receiving stolen property, because the act of the child in selling the necklace showed that he had attained a sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion within the meaning of this section.[87.]

Section 83 provides that nothing is an offence which is done by a child above seven years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. The IPC, 1860 provides no protection from culpable liability on ground of tender age to one who is aged 12 years or more. In a child's life the period between seven and 12 years of age is rather the twilight period of transition to a minimal workable level of understanding of things in the firmament of worldly affairs. And that is why both the IPC, 1860 and the Oaths Act have made special provisions for children below 12 years in respect of matters dependent on a minimal power of understanding.[88.]

A claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case.[89.]

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] .
2. The Indian Evidence Act, I of 1872, section 105.
3. *Musammat Anandi*, (1923) 45 All 329 ; *Babulal*, 1960 Cr LJ 437 (All).
4. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
5. *A K Chaudhary v State of Gujarat*, 2006 Cr LJ 726 (Guj).
81. *Hiralal, Supra*.
82. *Lukhini Agradanini*, (1874) 22 WR (Cr) 27, 28.
83. *Ulla Mahapatra*, (1950) Cut 293.
84. *Mussamut Aimona*, (1864) 1 WR (Cr) 43.
85. *Ulla Mahapatra, Supra*.
86. *A v DPP*, (1991) COD 442 (DC).
87. *Krishna*, (1883) 6 Mad 373.
88. *Santosh Roy v State of WB*, 1992 Cr LJ 2493 : 1992 (1) Crimes 904 (Cal).
89. Section 7A Juvenile Justice (Care and Protection of Children) Act, 2000. See also *Amit Singh v State of Maharashtra*, 2011 (8) Scale 439 [LNIND 2011 SC 731] : (2011) 9 SCR 890 [LNIND 2011 SC 731] : (2011) 13 SCC 744 [LNIND 2011 SC 731] .

## THE INDIAN PENAL CODE

## CHAPTER IV GENERAL EXCEPTIONS

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this chapter denotes a thing punishable under the Code or under any special or local law when it satisfied the conditions laid down in section 40 of the Code.

The "general exceptions" contained in sections 76–106 make an offence a non-offence. The "general exceptions" enacted by Indian Penal Code, 1860 (IPC, 1860) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by section 6 IPC, 1860 enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of definition of every offence contained in IPC, 1860, but the burden to prove their existence lied on the accused.[1.]

The following acts are exempted under the Code from criminal liability:—

1. Act of a person bound by law to do a certain thing (section 76).
2. Act of a Judge acting judicially (section 77).
3. Act done pursuant to an order or a judgment of a Court (section 78).
4. Act of a person justified, or believing himself justified, by law (section 79).
5. Act caused by accident (section 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (section 81).
7. Act of a child under seven years (section 82).
8. Act of a child above seven and under 12 years, but of immature understanding (section 83).
9. Act of a person of unsound mind (section 84).
10. Act of an intoxicated person (section 85) and partially exempted (section 86).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (section 87).
12. Act not intended to cause death done by consent of sufferer (section 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (section 89).
14. Act done in good faith for the benefit of a person without consent (section 92).
15. Communication made in good faith to a person for his benefit (section 93).
16. Act done under threat of death (section 94).
17. Act causing slight harm (section 95).

18. Act done in private defence (sections 96–106).

The above exceptions, strictly speaking, come within the following seven categories:—

1. Judicial acts (section. 77, 78).
2. Mistake of fact (sections 76, 79).
3. Accident (section 80).
4. Absence of criminal intent (sections 81–86, 92–94).
5. Consent (sections 87, 90).
6. Trifling acts (section 95).
7. Private defence (sections 96–106).

**Onus of proving exception lies on accused.—**When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.[2.]

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.[3.]

