# DEFENCE OF INSANITY IN INDIAN CRIMINAL LAW

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## I. Introduction

The subject of criminal liability and mental illness is still an unsolved problem of criminal jurisprudence. Despite luxuriant literature on various facets of this theme, few cogent ideas are seen to emerge in justification or explanation of the intensity of the controversy.[1] It, however, presents some facinating problems which deserve careful analysis.

The philosophical basis of exemption of insane offenders from criminal liability is perhaps traceable to the functional limitations of the retributive and deterrent theories of punishment which inspire the provisions of the Indian Penal Code. The retributive theory, though understandable as a desire to alleviate feelings of revenge of the injured person in society generally, is pointless and unrealistic when looked at from the point of view of an insane offender who is unable to make elementary moral discriminations and is thus incapable of adjusting with social demands of behaviour. It is equally clear that such persons are not likely to be deterred from the commission of crime by the threat of punishment.

The function of a test of responsibility in such cases, therefore, becomes primarily "to identify those who...must be regarded as ineligible for the process of criminal justice with their inherent punitive ingredients and who, therefore, must be conceived solely as the recipient of care, custody, and therapy." [2] With the development of psychiatry and behavioural sciences correctional philosophy has been cautiously progressing towards emphasis on rehabilitation and reform as well as social protection rather than retribution and punishment. This shift in emphasis from condemnatory-punitive aspect of criminal conviction to preventive-rehabilitative standpoint makes the question of determining criminal responsibility less urgent, though not superfluous (as Barbara Wootton would like us to believe). For the determination of responsibility becomes necessary to ascertain before reaching the dispositional stage whether or not the defendant has fulfilled the definitional elements

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1. Some writers have gone even to the extent of asking for abolition of the defence of insanity as serving no useful purpose. See, for example, Goldstein & Katz, "Abolish the 'Insanity Defense'—Why not?," 72 *Yale L.J.* 853 (1963); Szasz, *Law Liberty, and Psychiatry* (1963). For appraisals of Szasz's views see Stafford-Clark, "Book Review," 74 *Yale L.J.* 392 (1964); Wertheim, "Book Review," 64 *Colum. L. Rev.* 977 (1965); Joseph W. Bishop, Jr., "Book Review," 78 *Harv. L. Rev.* 1510 (1965).

2. See Allen, "The Rule of the American Law Institute's Model Penal Code," 45 *Marq. L. Rev.* 494, 496 (1962).

of the crime charged, known as *mens rea* which is a composite of various attitudes and frames of mind.

The mind, a superior and distinguished gift of nature to mankind, plays a predominant role in all human actions and behaviour. It is, therefore, natural that while considering and assessing the value and nature of any human action emphasis is laid on the working of the mental faculty of the person whose act is judged, because nothing undermines general respect for law more than a feeling that the law is arbitrary in assigning guilt. Therefore, a multilateral examination of the state of mind leading to insanity becomes important.

The defence of insanity, however, cannot be understood in terms of foresight of consequences alone. The concept of foresight has become part of criminal theory largely as a result of uncritical adoption of the classical theories of Bentham and Austin on the nature of "act" and "intention" formulated on the then predominant theories of psychology and moral philosophy. Later writers in criminal law have often neglected to revise their conclusions in the light of modern developments in psychology and philosophy. Contemporary philosophers, such as Gilbert Ryle,[3] G. E. M. Anscombe,[4] and Stuart Hampshire,[5] have shown that "intention" is not too simple a notion to be adequately expressed merely in terms of foresight and desire but is a very complex one which stands for very difficult ideas in different contexts. The attempt to define blameworthiness in terms of foresight leads to superficiality and is inconsistent with psychological reality.[6]

The M'Naghten[7] Rules, which are the continuing measure of insanity, incorporate a classical, scholastic, intellectual thought which is a century old. Attempts at modernization have, no doubt, led to some modified and substitute rules of criminal responsibility, but the stature and significance of the M'Naghten Rules has impeded efforts at creative

3. Ryle, *The Concept of Mind* (1949). See Hughes, "Book Review", 16 *Stan. L.R.* 470, 472 (1964).

4. Anscombe, *Intention* (1957).

5. Hampshire, *Thought and Action* (1959).

6. Professor Peter Brett's recent work, *An Inquiry into Criminal Guilt* (1963), questions the conventional formulations of the principles of *mens rea* and suggests that they be examined afresh in the light of modern work in philosophy, psychology and psychiatry. Barbara Wootton in her Hamlyn lectures, *Crime and the Criminal Law* (1963), also says that the conventional doctrine of *mens rea* can only make sense or be "logical" within the framework of a retributive theory according to which punishment is used and justified as an "appropriate" return for past wickedness and not merely as a prevention of anti-social conduct. For an examination of Lady Wootton's thesis see H. L. A. Hart, "Book Review," 74 *Yale L.J.* 1325 (1965); Louisell & Diamond, "Law and Psychiatry: Dentente, Entente, or Concomitance," 50 *Cornell L.Q.* 217 *et seq.* (1965).

7. "There are at least 10 variant spellings of this name." *Royal Commission on Capital Punishment* 1949-1953 *Report* 75, note 2 (Cmd. 8932) [hereinafter cited as *Report*]. See 74 *L. Q. Rev.* 1, 21 (1958); *Pigney* v. *Pointer's Transport Service Ltd.*, [1957] 1 Weekly L.R. 1122, 1123; Diamond, "On the Spelling of Daniel M'Naghten's Name," 25 *Ohio St. L.J.* 84 (1964). We have, however, adopted the spelling *M'Naghten* followed by the Royal Commission on Capital Punishment.

reconstruction. Even when scientific insight has exposed and partially clarified the complex web of psychological and physical states underlying the "insanity" concept, adherence to the illusory simplicity and precision of the M'Naghten Rules—to the belief that complexities can be reduced to a formula—has tended to block legal change.

The problem of insanity assumes different and even more significant proportions in a heterogeneous country like India where mass illiteracy, ignorance and economic differentiation of the people render any uniform test of culpability difficult. The common law tradition of judicial innovation is helping to soften the rigidity of the M'Naghten Rules in the United Kingdom but the statutory limitations of the Penal Code provisions of 1860 make such innovative adjustments in India difficult.

This paper, therefore, proposes to examine the following aspects of the defence of insanity in Indian criminal law :

(a) Defence of insanity in Hindu and Muslim systems of jurisprudence and modern attempts at codification culminating in section 84 of the Indian Penal Code, 1860.

(b) A brief critical review of the M'Naghten Rules in retrospect to show the extent of their embodiment in the Indian Penal Code, 1860.

(c) An examination of the judicial interpretation of section 84 and the selective case-law of over a century, involving a variety of fact situations, to find out the extent and scope of the defence of insanity as available under this section.

(d) A discussion of some allied problems—like the problem of burden of proof and its quantum—in relation to the defence of insanity.

(e) Shortcomings of the law of insanity and some suggestions for its adaptation to reflect modern advances in medico-psychiatric knowledge.

A socio-legal examination of these aspects is intended to assert a thesis that the M'Naghten Rules should be treated as merely a guideline around which the variations of life, education and thought reflecting types of mental disorders should be organized as defence to criminal liability. It is only when these variations are taken into account that the M'Naghten Rules will reflect a proper enforcement of criminal law in India.

## II. Indian Law of Insanity: Historical Development

### *A. Insanity in Ancient India*

It is curious that though the old Indian literature is replete with ideas on many topics of criminal law and matters which are taken into consideration while awarding punishment, it does not appear to contain

direct references to the plea of insanity as a defence. An attempt is nevertheless made to present such scattered material as this writer has found.

In ancient India, legal and moral derelictions were intermixed. The Hindu philosophy expounds that the consequences of the violation of a duty are to be borne by the person guilty of such violation. Whether the action be voluntary or involuntary, the perpetrator has to reap the consequences of his deeds without exception. The Order of Nature is self-operative against every breach or violation.[8] Thus, whether the wrong is done in sanity or insanity, by an adult or an infant, in normal or abnormal circumstances, the perpetrator has to suffer for it. Further, one may suffer for his misdeeds either in the current life or in subsequent lives as his fate decrees. The complicated theories of fate, *karma* (action), regeneration and *samskar*, it appears, played an important role in the formulation of the theory of absolute liability. However, we find that one could amend his misdeeds by undergoing proper atonement or penance known as *prayascitta*. In case where a wrong has been committed by a child who is unable to know the nature of his act and also too young to undergo any penance,[9] the duty of atonement is cast upon his parents or guardians.

The *karma* (action) theory postulates that man is free to act, and the Vedic *rishis* were prepared to appraise the ethical value of an act with reference to the intention of the doer.[10] Thus, it is clear that the consideration of an act done with will or intention, without external constraints, was different from the one performed under compulsion.[11] Now without going into the intricacies of what "free will" is, we may see what is understood by "compulsion."[12] The external compulsions are physical servitudes, necessities, passions,[13] and any other circumstance or condition which clouds the will, or deprives it of its freedom. An act so compelled is not the same as it would have been if

8. See Radhabinod Paul, *The History of Hindu Law* 169 (1958):
In the age of the confusion of the moral and juristic order with the physical it would indeed be perfectly logical to expect that every act, wilful or not, violating that Order should, as a matter of course be met with penalty; and, as even gods themselves were subject to this eternal order, it would be quite reasonable to find them powerless to overlook the sins.

9. One school of thought completely absolves a child below five years of age from liability of any sin or crime; but for children between the age group of five to ten years, their elders have to atone. The other school does not absolve the child of five years of age or less but provides that they are not liable for full *prayascitta* (penance) for the sin. See 4 Kane, *History of Dharmasastra* 79 (1953).

10. *Id.* at 169.

11. *Ibid.*

12. For the unintentional sin Vasistha says: "O Varna! the sin is not due to the पापवृत्तिः of the self: its धृतिः its originating cause, is wine, anger, gambling or आचित्तिः (ignorance)."

13. Radhabinod Paul, *op. cit. supra* note 8, at 170.

done free of those circumstances or conditions. We find Duryodhan's brother, Vikarna, in the *Mahabharata* speaking in defence of Draupadi when she was lost as part of a stake in a gambling game by Yudhisthira and was exposed to innumerable indignities. Vikarna raised three points on behalf of Draupadi of which one was that her being pledged by Yudhisthira was invalid in that it was made in the frenzy of gambling.[14] Thus, it may be inferred that frenzy or other conditions leading to abnormality of mind were recognized grounds for changing attitudes towards a wrongful human act.