**Applicability of General exceptions during investigation.—**In considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching the *prima facie* satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under IPC, 1860 as per Chapter IV of IPC, 1860. If on the basis of the allegation made in the complaint, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence.[4.] Investigating officer is bound to investigate and confirm that despite what is contained in the "General Exceptions"; acts committed by accused shall constitute offence under IPC, 1860. This shall be done, by virtue of section 6 of IPC, 1860. In the light of section 6 of IPC, 1860, definition of every offence is to be understood subject to the "General Exceptions". Therefore, investigation shall not confine merely to the acts committed by a person. Depending on facts and circumstances of each case, many other relevant facts also have to be investigated into, in the light of the provisions contained in "General Exceptions". It is only then that an investigating officer will be able to confirm whether the act committed by a person is an offence or not, as defined in IPC, 1860 subject to what is contained in "General Exceptions". Further, the category of self-defence falling in general exception would fall in a different category than the general exceptions, which are provided in the very chapter for exercise of the statutory duty or lawful power either under the mistake of law or fact or mistaken belief of law or fact.[5.]

## [s 84] Act of a person of unsound mind.

**Nothing is an offence which is done by a person who, at the time of doing it, [1] by reason of unsoundness of mind, [2] is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.** [3]

**COMMENT.—**

To commit a criminal offence, *mens rea* is generally taken to be an essential element of crime. It is said *furiosus nulla voluntus est*. In other words, 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; *actus non facit reum nisi mens sit rea*. Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her 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.[90.]

**[s 84.1] McNaughten Rule and the origin of Section 84 of IPC, 1860.—**

Section 84 clearly gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords rendered in the case of *R v Daniel McNaughten*.[91.] In that case, the House of Lords formulated the famous Mc Naughten Rules on the basis of the five questions, which had been referred to them with regard to the defence of insanity. The reference came to be made in a case where *Mc Naughten* was charged with the murder by shooting of Edward Drummond, who was the Pvt Secretary of the then Prime Minister of England Sir Robert Peel. The accused *Mc Naughten* produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an insane delusion that the Prime Minister was the only reason for all his problems. He had also claimed that as a result of the insane delusion, he mistook Drummond for the Prime Minister and committed his murder by shooting him. The plea of insanity was accepted and *Mc Naughten* was found not guilty, on the ground of insanity. The aforesaid verdict became the subject of debate in the House of Lords. Therefore, it was determined to take the opinion of all the judges on the law governing such cases. Five questions were subsequently put to the Law Lords. A comparison of answers to question no. 2 and 3 and the provision contained in section 84 of the IPC, 1860 would clearly indicate that the section is modelled on that answers.[92.]

The essential elements of section 84 are as follows:

(i) The accused must, at the time of commission of the act be of unsound mind;

(ii) The unsoundness must be such as to make the accused at the time when he is doing the act charged as offence, incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law.[93.] Where it is proved that the accused has committed multiple murders while suffering from mental derangement of some sort and it is found that there is (i) absence of any motive, (ii) absence of secrecy, (iii) want of pre-arrangement, and (iv) want of accomplices, it would be reasonable to hold that the circumstances are sufficient to support the inference that the accused suffered from unsoundness of mind.[94.]

Though the onus of proving unsoundness of mind is on the accused,[95.] yet it has been held that 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.[96.] Prosecution is duty bound to subject the accused to a medical examination immediately.[97.] This onus may, however, 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, his family history and so forth.[98.] Every person is presumed to know the natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts.[99.]

There are four kinds of persons who may be said to be non *compos mentis* (not of sound mind): (1) an idiot; (2) one made *non compos* by illness; (3) a lunatic or a madman; and (4) one who is drunk.

An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like. A person made non compos men-us by illness is excused in criminal cases from such acts as are-committed while under the influence of his disorder. A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason. Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.[100.]