The ancient *rishis* (sages) have always paid much consideration to the circumstances and conditions[15] in which a sin is committed and took great consideration of the personality development[16] of the sinner while alloting *danda* (punishment) or *prayascitta* (penance) for him. According to Manu,

> क्षन्तव्यं प्रभुणा नित्यं क्षिपतां कार्यिणां नृणाम् ।
> बालवृद्धातुरणांच कुर्वता हितमात्मनः ॥

Thus, a child and an insane person, among others, is to be forgiven and not punished for a crime.[17]

Yajnavalkya is more specific in describing the conditions which distort the working of the mind and ordains that no punishment be imposed upon a person who has committed an offence under these conditions. He observes :[18]

> मोहमदादिभिरदण्डनम् ।
> मोहश्चित्त वैकल्यं मदो मधादिजानिता विकृतावस्था
> आदिपदा दुन्मादादिसंग्रहः ॥

Thus the available literature in ancient Indian law does not make clear whether or not the insane person is fully absolved of his criminal liability. It appears that the concept of sin and the theory of absolute liability of each individual for acts committed by him did not admit of such exception. However, it is apparent that great consideration is shown in the ancient literature for the purposes of allotment of *danda* (punishment) or *prayascitta* (penance) to an insane violator of social or moral order.

### *B. Insanity in Muhammadan Law*

In Muhammadan law no responsibility appears to be attached to insane or imbecile persons. Their legal capacity, except as to acts done in lucid intervals, is affected in the same way as that of an infant with-

14. See *Mahabharata*, II, 65, 19-24.
15. *Yajnavalkyasmriti*, I, 368 ; *Manusmriti*, VIII, 326.
16. *Yajnavalkyasmriti*, III, 293.
17. *Manusmriti*, VIII, 312.
18. Yajnavalkya, quoted in *Dandaviveka of Vardhamana* 38 (Kamla Krishna ed. 1931).

out determination.[19] The law holds such persons to be incapable of understanding and so it gives them an exemption from liability. As in the case of minority, insanity also should be pleaded on the same day; otherwise there will be no favourable presumption. This is subject to conditions that the criminal should take an oath, and his real mental state should not be incompatible with his notorious madness.[20] Abu Yusuf taking into consideration such lack of understanding said that "the *hadd* cannot be imposed on the accused after his confession, unless it is made clear that he is not insane, or mentally troubled. If he is free from such deficiency, he should then be submitted to the legal punishment."[21] It was imperative, therefore, that the *qadi* assured himself of the sanity of the criminal before pronouncing judgment.[22]

### C. *Modern Attempts at Codification*

It is interesting to note that Mr. J.E.D. Bethune,[23] though on different grounds, advocated in 1848 a theory similar to that of "absolute liability" for criminal acts of insane persons. He observed: "The plea of lunacy will be wholly disallowed and it would be left to the prerogative of mercy to pardon those unhappy persons who alone...are really free from guilt."[24] In Mr. Bethune's time in India no proper law[25] either to judge the criminal liability or to treat an acquitted lunatic existed. Therefore, the Calcutta Court of Nizamat Adawlut, by 1845, proposed

19. Abdur Rahim, *Muhammadan Jurisprudence* 244 (1958).

20. *Minhaj-El-Talibin* 399.

21. Abu Yusuf, *Al-iqrar*; quoted in Qadri, *Islamic Jurisprudence in the Modern World* 270 (1963).

22. See 1 *Law in the Middle East* 225 (Khadduri & Liebesmy eds. 1955).

23. Minute of Mr. Bethune, dated June 10, 1848—*Indian Legislative Consultations*, February 10, 1849.

24. *Ibid.*

25. Some stray cases are available. In *Government* v. *Bhuwun Singh*, 1st April, 1818, 1 N.A. Rep. 357, a person was convicted of wounding six persons, and a plea of insanity having been overruled, he was sentenced to imprisonment for life. In cases of homicide, maiming and wounding, suspicion of temporary derangement was sufficient to bar *kisas* and *diyat*, but did not preclude the imprisonment of the offender to prevent danger to society. The discretionary power of the Nizamat Adawlut, in similar cases, was subsequently enlarged by section 7 of Regulation IV of 1822. The rule contained in section 4, Regulation XVII, 1817, empowering two or more judges of the Nizamat Adawlut to convict and punish a prisoner charged with a criminal offence, in opposition to the acquittal of their law officers, was extended to cases in which a *futwa* of the law officers may declare the legal punishment barred by doubts of the prisoner's sanity when he committed the act charged by section 7 of Regulation IV of 1822. Section 4 of this Regulation describes how the judges are to proceed, in the case of a prisoner who, subsequent to the perpetration of a crime and prior to conviction, may exhibit symptoms of derangement. In another case, *Arjoon Manjhee* v. *Lukhun Manjhee*, 1st May, 1823, 2 N.A. Rep. 260 (apparently coming after Regulation IV of 1822) the prisoner was proved to have beaten a girl on the head with a stone, which caused her death. No malice being proved, or probable cause assigned, and the prisoner becoming mad shortly after, the court attributed the act to insanity, and directed his detention. See 1 Morley, *Digest of Reported Cases in India* 152 *et seq.* (1850).

that a law be passed to empower the Sessions Judge and the Nizamat Adawlut to provide for the custody of the acquitted persons until certified for their recovery. The draft was prepared on the model of the English statutes and was passed as Act IV of 1849,[26] containing 7 sections in all. Its preamble neatly sums up the purpose of the Act :

> Whereas it is expedient to declare what unsoundness of mind excuses the commission of criminal acts, and to provide for the safe custody of persons found to have committed such acts, but acquitted by reason of unsoundness of mind, it is enacted as follows....

And section 1 of the Act laid the test of insanity as follows :

> No person who does an act which, if done by a person of unsound mind, is an offence, shall be acquitted of such offence for unsoundness of mind, unless the court or jury, as the case may be, in which, according to the constitution of the court, the power of conviction or acquittal is vested, shall find that, by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious and incapable of knowing, at the time of doing the said act, that he was doing an act forbidden by the law of the land.[27]

Before the passing of the above Act (six years after the *M'Naghten* case) the law as to the determination of guilt of an insane person was as uncertain and chaotic in this country as it was in England, wherefrom law and procedure were being imported and infused through the courts of the East India Company.[28] However, attempts were afoot to lay down provisions relating to the criminal acts done by insane persons. In 1837, Mr. Macaulay had drafted a code wherein he had provided as follows :

> Section 66 : Nothing is an offence which is done by a person in a state of idiocy.
>
> Section 67 : Nothing is an offence which is done by a person in consequence of being mad or delirious at the time of doing it.

It is obvious that section 67 granted to a lunatic an immunity extending as far as anything claimed by medical theorists.[29] This was felt to be too favourable to an offender; therefore, many suggestions and amendments were advanced to make the test of criminality of an insane person more precise and direct. However, no acceptable standards could be laid down until the decision of the *M'Naghten* case which took place in England in 1843. The rules laid down therein settled the law on the subject in England. The same rules became the basis of the present codified law on insanity in this country. It is natural, therefore, to go to what has been aptly called "the cloudy land of M'Naghtenism"[30] for a proper evaluation of the subject in Indian criminal law.

26. Tapas Banerjee, *Background to Indian Criminal Law* 119-20 (1963).

27. The following cases dealing with the problem of insanity may be noted: *Bundhoo Dhangur* v. *Fagoo*, 12th Feb., 1849, 6 N.A. Rep. 107; *Government* v. *Kellye Singh*, 18th May, 1849, 6 N.A. Rep. 144; *Mt. Sookree* v. *Boodhun Bhooya*, 21st Sept., 1849, 6 N.A. Rep. 163. See 2 Morley, *Digest of Reported Cases in India* 110 *et seq.* (1850).

28. See Setalvad, *The Common Law in India* ch. 3 (1960).

29. See Mayne, *Criminal Law of India* 164 (4th ed. 1914).

30. Biggs, *The Guilty Mind : Psychiatry and the Law of Homicide* 219 (1954).

## III. THE BASIS OF THE LAW : THE M'NAGHTEN RULES

### *A. M'Naghten in Retrospect*

#### *(1) The M'Naghten Case*

The *M'Naghten* case[31] marks a culmination in the development[32] of the law of insanity in England which had hitherto presented a bewildering picture of confusion. Daniel M'Naghten was a paranoiac who believed himself to be persecuted by the Tories and to have been goaded beyond endurance to commit the alleged murder. Suffering from delusions of persecution, M'Naghten had determined to kill Sir Robert Peel but shot and killed Edward Drummond, by mistake. He was tried, and acquitted on the ground of insanity. His acquittal evoked a public clamour. Many people believed that his story of delusion was a concoction, and that the murder was a pure political assassination. A debate ensued in the House of Lords with a view to "strengthening the law." And it was induced to employ the unusual procedure of addressing a series of questions to the fifteen judges of England to ascertain the law on the subject.

#### *(2) The M'Naghten Rules*

The judges' answers, announced by Tindal, C.J.,[33] too long to be reproduced here, are now known as the M'Naghten Rules. They may be summarized as follows :

(1) The accused is presumed to be sane until the contrary is proved.

(2) It must be proved that the accused, when he committed the act, 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 committing, or, if he did know this, not to 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 is punishable.

(4) If the accused labours under 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.

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31. The antecedent trial is reported in 4 St. Tr. (N.S.) 847.

32. It is beyond the scope of this paper to survey the English law up to 1843. For this see 1 Burdick, *Law of Crime* 269-75 (1946) ; Weihofen, *Mental Disorder as a Criminal Defense* 52-59 (1954) ; Whitlock, *Criminal Responsibility and Mental Illness* 12-19 (1963) ; "Medical Evidence and Criminal Responsibility," 32 *The Medico-Legal Journal* 176 (1964) ; Dixon, "A Legacy of Hedfield, M'Naghten, and Maclean," 31 *A.L.J.* 255 (1957).

33. Mr. Justice Maule, who wrote a separate opinion, first protested the practice of answering to hypothetical questions.

### *(3) Glosses Put on the Rules*

The vital part of the rules is as mentioned in 2 above. The first part of this, " not to know the nature and quality of the act,"[34] means that the accused must be insane in every possible sense of the word.[35] The second part, " not to know that what he was doing was wrong," is crucial. First, it has been argued that "know" means "to appreciate," or " to comprehend " or " to realize in its full meaning." Another question is whether " wrong " means " legal " or "moral" wrong.[36] Has the

34. In *R.* v. *Codere*, [1916] 12 Crim. App. R. 21, the Court of Criminal Appeal expressed the opinion that in using the language " nature and quality " the judges in their answers to the *M'Naghten* questions were only dealing with the physical character of the act, and were not intending to distinguish between its physical and moral aspects. See 1 Russell, *Crime* 110 (12th ed. 1964). Also see Devlin, "Mental Abnormality and the Criminal Law," in *Changing Legal Perspectives* 71 (Macdonald ed. 1963). This interpretation has not been universal as is evident from *Schwartz* v. *State*, (1902) 65 Nebraska 196 (S.C.).

35. Some leading authorities regard the existence of such forms of insanity as a mere legal fiction. See 1 Taylor, *Principles and Practice of Medical Jurisprudence* 578 (11th ed. 1956).

36. In England it is enough that the accused should know that what he was doing was contrary to law. That was decided in the case of *R.* v. *Windle*, [1952] 2 Q. B. 826. The accused, a feeble-minded man, induced his wife, who had frequently spoken of committing suicide, to consume a large number of aspirins, realizing that this was contrary to law but thinking that it was beneficial for her and, therefore, not morally wrong. It was held that in such a case the defendant's own notions of right and wrong are irrelevant; his knowledge that his act was legally wrong prevented him from coming within the M'Naghten Rules. Previously, in *R.* v. *Codere*, *supra* note 34, the Court of Criminal Appeal had not only assumed that knowledge of moral wrong was relevant but had examined its nature. It was held that moral wrong meant objective moral standard—"the ordinary standard adopted by reasonable men." For differing opinions on *Windle* see Norval Morris, " 'Wrong' in the M'Naghten Rules," 16 *Modern L. Rev.* (1953); Montrose in 17 *Modern L. Rev.* 383 (1954) and 18 *ibid.* 505. Judge Cardozo in the New York case of *People* v. *Schmidt*, (1915) 216 N.Y. 324, said, after reviewing the precedents: " It is impossible, we think, to say that there is any decisive adjudication which limits the word ' wrong ' to legal as opposed to moral wrong." Tennessee and Taxas choose moral wrong; some other states have them as alternatives. See Weihofen, *The Urge to Punish* 181 (1956). This has not been followed in Australia [*R.* v. *Stapleton*, (1952) A.L.R. 929] and it is not the law in Canada. According to Lord Devlin

> the alternative test which has been introduced into this country (Canada) and into Australia, that the accused must know that what he did was morally wrong, in the sense that it was something which would be condemned by right thinking men, is a test which brings uncertainty into the law....If it is not clear what right thinking men believe, then it must be left to the law to decide what is to be condemned and what is not. If it is clear and the law is not in accord with it, then the law should be altered so that it may condemn only what right thinking men condemn. Meanwhile, until the law is altered, it should be the same for the insane as for the sane. If a sane man commits murder and says, "I knew what I was doing was against the law but I thought it was morally right," that is no answer for him. I cannot see why if a person is led by insanity to believe that what he knows to be legally wrong is morally right it should be any answer for him.

Devlin, *supra* note 34, at 84.

accused got to know that what he was doing was contrary to law, or that it was contrary to the moral notions and law? Then there is the question whether, if he has full knowledge of what he is doing but is unable to prevent himself because of some disorder of the emotions rather than a defect of reason, the rule ought to be extended to cover that.[37]

### *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,[38] not only by eminent lawyers,[39] but also by medical scientiests 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."[40] In the light of modern psychiatric developments, criminological science and changing conceptions of guilt, the criticism and

37. Irresistible impulse is no defence in English law. See *R.* v. *True*, [1922] 16 Crim. App. R. 164; *R.* v. *Kopsch*, [1925] 19 Crim. App. R. 50; *R.* v. *Sodeman*, 55 Commw. L.R. 192 (Austl. 1936). The Bill of 1878 in England embodied the principle of irresistible impulse, but it was rejected in the English Draft Penal Code of 1879. However, in 1923 Lord Atkins Committee recommended an addition to the M'Naghten Rules recognizing that "an act may be committed under an impulse which the prisoner was by mental disease in substance deprived of any power to resist." This recommendation was opposed by the judiciary and dropped. Professor Hart's observations are noteworthy:

> When Lord Atkins Committee recommended in 1923 an addition to the McNaughten Rules to cater for what it termed "irresistible impulse," it was enough in the debate in the House of Lords for judicial members to prophesy the harm to society which would inevitably flow from the amendment. Not a word was said to meet the point that the laws of many other countries already conformed to the proposal: nothing was said about the United States where a similar modification of the McNaughten Rules providing for inability to conform to the law's requirement as well as defects in knowledge had been long accepted in several States without disastrous results. But in 1957, largely as a result of the immensely valuable examination of the whole topic by the Royal Commission on Capital Punishment, the law was amended, not as recommended by the Commission, but in the form of a curious compromise. This was the introduction of the idea...of a plea of diminished responsibility.

H.L.A. Hart, *The Morality of the Criminal Law* 10-11 (1965).

38. See *State* v. *Pike*, (1870) 49 N.H. 399, popularly known as the *Hampshire* doctrine; Reid, "Understanding the New Hampshire Doctrine of Criminal Insanity," 69 *Yale L. J.* 367 (1960). Also see *State* v. *Jones*, (1871) 50 N.H. 369.

39. 2 Stephen, *A History of the Criminal Law of England* 157 (1883). A quarter of a century ago, Mr. Justice Cardozo summed up the almost universal judgment. "Everyone," he said, "concedes that the present definition of insanity has little relation to the truths of mental life." Cardozo, *What Medicine Can Do for the Law* 32 (1932).

40. See *Report* at 80; Friedmann, *Law in a Changing Society* 167 *et seq.* (1959). Also see Zilboorg, "A Step Toward Enlightened Justice," 22 *U. Chi. L. Rev.* 331, 333 (1955).

discussion[41] 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 :[42]

(1) 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 ;

(2) that such knowledge is the sole instigator and guide of conduct, or at least the most important element therein, and consequently should be the sole criterion of responsibility; and

(3) 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.

### *C. Suggested Alternatives to the M'Naghten Rules*

" Not only is the famous test vague and uncertain," and an emblem of outworn medical notions, " but even from the point of view of assumedly separate, insulated mental functions it is too narrow a measure of irresponsibility." It ignores " those disorders that manifest themselves largely in disturbances of the impulsive and affective aspects

41. Friedmann, *op. cit. supra* note 40, at 168. A few of the plethora of books and articles discussing the M'Naghten Rules and allied problems are: Weihofen, *op. cit. supra* note 32 ; Glueck, *Mental Disorder and the Criminal Law* (1925) ; White, *Insanity and the Criminal Law* (1923) ; Zilboorg, *Mind, Medicine and Man* (1943) ; Hall, *General Principles of Criminal Law* ch. XIV (2d ed. 1960) ; Maudsley, *Responsibility in Mental Diseases* (1874); Sullivan, *Crime and Insanity* (1924) ; *Crime and Insanity* (Nice ed. 1958) ; American Bar Foundation, *The Mentally Disabled and the Law* 330-47 (Lindman & McIntyre eds. 1961); Bergler, *Justice and Injustice* 117-22 (1963) ; Overholser, *The Psychiatrist and the Law* (1953) ; Barnes, " A Century of the McNaghten Rules," 8 *Camb. L. J.* 300 (1944) ; Keedy, " Insanity and Criminal Responsibility," 30 *Harv. L. Rev.* 535, 724 (1917) ; Tulin, " The Problem of Mental Disorder : A Survey," 32 *Colum. L. Rev.* 933 (1932) ; MacNiven, " Psychoses and Criminal Responsibility," in *Mental Abnormality and Crime* (Radzinowicz & Turner eds. 1944) ; Crotty, " The History of Insanity as a Defense to Crime in English Criminal Law," 12 *Calif. L. Rev.* 105 (1924) ; Silving, " Mental Incapacity in Criminal Law," in 2 *Current Law and Social Problems* 1 (Macdonald ed. 1961); Devlin, *supra* note 34; Diamond " From M'Naghten to Currens and Beyond," 50 *Calif. L. Rev.* 189 (1962) ; Williams " The Royal Commission and the Defence of Insanity," *Current Legal Problems* 16 (1954) ; Morris, "Committee Report," 21 *Modern L. Rev.* 63 (1958) ; Mueller, "M'Naghten Remains Irreplacable: Recent Events in the Law of Incapacity," 50 *Geo. L. J.* 105 (1961) ; Ward, " The M'Naghten Rule : A Reevaluation," 45 *Marq. L. Rev.* 506 (1962) ; Werthem, " Psychoauthoritarianism and the Law," 22 *U. Chi. L. Rev.* 336 (1955) ; Ehrenzweig, " A Psycho-Analysis of the Insanity Plea—Clues to the Problems of Criminal Responsibility and Insanity in the Death Cell," 73 *Yale L. J.* 425, 428 *et seq.* (1964).

42. See Glueck, " Psychiatry and the Criminal Law," 12 *Mental Hygiene* 575, 580 (1928) as quoted in *Durham* v. *United States*, 214 F. 2d 862, 871 (1954). Also see Williams, *Criminal Law* 506 (2d ed. 1961).

of mental life." [43] Hence since 1843 much discussion has taken place as to the effect of these latter forms of insanity in conferring immunity from criminal responsibility.[44]

*(1) Irresistible Impulse*

A widely favoured test, at least as a supplement to the M'Naghten Rules, has been the test of "irresistible impulse" which considerably broadens the area of mental illness which the law will consider to be in the area of non-responsibility by legally recognizing established psychological and psychiatric phenomena.[45] But the Royal Commission on Capital Punishment, has dubbed this concept as "largely discredited" and as "inherently inadequate and unsatisfactory." [46] The infirmity of the concept is that it is too narrow and specialized a symptom, carrying

> an unfortunate and misleading implication that, where a crime is committed as a result of emotional disorder due to insanity, it must have been suddenly and impulsively committed after a sharp internal conflict. In many cases, such as those of melancholia, this is not true at all. The sufferer from this disease experiences a change of mood which alters the whole of his existence.... The criminal act, in such circumstances, may be the reverse of impulsive. It may be coolly and carefully prepared: yet it is still the act of a madman.... Similar states of mind are likely to lie behind the criminal act when murders are committed by persons suffering from schizophrenia or paranoid psychoses....[47]

*(2) The Durham Test*

"Instead, a powerful trend in modern psychiatric and legal opinion favours the adoption of a broader test, which correlates criminal liability" with the various mental disorders that can seriously affect the comprehension and control of behaviour. Thus, a momentous decision, *Durham* v. *United States*,[48] of the United States Court of Appeals for the District of Columbia has formulated the rule that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." No doubt, *Durham* is a great improvement over both the M'Naghten Rule and the "irresistible impulse test" in that it

43. Glueck, *Law and Psychiatry* 48 (1962). For appraisals of this recent book see Douglas, "Book Review," 76 *Harv. L. Rev.* 1101 (1963); Freedman, "Book Review," 76 *Harv. L. Rev.* 1104 (1963); Williams, "Book Review," *Camb. L. J.* 308 (1963); C, "Book Review," 27 *L. Q. Rev.* 376 (1964).

44. It was urged by Stephen that the M'Naghten Rules were capable of covering such cases, if properly interpreted. See Stephen, *op. cit. supra* note 39, at 163.

45. See Friedmann, *op. cit. supra* note 40, at 168.

46. *Report* § 314. Friedmann, *op. cit. supra* note 40, at 168.

47. *Report* at 110. This criticism was endorsed in *Durham* v. *United States*, *supra* note 42, at 873-74.