### [s 84.2] Legal insanity *vis-a-vis* Medical insanity.—

A distinction is to be made between legal insanity and medical insanity. A Court is always concerned with legal insanity, and not with medical insanity. What sections 84, IPC, 1860 provides is defence of legal insanity as distinguished from medical insanity. A person is legally insane when he is incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law.[101.] Incapacity of the person on account of insanity must be of the nature which attracts the operation of section 84 IPC, 1860.[102.] An accused who seeks exoneration from liability of an act under section 84 of the IPC, 1860 is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the IPC, 1860 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 IPC, 1860.[103.] The medical profession would undoubtedly treat the accused as a mentally sick person. 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.[104.] Only legal insanity is contemplated under section 84 of IPC, 1860.[105.]

### [s 84.3] 42nd Report of Law Commission of India.—

Law Commission of India re-visited section 84 of the IPC, 1860 in view of the criticism to the M'Naughten Rules in various countries including Britain but came to the conclusion that law of insanity under section 84 of the IPC, 1860 needs no changes in Indian circumstances.[106.]

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 the Penal Code. 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.[107.] In this case, the accused was under medical treatment prior to the occurrence. Evidence indicating that he remained mentally fit for about four years after treatment. During the trial also he was sent for treatment and his conduct was normal thereafter. On such facts, it was held, that the accused was not entitled to protection under section 84. The Court also added that where previous history of insanity of the accused comes to light during investigation, the accused must be medically examined and report placed before the Court. Any lapse in this respect would create infirmity in the prosecution case and the accused may become entitled to benefit of doubt.

**1. 'At the time of doing it'.**—It must clearly be proved that at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.[108.] If he did know it, he is responsible.[109.]

In *Sheralli Wali Mohammed v State of Maharashtra*,[110.] it was held that:

> ... it must be proved clearly that, at the time of the commission of the acts, the appellant, by reason of unsoundness of mind, was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law. The question to be asked is, is there evidence to show that, at the time of the commission of the offence, he was labouring under any such incapacity? On this question, the state of his mind before and after the commission of the offence is relevant.

The crucial point of time for deciding whether the benefit of this section should be given or not is the material time when the offence takes place. If at that moment a man is found to be labouring under such a defect of reason as not to know the nature of the act he was doing or that, even if he knew it, he did not know it was either wrong or contrary to law then this section must be applied. In coming to that conclusion, the relevant circumstances, like the behaviour of the accused before the commission of the offence and his behaviour after the commission of the offence, should be taken into consideration.[111.] The accused pushed a child of four years into fire resulting in his death but there was nothing to show that there was any deliberateness or preparation to commit the crime. His act was accompanied by manifestations of unnatural brutality and was committed openly. He neither concealed nor ran away nor tried to avoid detection which showed that he was not conscious of his guilt. It was held that the accused was entitled to benefit of section 84 and his conviction under section 302 was set aside.[112.] The accused, a young boy brought up by his grandfather, went abroad for further studies. When his parents visited abroad they did not care to see him. His grandfather's death was communicated to him much later. On return to India, he committed offences of brutal nature at random. During the pendency of the session's case, he again continued and completed his engineering course and started a printing press and later he managed a garage and allied industries employing nearly 30 persons. His behaviour before and after the offences was that of a normal man. It was held that he was insane at the time of the offence and was given benefit of section 84.[113.] Where the accused was examined by two doctors who certified him to be schizophrenic and his abnormal behaviour was also apparent from the evidence on the record, the Supreme Court held that the acquittal of the accused by the High Court was proper.[114.]

In other words, to get the benefit of section 84 IPC, 1860, it must be shown that at the time of the commission of the act the accused by reason of unsoundness of mind was incapable of either knowing the nature of the act or that the act was either morally wrong or contrary to law and for determining this his state of mind before and after the commission of the offence is most relevant. It would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime.[115.] Thus, the fact that the accused committed the murder over a trifling matter and made a clean breast of his crime would not go to show that he was insane.[116.]

### [s 84.4] Lucid intervals.—

A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; merely a cessation of the violent symptoms of the disorder is not sufficient.[117.]

**2. 'Unsoundness of mind.'—**Whether the want of capacity 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. It is only 'unsoundness of mind' which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility.[118.] The nature and extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.[119.] Thus, as Stephen says that if a person cuts off the head of a sleeping man because 'it would be great fun to see him looking for it when he woke up', it would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act.[120.] The accused had killed his wife and his minor children and assaulted his neighbour and the police officer. The evidence showed that he had a history of insanity with at random assault on strangers but his relations with his wife were cordial. It was held that the accused was a man of unsound mind and his conviction under sections 302, 332 and 323 was set aside.[121.] The accused caught hold of the legs of a girl of two years of age on the road and struck her on the ground. She sustained head injury and died in the hospital. On the basis of the ocular evidence about the conduct of the accused at the time of the offence and the opinion of the doctor about his state of mind, the accused was acquitted on the ground of insanity.[122.] The accused, a labourer, killed his brother's wife and attempted to kill his mother in a quarrel over money deposited with his mother. Accused assaulted with axe on the vital parts of the victim's body, absconded for three months and immediately after the incident worked as a labourer in another village for 15 days. It was held that the conduct of the accused immediately before, at the time of and after the incident, was wholly inconsistent with the plea of insanity raised by him. The history of earlier mental derangement was not by itself sufficient to bring the case within section 84.[123.] Where on the day of the crime the accused was seen dancing with a dog on his head and with a broken bottle, but the medical evidence showed that he was a normal man, it was held that defence of insanity was an afterthought.[124.] The mere fact that the accused attempted to escape from the scene of occurrence after killing his wife, belied his plea of insanity.[125.] Where a father and his relatives sacrificed a four-year-old son to propitiate the deity, the Supreme Court held that this does not by itself constitute insanity. Such primitive and inhuman actions must be punished severely so as to deter others from resorting to such barbaric practices.[126.]

**[s 84.5] Partial delusion.—**

Mere abnormality of mind or partial delusion affords no protection under section 84 IPC, 1860.[127.] Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is to be, therefore, excused depends upon the nature of the delusion. If he labours under a partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts, with respect to which the delusion exists, were real.[128.] If a person afflicted with insane delusion, in respect of one or more particular subjects or persons, commits a crime, knowing that 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 public benefit, he is nevertheless punishable according to the nature of the crime committed.[129.] Where the accused after killing his daughter tried to commit suicide and there was no evidence of psychiatric treatment but only major depression, he was held liable to be convicted.[130.]

**3. 'Nature of the act, or...what is either wrong or contrary to law.'—**If the accused were conscious that an act was done which he ought not to do and if the act was at the same time contrary to the law of the land, he is punishable. His liability will not be diminished if he 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 public benefit, if he knew that he was acting contrary to law.[131.] Where the accused, a young man, took a girl of four years on a bicycle to a lonely place near a canal, sexually assaulted her and threw her into the canal, it was held that it was a carefully thought out action and not an act of an insane person.[132.]

Mere absence of motive for a crime, howsoever atrocious it may be, cannot, in the absence of plea and proof of legal insanity, bring the case within this section.[133.] The mere fact that an act of murder is committed by the accused on a sudden impulse and there is no discoverable motive for the act will not generally afford the Court sufficient basis for accepting the plea of insanity.[134.] Thus, in *SW Mohammed's* case the Supreme Court held that the mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open would not indicate that he was insane or that he did not have the necessary *mens rea* for the offence.[135.] In a Madras case, however, the Madras High Court has held that where the accused was insane for some months prior to occurrence and on cordial terms with his wife but suddenly killed the wife in the open courtyard without any ostensible motive and did not even attempt to run away or secret his crime, he had to be given the benefit of section 84, IPC, 1860.[136.] This case can, of course, be distinguished from the above mentioned Supreme Court case on the ground that in the instant case the accused had previous history of insanity which was not fully cured. Prior or subsequent treatment for schizophrenia coupled with the evidence of the doctor that the accused was schizophrenic would entitle the accused to the benefit of section 84 in a charge of murder.[137.] But where the doctor in his evidence merely said unsoundness of mind may have existed from before and that evidence was contradicted by evidence of close relations about sanity of the accused at the time of the occurrence, it was held that the accused could not get the benefit of section 84, IPC, 1860.[138.] There is a difference between medical insanity and legal insanity. By medical insanity is meant the prisoner's consciousness of the bearing of his act on those affected by it and by legal insanity is meant the prisoner's consciousness in relation to himself.[139.] There can be no legal insanity unless the cognitive faculties of the accused are as a result of unsoundness of mind completely impaired. In order to constitute legal insanity unsoundness of mind must be such as to make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.[140.] Thus, mere abnormality of mind or partial delusion,