48. 214 F. 2d 862 (1954). Also see Friedmann, *op. cit. supra* note 40, at 165.

makes medical testimony on the defendant's *mental disability* permissible,[49] whereas application of the M'Naghten Rules limits medical testimony to the defendant's capacity to make *moral judgments*.[50]

*(3) Royal Commission's View*

The Royal Commission on Capital Punishment (1949-1953) recommended in their report, with one dissent, 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 :

> [T]he 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 the nature and quality of the act or (b) did not know that it was wrong or (c) was incapable of preventing himself from committing it.[51]

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." Three members were opposed to the elimination of the rules but preferred their extension to include the situation where a person knew what he was doing and knew it was wrong, but was " incapable of preventing himself from committing it,"—a proposal the majority also viewed as an improvement on the present law.

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49. This test has, however, been rejected in subsequent decisions of other U.S. Appeal Courts, which felt bound by the " right and wrong test " adopted by the Supreme Court in *Davis* v. *U.S.*, 165 U.S. 373 (1897), but also doubted the correctness of the *Durham* test [*e.g.*, *Sauer v. U.S.*, 241 F. 2d 640 (1957) ; see also *Anderson* v. *U.S.*, 237 F. 2d 118 (1956)]. The most frequent objection to the *Durham* standard is that it lacks meaning because its critical terms, " product," " disease," and " defect," are undefined. It has been argued that the *M'Naghten* formulation is little clearer in the definition of its essential terms. See Glueck, *op. cit. supra* note 43, at 97 ; Weihofen, *op. cit. supra* note 36, at 35-38. But see Kuh, " The Insanity Defense—An Effort to Combine Law and Reason," 110 *U. Pa. L. Rev.* 771 (1962).

For evaluations of *Durham* see Silving, *supra* note 41, at 68, 81; Sobeloff, " Insanity and the Criminal Law : From McNaghten to Durham and Beyond," 41 *A.B.A.J.* 793 (1955) ; Hall, " Psychiatry and Criminal Responsibility," 65 *Yale L. J.* 761 (1956) ; Douglas, " The Durham Rule : A Meeting Ground for Lawyers and Psychiatrists," 41 *Iowa L. Rev.* 485 (1956) ; " Note," 58 *Colum. L. Rev.* 183 (1958) ; Watson, " Durham Plus Five Years : Development of the Law of Criminal Responsibility in the District of Columbia, " 116 *Am. J. Psychiatry* 289 (1959) ; Reid, *supra* note 38. For a comprehensive discussion of the rule, its effects, and a compilation of recent commentary see Symposium, " Insanity and the Criminal Law—A Critique of *Durham* v. *United States*, " 22 *U. Chi. L. Rev.* 317, 320, 325, 331, 336, 339, 356, 367, 377, 397 (1954-55). For a survey of cases rejecting *Durham* see Krash, " The Durham Rule and Judicial Administration of the Insanity Defense in the District of Columbia," 70 *Yale L. J.* 905 (1961).

50. See Brett, *op. cit. supra* note 6, at 166.

51. *Report*, Recommendation No. 18, at 275, and § 317. Similar suggestions had been made by Stephen seventy-five years earlier, and by a Committee on Insanity and Crime appointed by the Lord High Chancellor in 1923.

*(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 on the Royal Commission, but they also introduced the notion that the test 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" the Commentary says, "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." [52]

The Model Penal Code formulation is in effect a combination of the M'Naghten Rules and irresistible impulse. The differences are in detail rather than in principle, and it may be doubted whether in some respects, they are an improvement on the models which they replace.[53] In any event, the new formulation is open to the same charge as its predecessors. It does not meet all classes; it is not in accord with the practice of psychiatrists, and it is likely to produce a great deal of verbal jugglery in order to make it workable.[54]

## *D. The Homicide Act, 1957*

The outcome of the Report of the Royal Commission was the Homicide Act of 1957, section 2(5) of which provides a means of by-passing the difficulties surrounding the M'Naghten Rules, by means of 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 causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions 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 Rules, 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 posits a reduction of culpability (and punishment) because of a reduced capacity to form all the required mental elements.

52. *The Model Penal Code* § 4.01 (Tent. Draft No. 4, 1955).

53. Glueck, *op. cit. supra* note 43, at 68-69 : "The A.L.I. test is apparently a rewording, in more sophisticated language, of the familiar M'Naghten and irresistible impulse rules."

54. See Brett, *op. cit. supra* note 6, at 165.

The doctrine of diminished responsibility, known to Scottish law for some ninety years at least,[55] impressed the members of the Royal Commission favourably. But they felt inhibited to recommend its introduction into English law unless it could be applied to responsibility for all crimes other than murder. The Commission thought, erroneously it seems, that in Scotland diminished responsibility was restricted to cases of homicide only.[56]

The acceptance of this doctrine has mellowed down the criticism of the M'Naghten Rules.[57] The rigidity of these rules with regard to disease of the mind and the difficulties that arise in relation to insanity not affecting the reason or the intellect do not apply to diminished responsibility. Apart from cases where a technical acquittal is required, diminished responsibility has the advantage of the possibility of a lighter sentence, or sentence in the discretion of the court as against detention as a Broadmoor patient during Her Majesty's pleasure.

It is thus evident from the foregoing discussion 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 section 84 of the Indian Penal Code, 1860.

## IV. The Substantive Law of Insanity in India

### *A. Section 84 : Its Interpretation*

The defence 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 incapable 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.[58] In order to constitute a crime, the intent and the

55. Smith, "A Scottish Survey," *Crim. L. Rev.* (Eng.) 500, 509 (1954). Keith, "Some Observations on Diminished Responsibility," 27 *Medico-Legal Journal* 4 (1959) ; 14 *Jurid. Rev.* 109-18 (1959). The Royal Commission on Capital Punishment (Cmd. 8932, p. 392) gives a useful summary of the development of the plea of diminished responsibility in England.

56. *Ibid.*

57. Fitzgerald, *Criminal Law and Punishment* 138-43 (1962). But see Sparks, "'Diminished Responsibility' in Theory and Practice," 27 *Modern L. Rev.* 9 (1964) ; Barbara Wootton "Diminished Responsibility : A Layman's View," 76 *L. Q. Rev.* 224 (1960). Whitlock, *op. cit. supra* note 32, at 94-108. For a discussion of diminished responsibility in England, see Hughes, "The English Homicide Act of 1957," 49 *J. Crim. L. & P. S.* 521, 525-28 (1959).

58. *Ambi* v. *State of Kerala*, (1962) 2 Cri.L.J. 135.

act must concur. The section[59] 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"[60] 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, but precise definitions are hard to come by. 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 has 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:

59. Two minor differences in sections 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

(i) there is no distinction between the two words "nature" and "quality": both refer to the physical character of the act (*R.* v. *Codere*, *supra* note 34), and

(ii) "wrong" has been held to 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*, *supra* note 36).

See Bhattacharya, *Insanity and Criminal Law* 27 (2d ed. 1964).

60. Courts in India are concerned with "unsoundness of mind" as defined in the section and not with "unsoundness of mind" as understood in the medical science. For, speaking medically, the "unsoundness of mind" would admit of a variety of conditions of varying degrees of severity manifesting far too many characteristics to justify any precise definition applicable to all cases. It is for this reason that in law the expression "unsoundness of mind" of a person has been given different content according to the nature and degree of the protection it is intended to be given to him. For example, in the Indian Contract Act, 1872, when defining a "sound mind" the emphasis is on the capacity to form rational judgment as to the effects of the contract on his interest (section 12). In probate cases, the test usually employed is: "Was the testator of a sound disposing mind, *i.e.*, was he able to understand the nature of the act and its effect, the extent of the property which he was disposing and the claims he ought to give effect to." In section 65(2) of the Indian Lunacy Act, 1912, the law is concerned with "whether the person is of unsound mind so as to be incapable of managing his affairs." For the purposes of criminal law, the emphasis thus appears to be on "unsoundness of mind" which incapacitates the person from knowing the nature of the act or that what he is doing is either wrong or contrary to law.

For a distinction of the medical and legal view of insanity as evident from Indian decisions see *infra* notes 98-116 and accompanying text.

their unsoundness[61] must reach that degree which the latter part of this section requires.

*(2) Tests of Insanity*

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

(i) that his unsoundness of mind was such that he was "incapable of knowing the nature of the act," or

(ii) that it had precluded him from understanding that the act he was doing was wrongful.[62]

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.[63] These two elements need not be simultaneously present in each case, nor indeed, are they invariably so present. The absence of both or either relieves the offender from liability to punishment. Situations like automatism, mistake and simple ignorance such as can occur only in gross confusional states are covered by the first category, whereas the second category embraces cases where mental disease has only partially extinguished reason. This latter cate-

61. Huda, *The Principles of the Law of Crimes in British India* 271 (1902):

> The use of the more comprehensive term "unsoundness of mind" has the advantage of doing away with the necessity of defining insanity and of artificially bringing within its scope various conditions and affections of the mind which ordinarily do not come within its meaning, but which none the less stand on the same footing in regard to exemption from criminal liability.

Modi, *Medical Jurisprudence and Toxicology* 380 (15th ed. 1965):

> It appears that the law givers have used the term "unsoundness of mind..." in the Indian Penal Code with a view to avoiding the necessity of defining insanity. Unsoundness of mind covers a wider range, and is synonymous with insanity, lunacy, madness, mental derangement, mental disorder and mental aberration or alienation.

Macaulay's draft of the Indian Penal Code used terms like "idiocy," "mad" and "delirious" which were obviously dropped in the final draft because of the air of uncertainty and varying degrees hanging around these words.

62. See:

Allahabad: *Pancha* v. *Emperor*, A.I.R. 1932 All. 233; *Rustam Ali* v. *State*, A.I.R. 1960 All. 333.

Calcutta: *Karma Urang* v. *Emperor*, A.I.R. 1928 Cal. 238; *Bazlur Rahman* v. *Emperor*, A.I.R. 1928 Cal. 1; *Geron Ali* v. *Emperor*, A.I.R. 1941 Cal. 129.

Kerala: *Ambi* v. *State of Kerala*, *supra* note 58.

Madras: *Govindaswami Padayachi*, *In re*, (1952) I.L.R. Mad. 479.

Patna: *Narain Sahi* v. *Emperor*, A.I.R. 1947 Pat. 222; *Etwa Oraon* v. *State*, A.I.R. 1961 Pat. 354.

Pepsu: *Madho Singh* v. *State*, A.I.R. 1959 Pep. 17.

Punjab: *Sardar Bakhsh* v. *Emperor*, (1934) 35 Cr. L.J. 1938; *Hazara Singh* v. *The State*, A.I.R. 1958 Punj. 104.

63. Mayne, *op. cit. supra* note 29, at 172; *Emperor* v. *Katay Kisan*, (1924) 1 Cr. L.J. 854, 856.

gory is of marked significance as it is usually the test in numerous cases.[64]

*(3) Test of Insanity Devised by the Calcutta High Court*

The Calcutta High Court has tried to formulate a third test in *Ashiruddin Ahmad* v. *The King*.[65] The accused, Ashiruddin Ahmad, according to his version, in his dream was commanded by someone in paradise to sacrifice his own five-year old son. The next morning he took his son to a mosque and killed him by thrusting a knife in his throat. He then went straight to his uncle, but, finding a chaukidar nearby, took him to a tank at some distance, and then told the story.