irresistible impulse or compulsive behaviour of a psychopath affords no protection under section 84 of the IPC, 1860 as the law contained in that section is still squarely based on the outdated M'Naughten Rules of 19th Century England. Thus, in *Siddheswari's* case[141.] where the accused killed her ailing child of three and there was also some evidence elicited in cross-examination to show that the accused had suffered from some mental derangement two years prior to the incident, it was held that the mere fact the murder was committed on a sudden impulse or as a "mercy killing" was no ground to give her the benefit of section 84 IPC, 1860, even though both euthanasia (mercy killing) and irresistible impulse would entitle the accused in England to get the benefit of diminished responsibility and her crime would be treated as manslaughter (i.e. culpable homicide not amounting to murder). In a latter case too the Gauhati High Court felt that where the accused has made out a *prima facie* case of irresistible impulse the plea has to be taken into consideration in deciding the question of giving benefit of section 84, IPC, 1860, to the accused.[142.]

The position, however, has undergone a sea change in England where the right or wrong test of the M'Naughten Rules no longer dominate this branch of criminal law to the exclusion of mental abnormality falling short of complete insanity as a limited defence establishing a claim to diminished responsibility. Thus, under section 2 of the Homicide Act, 1957 if two Psychiatrists certify that the homicidal act of the accused was influenced by abnormal condition of his mind though not amounting to legal insanity within the meaning of M'Naughten Rules, still he cannot be convicted of murder but his offence will be regarded only as a manslaughter which is equivalent to culpable homicide not amounting to murder under the IPC, 1860. It is hoped that the Indian law too would be changed on this score with due regard to the modern developments in the field of psychology of criminal behaviour.

**[s 84.6] CASES.—**

Accused, who was a mentally challenged person before the incident, killed three persons and caused injuries to others with an axe. He did not know the implication of his act and indiscriminately went on wielding axe blows, be it a child or a woman and there after he did not even attempt to hide the weapon which he used for committing crime. He was found of unsound mind in his medical examination. Case of accused comes within the four corners of section 84 IPC, 1860.[143.] Where an accused, who was suffering from fever which caused him while suffering from its paroxysms to be bewildered and unconscious, killed his children at being annoyed at their crying, but he was not delirious then, and there was no evidence to show that he was not conscious of the nature of his act, it was held that he was not entitled to protection under this section.[144.] But where the accused labouring under a delusion believed his two-month-old infant child to be a devil and danger to himself, his family and to the whole world and, therefore, killed the child with unusual ferocity almost reducing it to a pulp and thereafter without making any attempt to escape told the police party that he had removed a devil from the world, it was held that the accused did not know that what he had done was wrong and as such was entitled to get protection of section 84, IPC, 1860, even when he did not plead insanity in his defence as the prosecution itself disclosed that he was insane.[145.] IPC, 1860Allegation that accused appellant had cut his son, aged about one and a half years, to death and he was intercepted while he was preparing to bury the dead body by digging a pit. Medical evidence shows that the accused was suffering from schizophrenia. Accused was reticent by nature and used to keep himself indoors and interact only when he was compelled to do so. He was not in a normal state of mind at the time of alleged crime. Appellant is entitled to the benefits under section 84 of IPC, 1860.[146.] The accused killed three persons and caused injuries to others and there was no previous enmity or motive established. The