The court laid down that to get the benefit of section 84 the accused should establish any one of the following three elements,[66] namely,

(i) that the nature of the act was not known to the accused, or

(ii) that the act was not known by him to be contrary to law, or

(iii) that the act was not known by him to be wrong.

The court held that this third element was established by the accused, because he believed that his dream was a reality. It said that the "accused was clearly of unsound mind and that acting under delusion of his dream 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 :

64. See The Indian Law Institute, *Essays on the Indian Penal Code* 76 (1962); Mayne, *op. cit. supra* note 29, at 174. Also see *infra* notes 132-139.

65. A.I.R. 1949 Cal. 182.

66. A recent Gujarat case, *Kanbi Kurja* v. *State*, A.I.R. 1960 Guj. 1, has also approved the 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*, presumably meaning thereby a woman who had given birth to an illegitimate son, 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 items 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 hallucinations, in consequence of which he was not in a position to realize that what he was doing was either wrong or contrary to law.

*First*: An accused will be thus privileged to plead in every case that he had seen a dream enjoining him to do a certain criminal act and believing that his dream was a command by a supernatural power, he was impelled to translate the dream into action, and he would be, therefore, protected by section 84. The court will have no independent means of ascertaining the truth of the defendant's statement. The defence of insanity is, therefore, likely to be misused.

*Second*: The court's interpretation that "wrong" or "contrary to law" are two independent tests runs counter to its earlier interpretation in *Geron Ali* v. *Emperor*,[67] where it found "wrong" or "contrary to law" as forming *one* test only. It is really embarrassing to note that Mr. Justice Roxburg, who was a member of the division bench in both *Geron Ali* and *Ashiruddin Ahmad*, did not observe or clarify these obviously conflicting decisions. One would have expected a more reasoned and elaborate judgment 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 Beg, J., 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. [68]

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 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.

### *(4) True Test of Insanity*

It is, however, clear that in laying down the two tests the Indian Penal Code recognizes the "right and wrong" test of the M'Naghten

67. *Supra* note 62 (Calcutta).
68. *Lakshmi* v. *State*, A.I.R. 1959 All. 534.

Rules which has been acclaimed by the High Courts in India as a correct guide for cases involving the plea of insanity.[69]

69. See:

Allahabad: *Pancha* v. *Emperor*, *supra* note 62, at 235: "Section 84, I.P.C. has borrowed this definition (from the M'Naghten Rules) of unsoundness of mind which is recognised as a good excuse."

Assam: *State* v. *Kartik Chandra*, A.I.R. 1951 Ass. 79, 81: "This enunciation of the Law of England is the basis of Section 84 of I.P.C. and is embodied in it."

Bombay: *Queen-Empress* v. *Lakshman Dagdu*, (1886) I.L.R. 10 Bom. 512, 518: Rules of insanity "are substantially the same here and in England."

Calcutta: *Queen-Empress* v. *Kader Nasyer Shah*, (1896) I.L.R. 23 Cal. 604, 607: The test given in section 84 of the I.P.C. is "in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords in McNaghten's case...."

Central Provinces: *Emperor* v. *Katay Kisan*, *supra* note 63, at 856: "Section 84, Indian Penal Code, embodies in a few words the law as to non-punishable insanity laid down in England in 1843 by fifteen Judges in response to five questions put to them by the House of Lords in McNaghten's case...."

Gujarat: *Kanbi Kurja* v. *State*, *supra* note 66, at 2: "The provisions of S. 84 are in substance the same as those laid down by the House of Lords in Daniel McNaughton's case...."

Lahore: *Tola Ram* v. *Emperor*, A.I.R. 1927 Lah. 674, 677: "This exposition of the law has since 1843 been accepted by the Courts in England and is the basis of the law in India as embodied in S. 84, I.P.C." *Ghungar Mal* v. *Emperor*, A.I.R. 1939 Lah. 355: "The language of this section follows fairly closely what was laid down in the famous *M'Naghten's* case...."

Madhya Pradesh: *State* v. *Chhotelal*, A.I.R. 1959 M.P. 203, 205: "The principle underlying the section is substantially based on the well-known M'Naghten Rules, and consequently considerable assistance in understanding its content can be had from the English decisions of the question."

Nagpur: *Kalicharan* v. *Emperor*, A.I.R. 1948 Nag. 20, 23: "It is the rule in (1843) 10 Cl. & Fin. 200 which is the basis of S. 84, Penal Code." *Deorao* v. *Emperor*, A.I.R. 1946 Nag. 321, 329: "This section reproduces the substance of the second answer of the Judges in (1843) 10 Cl. & F. 200...."

Oudh: *Muhammad Hussain* v. *Emperor*, (1913) 14 Cr. L.J. 81, 84: "The law on the subject, which practically embodies the decision of the House of Lords in the well-known McNaughten's case...is contained in section 84 of the Indian Penal Code...," *per* Kanhaiya Lal, A.J.C.; "The law in India on this subject is based upon the answers given by the fifteen Judges to the questions put to them by the House of Lords in the course of the discussion initiated by the proceedings in the well-known case of McNaughten," *per* Stuart, A.J.C. (p 90). *Wazir* v. *Emperor*, A.I.R. 1948 Oudh 179, 180: "The law relating to criminal responsibility of a person said to be of unsound mind was laid down in England in the celebrated McNaughten case over a century ago by a fourteen English Judges on questions put to them by the House of Lords, since when it has not only been the law of England but also in India."

Patna: *Emperor* v. *Gedka*, A.I.R. 1937 Pat. 363, 364: Indian rule is "in substance the same as that laid down in answers of the Judges to the questions put to them."

Punjab: *Hazara Singh* v. *The State*, *supra* note 62, at 108: "In substance, our law relieving insane persons from criminal responsibility, is based upon English law as derived from a set of answers formulated in the abstract, delivered by the Judges in reply to questions put to them by the House of Lords."

### B. *Nature of Mental Derangement*

It is not every form of mental derangement or any infraction of, or deviation from a normal conduct, that confers immunity from criminal liability.

#### *(1) Various Degrees of Insanity*

There is really no difference of kind but only of degrees between the normal and the mentally ill. The disease, disorder or disturbance of the mind, must be of a 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 jealousy, 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.[70]

#### *(2) Impairment of Cognitive Faculties* [71]

The cognitive phase of mental life is the most important factor in governing human conduct. Exemption from liability is, therefore,

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70. *Hazara Singh* v. *The State*, *supra* note 62, at 108 (Punjab).
71. See:

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|---|---|---|
| Allahabad | : | *Emperor* v. *Harka*, (1906) 4 Cr. L.J. 88; *Pancha* v. *Emperor*, *supra* note 62; *Rustam Ali* v. *State*, *supra* note 62. |
| Assam | : | *State* v. *Kartik Chandra*, *supra* note 69. |
| Calcutta | : | *The Queen* v. *Jugo Mohun Malo*, (1875) 24 W.R. 5; *Ram Sundar* v. *Emperor*, A.I.R. 1919 Cal. 248; *Mantajali* v. *Emperor*, A.I.R. 1920 Cal. 39; *Bazlur Rahman* v. *Emperor*, *supra* note 62; *Queen-Empress* v. *Kader Nasyer Shah*, *supra* note 69, at 608-9. |
| Central Provinces | : | *Emperor* v. *Katay Kisan*, *supra* note 63. |
| Gujarat | : | *Kanbi Kurja* v. *State*, *supra* note 66. |
| Himachal Pradesh | : | *Goverdhan* v. *Union of India*, (1961) 2 Cri. L.J. 475. |
| Kerala | : | *Paily* v. *State*, (1959) 2 Ker.L.R. 1346. |
| Lahore | : | *Ramzan* v. *Emperor*, A.I.R. 1919 Lah. 470; *Emperor* v. *Sajjan Singh*, (1913) 32 Cr. L.J. 816. |
| Madhya Bharat | : | *Kashiram* v. *The State*, A.I.R. 1957 M.B. 104. |
| Madhya Pradesh | : | *State* v. *Chhotelal*, *supra* note 69. |
| Madras | : | *In re PALANSWAMI GOUNDAN*, A.I.R. 1952 Mad. 175. |
| Mysore | : | *Channabasappa* v. *State of Mysore*, A.I.R. 1957 Mys. 68; *In re JINNAPPA*, (1961) 2 Cri. L.J. 250. |
| Nagpur | : | *Kalicharan* v. *Emperor*, *supra* note 69; *Baswantrao Bajirao* v. *Emperor*, A.I.R. 1949 Nag. 66. |
| Patna | : | *Emperor* v. *Gedka*, *supra* note 69; *Prabhu Ram* v. *The State*, A.I.R. 1955 N.U.C. (Patna) 451. |
| Saurashtra | : | *Hemu Bechar* v. *The State*, A.I.R. 1951 Sau. 19; *Vaghumal Kherajmal* v. *State*, A.I.R. 1955 Sau. 13; *State* v. *Koli Jeram*, A.I.R. 1955 Sau. 105. |
| Sind | : | *Dhani Bux* v. *Emperor*, A.I.R. 1916 Sind 1. |

confined only to those cases in which insanity materially impairs the cognitive faculties of the accused, *i.e.*, the faculty of understanding the nature of his act in its bearing on the victim or in relation to himself, *i.e.*, his own responsibility for it. Such cases where insanity affects only the emotions and the will of the offender (whilst it leaves the cognitive faculties unimpaired) have been left outside the exception.[72] or the cherished purpose of criminal law has been to make people control their insane as well as their sane impulses, to guard against "mischievous propensities and homicidal impulses." [73]

*(3) Capacity to Realize the Nature of the Act*

The law recognizes incapacity to realize the nature of the act, and presumes that where a man's mind or his faculties of ratiocination are sufficiently unclouded to apprehend what he is doing he must always be presumed to intend the consequences of the action he takes.[74] Many cases of erratic behaviour have been not held to be sufficient to attract the application of section 84 of the Indian Penal Code. Examples of this are :

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72. *Queen-Empress* v. *Kader Nasyer Shah, supra* note 69, at 608-9 :
It may be that our law, like the law of England, limits non-liability only to those cases, in which insanity affects the cognitive faculties... and the cases, in which insanity affects only the emotions and the will... have been left outside the exception....Whether this is the proper 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 will as to those in which it affects the cognitive faculties, is a question which it is not for us here to consider....but our duty is to administer the law as we find it....[W]here the will and emotions are affected by the offender being subjected to insane impulses, it is difficult to say that his cognitive faculties are not affected. In extreme cases that may be true; but we are prepared to accept the view as generally correct that a person is entitled to exemption from criminal liability under our law in cases in which it is only shown that he is subjected 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. To take such a view as this would be to go against the plain language of section 84 of the Indian Penal Code, and the received interpretation of that section.

*Dhani Bux* v. *Emperor, supra* note 71 (Sind) ; *Ram Adhin* v. *Emperor*, (1932) 33 Cr. L.J. 163, 166 : " It is not an excuse for a person who has committed a crime that he had been goaded to it by some impulse which medical men might choose to say he could not control ; " *Tola Ram* v. *Emperor, supra* note 69 (Lahore) ; *Kalicharan* v. *Emperor, supra* note 69 (Nagpur).

73. *Chajju* v. *Emperor*, (1910) 11 Cr. L.J. 105 (Punjab). Also see Bhattacharya, *op. cit. supra* note 59, at 28, 33.

74. *Mani Ram* v. *Emperor*, A.I.R. 1927 Lah. 52, 53 [quoted in *Jalal* v. *Emperor* (1931) 30 Cr. L.J. 1024 also] ; *Hemu Bechar* v. *The State*, *supra* note 71 (Saurashtra).

(i) that an accused is conceited, odd, irascible and his brain is not quite all right,[75] or he was "moody, irritable and conceited;" [76]

(ii) that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will ; [77]

(iii) that he committed certain unusual acts in the past such as snatching away of *huqqas* from people saying that it was bad to smoke, sometimes tearing his clothes or hurling brickbats and once giving a beating to his uncle ; [78]

(iv) that he was liable to recurring fits of insanity at short intervals,[79] or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour ; [80]

(v) that he used to quarrel with his wife on certain occasions and used to lock her up inside the house whenever he used to go to work ; [81]

(vi) that his behaviour was very queer,[82] or he appeared to be a little weak-minded [83] or of weak inhibitions ; [84]

(vii) that he dragged the corpse of the deceased to a corner in the courtyard of his house and was found digging a pit and had with a stick in his hand danced round the dead body ; [85]

(viii) that he is unbalanced and excited and had certain obsessions regarding Kali worship and was saying that the Kali temple in the village ought to be electrified ; [86]

(ix) that he was behaving in an eccentric or strange manner before committing the offence [87] and that some time prior to the occurrence he had suffered from derangement of the

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75. *Abdul Rashid* v. *Emperor*, A.I.R. 1927 Lah. 567.

76. *Umar Khan* v. *Emperor*, A.I.R. 1932 Lah. 11,12. Also see *Gopalan Krishnan Nair*, (1954) I.C. 64.

77. *Tola Ram* v. *Emperor*, *supra* note 69 ; *Ram Adhin* v. *Emperor*, *supra* note 72.

78. *Chandgi* v. *Emperor* A.I.R. 1932 Lah. 260.

79. *Lakshmi* v. *State*, *supra* note 68 ; *Channabasappa* v. *State of Mysore*, *supra* note 71 (Mysore), at 69.

80. *In re RAJU SHETTY*, A.I.R. 1960 Mys. 48.

81. *Rustam Ali* v. *State*, *supra* note 62 (Allahabad).

82. *In re KANDASAMI MUDALI*, A.I.R. 1960 Mad. 316.

83. *Ismail* v. *Emperor*, (1928) 29 Cr. L.J. 540, 541.

84. *Sardara* v. *Emperor*, (1928) 29 Cr. L.J. 827, 828.

85. *Goverdhan* v. *Union of India*, *supra* note 71 (Himachal Pradesh).

86. *In re MANICKAM*, A.I.R. 1950 Mad. 576.

87. *Md. Islam* v. *Emperor*, A.I.R. 1931 Oudh 77 ; *Gulab* v. *The State*, (1951) I.L.R. 1 Raj. 800.

mind and that even subsequently he had behaved in a strange manner or had been taciturn, moody or saturnine ; [88]

(x) that he lectured before imaginary audiences on every conceivable subject under the sun for several hours together every day and thought himself to be a great poet of the ranks of Byron, Shelley and Wordsworth ; [89]

(xi) that prior to the offence he had smoked excessively, did not speak to people and remained in a moody and pensive state, and that his behaviour was so erratic and eccentric that even some exorcists were called to charm away his ailments; [90]

(xii) that previous to the occurrence he used to talk wildly and incoherently, tear up his clothes, strip himself stark naked in public and besmear himself occasionally with faecal matter and that the family had asked the deceased exorcisor of evil spirits to remove the insanity by exorcism ; [91]

(xiii) that he complained of headache and used to speak to himself and was on one occasion seen eating postherds ; [92]

(xiv) that he was driven to desperation on account of starvation [93] or unemployment,[94] or that he had been disturbed and distressed by the shortage of cloth, rice and fodder and he had complained of the hard times he was passing through; [95]

(xv) that his wife had an incestuous intimacy with his father and three or four days earlier he had found them in a compromising position, and though he kept peace at the time his angry passions continued all along.[96]

### C. *Legal and Medical Insanity*

As noted above, every mentally diseased [97] person is not *ipso facto*

88. *In re GOVINDASWAMY*, A.I.R. 1965 Mad. 283 (June).
89. *Bazlur Rahman* v. *Emperor*, *supra* note 62 (Calcutta).
90. *State* v. *Koli Jeram*, *supra* note 71, at 109 (Saurashtra).
91. *Lachman* v. *Emperor*, A.I.R. 1924 All. 413.
92. *Queen-Empress* v. *Kader Nasyer Shah*, *supra* note 69 (Calcutta).
93. *Mabajjan Bibi* v. *Emperor*, A.I.R. 1932 Cal. 658.
94. *Vaghumal Kherajmal* v. *State*, *supra* note 71 (Saurashtra).
95. *Ram Sundar* v. *Emperor*, *supra* note 71 (Calcutta).
96. *Muhammad Hussain* v. *Emperor*, *supra* note 69 (Oudh).
97. *Ismail* v. *Emperor*, *supra* note 83, at 541. Also see Justice Tracey's remarks in the *Edward Arnold* case, (1724) 16 St. Tr. 695, 704, " it is not every kind of frantic humour or something unaccountable in a man's actions, that points him out to be such a mad man as is to be 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 a wild beast, such a one is never the object of punishment," followed in *Tola Ram* v. *Emperor*, *supra* note 69 ; *Sardara* v. *Emperor*, *supra* note 84 ; *State* v. *Durgacharan*, A.I.R. 1963 Or. 33.

exempted from criminal liability [98] since the legal definition of insanity differs considerably from the medical definition.[99] The courts in India confine themselves to enquiry as to whether the legal [100] test of insanity has been met. The distinction between a "medical view of insanity" and a "legal view of insanity" [101] is important to consider.

*(1) Some Distinctions*

*First*: The medical and the legal standards of sanity are not identical. From the medical point of view, it is probably correct to say that every man at the time of committing the criminal act is insane,[102] that is, he is not in a sound, healthy, normal condition and, therefore, needs treatment. But from the legal point of view, a man must be held to be sane so long as he is able to distinguish between right and wrong, so long as he knows that the act done is wrong or contrary to law.[103]

98. *Barelal* v. *State*, A.I.R. 1960 M.P. 102; *Rustam Ali* v. *State*, *supra* note 62 (Allahabad); *Kanbi Kurja* v. *State*, *supra* note 66; *Goverdhan* v. *Union of India*, *supra* note 71 (Himachal Pradesh); *Ambi* v. *State of Kerala*, *supra* note 58.

99. The reason of this difference in medical and legal criteria of responsibility is pointed out in Menderson & Gilleppie, *Textbook of Psychiatry* 712 (1956) which is quoted by Naik, J., in *Ramdulare* v. *State*, A.I.R. 1959 M.P. 259, 260. Also see Rolph Patridge, *Broadmoor* (1953) for a clear and forceful discussion of the distinction between legal and medical insanity.

100. See *Emperor* v. *Katay Kisan*, *supra* note 63; *In re JINNAPPA*, *supra* note 71 (Mysore); *Madho Singh* v. *State*, *supra* note 62 (Pepsu).

101. See *Barelal* v. *State*, *supra* note 98; *Lakshmi* v. *State*, *supra* note 68, at 535; *Kalicharan* v. *Emperor*, *supra* note 69 (Nagpur).

102. See *Ram Adhin* v. *Emperor*, *supra* note 72.

> [T]here is a school of medico-legal thought which tends to regard all forms of crime as being the result of some mental abnormality, and the perpetrators of them as being the subjects more properly of medical treatment than of judicial punishment. What we have to administer, however, is the law as it stands, and not any form of medico-legal theory that is opposed to that law.

*Id.* at 166.

103. See

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|---|---|---|
| Gujarat | : | *Kanbi Kurja* v. *State*, *supra* note 66. |
| Kerala | : | *Ambi* v. *State of Kerala*, *supra* note 58. |
| Lahore | : | *Sher Singh* v. *Crown*, A.I.R. 1923 Lah. 508, 509; *Emperor* v. *Sajjan Singh*, *supra* note 71, at 818. |
| Madhya Pradesh | : | *Barelal* v. *State*, *supra* note 98. |
| Madras | : | *In re PAPPATHI AMMAL*, A.I.R. 1959 Mad. 239. |
| Nagpur | : | *Hagroo* v. *State*, A.I.R. 1953 Nag. 255, 256; *Kalicharan* v. *Emperor*, *supra* note 69: *Baswantrao Bajirao* v. *Emperor*, *supra* note 71. |
| Patna | : | *Narain Sahi* v. *Emperor*, *supra* note 62. |
| Pepsu | : | *Ujagar Singh* v. *State*, A.I.R. 1954 Pep. 4. |
| Punjab | : | *Chajju* v. *Emperor*, *supra* note 73, at 107. |
| Saurashtra | : | *State* v. *Koli Jeram*, *supra* note 71, at 107. "There can be no legal insanity unless the cognitive faculties of the accused are, as a result of unsoundness of mind, so completely impaired as to render him incapable of knowing the nature of the act, or that what he is doing is wrong or contrary to law." Also see *Vaghumal Kherajmal* v. *State*, *supra* note 71. |

Also, persons whom medical science would pronounce as insane do not necessarily take leave of their emotions and feelings, such as hope, fear, frustration, ambition, revenge, etc. Fear may exercise its influence over them, and threats may have a deterrent effect. Such persons, though insane, would refrain from committing any acts of violence or mischief if more powerful men are present. In the words of Bramwell, B., " there are mad men who would not have yielded to their insanity, if a policeman had been at their elbow." [104]

*Second*: To establish the defence of insanity the mental condition referred to in the section must exist *at the time when the act was committed.* If a man is found to be insane six or seven hours after committing the offence it raises no presumption that he was of unsound mind at the time of the commission of the offence.[105] For the purposes of " legal insanity," unsoundness of mind at the crucial time of the commission of the act only is relevant; medically a man may be insane at any time.

*Third*: Also, while a court of law commonly looks for some clear and distinct proof of mental delusion or intellectual aberration existing previously to, or at the time of, the perpetration of the crime, a medical man recognizes that there may be delusion, springing up in the mind suddenly, and not revealed by the previous conduct or conversation of the accused. Thus the tests employed by the medical man to detect insanity are different from those employed by the lawyer. He infers insanity from the absence of motive, of any attempt to escape, and of any accomplice. The fact that the person was *conscious* of the crime is immaterial. On the other hand, the legal test of the existence of insanity is " conduct." A lawyer means by madness " conduct of a certain character," while a physician means by it " a certain disease one of the effects of which is to produce such conduct." [106]

*Fourth*: To a medical man the motivation for an act is of primary importance whereas motive is not of decisive importance in determining legal insanity.[107]

*Fifth*: The legal view of insanity prevails over the medical view when there is a conflict between the two.[108] " It is important to recognize that in all aspects of the relationship between psychiatry and the law, it is in fact the law which calls the tune." [109]

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104. See *State* v. *Durgacharan*, *supra* note 97, at 35; *Karma Urang* v. *Emperor*, *supra* note 62 (Calcutta) ; *Pancha* v. *Emperor*, *supra* note 62 (Allahabad).

105. See *Bagga* v. *Emperor*, A.I.R. 1931 Lah. 276, 277; also see *State of Madhya Pradesh* v. *Ahmadulla*, A.I.R. 1961 S.C. 998.

106. See *infra* notes 207-208.

107. See *infra* notes 222-232.

108. Similar is the case in civil matters. See *Rajkumar* v. *Ram Sunder*, A.I.R. 1932 P.C. 69.

109. 1 Taylor, *Principles and Practice of Medical Jurisprudence* 545 (11th ed. 1956).

*(2) Illustrative Cases* [110]

At least three cases bring out the difference between medical and legal insanity.

In the well-known Bombay case, *Queen-Empress* v. *Lakshman Dagdu*,[111] the accused brutally killed his young children with a hatchet. He had shown no previous symptoms of insanity. The reason he ascribed for the crime was that he was ill with ague, and the cry of the children vexed him. After killing them he went to sleep. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. His manner was quiet when he was questioned and there was no attempt at concealment. He made a full confession of his guilt but had shown no signs of sorrow or remorse. It was held that as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, held guilty of murder.

Judged from medical viewpoint, there was, in this case, no premeditation, the idea having occurred to the accused with suddenness, there was no precaution taken, no concealment or attempt to escape, no sorrow or remorse, and the act was done without the aid of an accomplice. The court conceded that if the case had to be decided by medical tests, the accused would have to be acquitted, but it felt constrained to apply principles which were judicially recognized, though it recommended the case for governmental clemency.

The next case is *Chajju* v. *Emperor* [112] where the medical evidence, given by gentlemen of professional eminence and unimpeachable veracity, was distinctly in favour of the accused. Their evidence disclosed that the accused must have been insane because he was a man of high character, that he was suffering from debility, and that in all probability he committed this very extraordinary and wholly motiveless crime in a fit of melancholia.

The court held this evidence founded on *a priori* grounds; it differed from the theoretical views expressed by the medical experts and observed:

> They have regarded the case from the point of view merely of medical men, and so far as the case before us is concerned, their opinions are admittedly theoretical. They say that the accused must have been insane and that it seems impossible that he could have realized what he was doing because he was a man of blameless antecedents, was at the time in a bad state of health, and was the author of a wholly objectless crime.[113]

110. See *infra*.
111. *Supra* note 69 (Bombay).
112. (1910) 11 Cr. L.J. 105.
113. *Id.* at 107.

The court remarked that while all these facts were undoubtedly entitled to consideration, the important question for a court of law was: Whether when the accused committed the act, he was by reason of unsoundness of mind incapable of knowing the nature of his act or that what he was doing was wrong or contrary to law.[114]

The other case illustrating the difference between medical and legal insanity was decided recently by the High Court of Kerala (1962).[115] The accused, his wife, his mother, and his sister were living together. In the absence of his mother and sister, who were away on a visit, the accused began to maltreat and beat his wife. On January 4, 1960, the accused went to a nearby village to purchase medicine for his mother. When he returned with the medicine his mother asked him to change his clothes and take his meals. The accused went to the kitchen and his wife (the deceased) served him with food. The sister then heard an exchange of words between the accused and her sister-in-law from the kitchen. The accused asked the deceased: "Whom were you looking at and with whom were you talking?" The deceased denied the insinuation. The sister then asked the accused not to talk to his wife in that indiscreet manner as she was not a woman of easy virtues. The accused told the sister not to interfere as it was none of her business. The mother hearing the conversation came to the kitchen and advised the sister to go away. While the sister was leaving, the accused followed his wife and beat her with his shoes. The accused then went inside the house and asked the deceased to give him all her jewels, which she did. He then went to the kitchen, returned with a *chopper* and hit the deceased on her head, as a result of which she died. The accused then, on seeing three neighbours coming towards the house, threatened them with dire consequences if they dared to enter the house. He closed the door and went inside. Thereafter, he told these persons that he had killed his wife and that they could inform the authorities. He also made an extra-judicial confession to two other persons and said that the village *munsiff* could do whatever necessary.

At the trial, the Superintendent of the Mental Hospital, Madras, deposed that he had treated the accused between April 19, 1959, and May 7, 1959, and in his opinion the accused was suffering from schizophrenia.[116] The doctor spoke of the symptoms which he had noticed—no inclination to secure employment, loss of all initiative, a sense of just drifting in life, little touch with reality, living in fantasy, poor ideas, unsatisfactory sleep, taking life easy and capable of being easily led or misled. Commenting on this evidence the court said:

114. *Ibid.*
115. *Ambi* v. *State of Kerala*, (1962) 2 Cri. L.J. 135.
116. Also see *infra* notes 149-150.

"[T]he evidence of the doctor would at the most show that the accused was not mentally a normal person. This cannot amount to legal insanity." Examining the entire evidence, the court was of the opinion that the conduct of the accused was consistent with that of a sane, but highly jealous husband. His conduct was indicative of his being conscious of the nature of the act in that he was prepared to suffer the consequences of his wrongful act. And if he was conscious of the nature, of the act, he must be presumed, notwithstanding the medical evidence, to have been conscious of its criminality.

These cases pinpoint that the test of insanity as viewed from a legal point is not identical with the medical idea, and that in many cases a man who is in the opinion of the medical experts of unsound mind cannot be exonerated from the criminal liability. Nevertheless, some mental disorders have been judicially recognized as exempting criminal responsibility. In what follows is a brief evaluative presentation of some of the fact situations involving a discussion of various types of mental disorders judicially examined by Indian courts. These fact situations at times overlap. An effort has, however, been made to avoid duplication and present clearer distinctions.

### *D. Judicial View of Some Mental Disorders*

#### *(1) Insanity Caused by Intoxicants*

A state of acute intoxication may lead to insanity. Insanity thus arising is regarded the same as arising from any other cause; if it is so pronounced as to come within the legal test of irresponsibility, it is a defence.[117] Indian courts have mainly faced two types of fact situations: one, arising from the abuse of alcohol, and the other, arising from the habit of *ganja* [118] smoking.

##### *(i) Inebriety*

The general rule, as in English law, is that mere drunkenness cannot be pleaded as an excuse for crime, but a state of *mental unsoundness* produced by alcohol can be so pleaded,[119] and if established by proof,

117. *Emperor* v. *Harka*, *supra* note 71 (Allahabad), at 89 ; *Prabhunath* v. *State*, A.I.R. 1957 All. 667. Also see *Basdev* v. *State of Pepsu*, A.I.R. 1956 S.C. 488, 491, quoting Russel.

118. *Ganja* is an indigenous preparation of opium.

119. In *Director of Public Prosecution* v. *Beard*, [1920] A.C. 479, the House of Lords laid down three rules of law on this matter which have been consistently followed in India. See *Ramsingh* v. *Emperor*, A.I.R. 1937 Nag. 386 ; *Waryam Singh* v. *Crown*, A.I.R. 1926 Lah. 428 ; *Narayanan* v. *State*, (1959) Ker. L.J. 623. Also see *Attorney-General for Northern Ireland* v. *Gallagher*, [1961] All E.R. 299.

would be held to be so.[120] Thus in *Emperor* v. *Bheleka Aham*,[121] the accused, Bheleka, was proceeding towards his field and the boy, Ratneshwar, was returning home when the two met, and the former, without a word spoken, inflicted the fatal blow with a *dao* which he had with him, immediately afterwards making off across the field. The blow dealt was absolutely unprovoked and unpremeditated, there being no quarrel or dispute of any kind between them. The evidence showed that the accused was addicted to intemperate habits by excessive use of opium (though this case related to opium, the rule laid down by the court is about drunkenness) and that occasionally or for some days before and after killing the boy, he was irresponsible for his actions. Acquitting the accused, the court observed:

> Under s. 84 unsoundness of mind producing incapacity to know the nature of the act committed or that it is wrong or contrary to law is a defence to a criminal charge, but by s. 85 such incapacity is no defence, if produced by voluntary drunkenness. If, however, *voluntary drunkenness causes a disease which produces such incapacity, then s. 84 applies, though the disease may be of temporary nature.* Without attempting to lay down any rule as to what constitutes *such a disease*, we are of opinion that there was such a disease in the present case, which consequently falls under s. 84.[122]

The Lower Burma Chief Court, however, did not find "such a disease," as above, in an apparently similar fact situation.[123] "The term 'unsoundness of mind'," the court observed "cannot be construed so widely as to cover the loss of self-control following a hostile blow on the head, which is already inflamed with alcohol and has been exposed to the sun afterwards." [124]

The Allahabad[125] and Saurashtra[126] High Courts have also held that there is a distinction between the defence of insanity in the true sense

120. *Samman Singh* v. *Emperor*, A.I.R. 1941 Lah. 454, 456: "It is true that drunkenness may in extreme cases result in delirium tremens or insanity—whether temporary or permanent—and if it does so, the offender will be held not guilty." In this case, however, the evidence did not justify any such finding. *Waryam Singh* v. *Crown*, *supra* note 119, at 429: "[U]nless drunkenness either amounts to unsoundness of mind so as to enable insanity to be pleaded by way of defence, or the degree of drunkenness is such as to establish incapacity in the accused to form the intent necessary to constitute the crime, drunkenness is neither a defence nor a palliation."

121. (1902) I.L.R. 29 Cal. 493.

122. *Id.* at 495-96. [Emphasis supplied.]

123. *MauNg Gyi* v. *Emperor*, (1913) 14 Cr. L.J. 427 (Lower Burma). The accused, in this case, after drinking liquor walked two miles in the sun to a village where he was hit on head by another person. He pursued that person to a certain house, but not finding him there he attacked and wounded with a *dao* five women who were in the house. The civil surgeon thought that the accused was not fully responsible for his actions "owing to the mental state caused by the wound on his head and the alcohol he had taken and the walk that he had taken in the sun." The court regarded these facts insufficient for the application of section 84 of the Indian Penal Code.

124. *Id.* at 428.

125. *Prabhunath* v. *State*, *supra* note 117.

126. *Ranjitsingh Ramsingh of Rajkot* v. *State*, A.I.R. 1955 N.U.C. 533 (Saurashtra).

caused by excessive drunkenness and the defence of drunkenness which produces a condition such that the drunken man's mind becomes incapable of forming specific intention. Actual insanity supervening as a result of alcoholic excess furnishes as complete an answer to a criminal charge as insanity induced by any other cause. But in cases falling short of insanity, evidence of drunkenness merely establishing that the mind of the accused was so affected by drink that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.[127]

*(ii) Ganja Smoking*

The general rule propounded in *Emperor* v. *Harka* [128] that "if a person was of unsound mind, he is to be judged by the ordinary rules in regard to insanity, no matter whether the insanity arose from disease of the brain or from persistent indulgence in intoxicating drugs or liquor" has been treated as "unduly strained in favour of the prisoner" in a Nagpur case,[129] where the accused, charged for the killing of his wife, took the plea of insanity owing to excessive *ganja* smoking. Examining the conclusions of the Ganja Commission and of other authorities as set out in Taylor's *Principles and Practice of Medical Jurisprudence*, the court disfavoured the rule laid down in the *Harka* case and observed:

> In applying the law, there are difficulties arising from the effects of *ganja* smoking which do not often arise in cases of drunkenness from alcohol. For the effects of *ganja* stimulate the symptoms of insanity in a way which the effects of alcohol usually do not....[T]here may be hallucinations...sometimes accompanied by strong emotional excitement and even violent delirium....*This extremely temporary form of insanity must be clearly distinguished from the unsoundness of mind, even temporary unsoundness of mind, coming within the purview of section 84, Indian Penal Code*, and must be dealt with rather according to the provisions of law contained in sections 85 and 86.[130]

The court, therefore, held that temporary insanity caused by one bout of *ganja* smoking, which is of such an extremely temporary nature, as to pass off a few hours after the consumption of *ganja*, is not even temporary unsoundness of mind, but is nothing more or less than intoxication, and affords no excuse to the prisoner unless the intoxication be involuntary.

The view of the court is a rational one in that it takes into account the peculiar effects of *ganja* smoking giving a semblance of insanity, which is but of a transitory nature. This test of determining insanity in conjunction with the special effects of the drug involved may seem to be a departure from the general rule, but if examined carefully, it only

127. *Prabhunath* v. *State*, *supra* note 117, at 670. This decision has obviously borrowed the expression of the House of Lords in the *Beards* case, *supra* note 119.

128. (1906) 4 Cr. L.J. 88, 89 (Allahabad).

129. *Vithoo* v. *Emperor*, (1912) 13 Cr. L.J. 164 (Nagpur).

130. *Id.* at 165. [Emphasis supplied.]

lays down a rule of caution to prevent the misuse of the defence of insanity in the interests of society.[131]

*(2) Insane Delusions*

To the layman hallucinatory experiences and delusional beliefs are the very essence of insanity. Delusions are generally defined as being incorrigible false beliefs. They are unshaken by rational argument and are inappropriate to social and cultural context of the individual who holds them. They are usually associated with his personality and consist of a belief in some beneficial or prejudicial influence. Delusions may be of grandeur or exaltation, of persecution, of depression, of jealousy, of infidelity, etc. Courts in India have faced interesting situations involving delusions of infidelity, persecution, jealousy, religious beliefs, evil spirits. In such cases there is a mistake of fact, as there a person kills another but thinks that he was breaking a jar or thinks that by doing so he is sending the person slain to heaven.[132] The whole experience is attended by marked emotional tension which adds to the conviction of the reality of the belief.

*(i) Delusions of Infidelity*

A society with many sex taboos like India's puts a great emphasis on the fidelity of a woman. This may probably be the reason that in India cases involving delusions of infidelity are many.

131. The court followed *Queen-Empress* v. *Sakharam Valad Ramji*, (1890) I.L.R. 14 Bom. 564, which also dealt with the defence of insanity allegedly arising from the use of *ganja*. In this case the confirmed habit of smoking *ganja* made the accused unwilling or unable to work. It brought him to poverty and misery; it induced or intensified a state of mental irritability which rendered him unable to resist the temptation to resent with brutal violence the slightest disrespect or opposition to his wishes. These facts did not indicate that the proved habit of smoking and drinking *ganja* had so weakened the mind of the accused such as would absolve him in circumstances under which the existence of *delirium tremens* induced by a habit of taking intoxicants may absolve the killer of another from responsibility to the criminal law. Another case *Public Prosecutor* v. *Devasikamani*, A.I.R. 1928 Mad. 196, also deals with a case of insanity arising from smoking *ganja*. In this case of mischief by setting fire to a thatched building the facts were that the accused took a torch from the kitchen, ran to the building, put into the thatch and than threw it on the roof of the kitchen and ran away. The thatch caught fire and the school building was completely destroyed. The accused pleaded insanity on the ground of his being a smoker of *ganja*. It was proved that he used to threaten his father and children and used to beat his wife and run away in forest and used to throw away his food. The court held that the facts were not strong enough to give him exemption from the liability of his conduct under section 84 and that the fact that he ran away after putting the torch to the thatch showed that at the time he committed the offence he was conscious that what he was doing was wrongful. Also see *Queen-Empress* v. *Dongar*, (1886) in Ratanlal, *Unreported Criminal Cases of the High Court of Bombay 1862-1898*, at 279 (1901), which was decided just after a week of the *Lakshman Dagdu* case, *supra* note 69 (Bombay); *King-Emperor* v. *Tincouri Dhopi*, A.I.R. 1923 Cal. 460.

132. See *Queen-Empress* v. *Kader Nasyer Shah*, (1896) I.L.R. 23 Cal. 604.

In *Muhammad Husain* v. *Emperor*,[133] the accused killed his wife on the ground that he had found her with his father in an illicit liaison. The evidence disclosed that for three or three-and-half years prior to the occurrence the accused had suffered at intervals from fits and mental unsoundness in course of which he was subject to delusions. The Oudh Chief Court regarded the accused's allegation as obviously untrue as the father was seventy or seventy-five years old and the wife was eight months advanced in pregnancy. The court held that he had killed her under the influence of a delusion which had produced in his mind, a bona fide belief that the woman had been guilty of abominable conduct but this delusion did not prevent him from knowing the nature of his act. The accused's conduct as a whole was that of a man who believed that in killing his wife he had done something morally justifiable even though the law might see fit to punish him. The court accordingly convicted him.

Strikingly enough, in a Peshawar case, *Zurab* v. *Emperor* [134] also, the accused suffered a similar delusion which led him to believe that his father had illicit relations with his wife. In this case, however, the evidence indicated the requisite mental derangement (apart from the delusion) justifying the acquittal of the accused.

Another case, *Ghatu Pramanik* v. *Emperor*, [135] also relates to the delusion of infidelity. The accused in his confession stated that he had seen the deceased arrange a clandestine meeting between his wife and a young man, whom he actually saw enter his wife's room some time before midnight and again leave it after a considerable interval, whereupon he was smitten with such shame that he could not have a wink of sleep and was devoid of his senses at the time he killed the deceased. It was held that there was no doubt that the accused did actually believe he had ocular proof of his wife's infidelity and that if he had acted under the immediate influence of such a delusion, his guilt would have been greatly reduced, but as he did not do so, his offence was murder under section 302, nor was there any ground for the application of section 84.

In a recent case, *Hazara Singh* v. *The State* (1958),[136] the Punjab High Court also dealt with a situation involving delusion of infidelity. The frequent visits of the deceased to her brother-in-law created in the accused's mind an indelible impression that his wife had contracted adulterous intimacy with the latter. Under this strong delusion of unfaithfulness of his wife, he had been in the habit of mercilessly beating and maltreating her. The brooding over the character of his wife assumed the form of a kind of temporary insanity. Deeply

133. (1913) 14 Cr. L.J. 81.
134. A.I.R. 1937 Pesh. 38.
135. (1901) I.L.R. 18 Cal. 613.
136. A.I.R. 1958 Punj. 104.

disturbed by the thoughts of the unchastity of his wife, during the night of the occurrence, the accused caused her death by throwing nitric acid. The medical evidence showed that he was capable of knowing what he was doing and had ordinary concept of right and wrong. The accused was, therefore, held guilty of murder but the court thought fit to reduce the death sentence to imprisonment for life.

*(ii) Delusions of Jealousy*

Such cases are also not uncommon. In *Dil Gazi* v. *Emperor*, [137] the accused, who harboured a delusion that his wife would either elope or be taken away by some armed men, cut her throat without any rational motive. He made no attempt to escape or offer resistance or to conceal his act. The evidence showed that before the commission of the offence he suffered from a failure of reasoning powers, besides his delusions as to dangers which threatened his wife. His climbing a tree in search of his pillows indicated a state of mind resembling that generally described as idiocy. The court regarded these facts as proving unsoundness of mind which prevented the accused from knowing the nature of his act, and that it was wrong or contrary to law.

A case from Upper Burma, *Nga Pyan* v. *Emperor*, [138] also smacks of the delusion of jealousy. The accused was under a delusion that the man whom he attacked was keeping his sisters and daughters in the monastery. The evidence disclosed that he was known as "Mad Nga Pyan;" that immediately before he committed the offence he was noticed by some persons to be in one of his usual mad fits; that he discontinued the attack when he was asked to do so and that the act was absolutely unprovoked and motiveless. It was held that under these circumstances the accused was, at the time of committing the offence, incapable by reason of unsoundness of mind, of knowing the nature of the act or that it was wrong or contrary to law.

*(iii) Delusions Owing to Religious Beliefs and Superstitions*

Cases of human sacrifice and of murder of supposed witches offer such examples. In *Queen* v. *Bishendharee Kahar*,[139] the accused sacrificed his son to the god Mahadeo (in pursuance of a vow that if the son were born he would "sacrifice Ganges water, and do pooja") because wealth had not accompanied the son's birth and afterwards cut his own throat as a protest against his deity's injustice. He believed that his son would come back to life in three days. He was otherwise perfectly sane, and repudiated all suggestions as to his insanity. It was held that he could not but be convicted of murder, though his act may have been prompted to some extent by his religious enthusiasm.

137. (1907) 6 Cr. L.J. 233 (Calcutta).
138. (1912) 13 Cr. L.J. 49.
139. (1867) 7 W.R. 64.

Similarly, *In re NARAYANASWAMY GOUNDAN*,[140] a *poojari* (priest) of Mariamman temple, on being asked to sing in praise of the goddess to bring about a cure of a person attacked with smallpox, carried away a five months old infant, whirled it round and caused its death as a sacrifice to the goddess. His defence was that he was not in his senses but inspired. It was found that the appellant had not in a state of paroxysm, religious or otherwise, on the spot and instantaneously, committed the murder and where there was evidence that before and after the offence the appellant was a perfectly sane and normal person, it was held that these were not enough to show that the appellant was insane, at the time of the act, within the meaning of section 84.

In yet another case, *Geron Ali* v. *Emperor*,[141] the accused was a disciple of a *pir*. On being told by the *pir's* mistress, whom he respected as mother, that he would go to heaven if he offered a human head in sacrifice on the auspicious first day of Ramzan, cut off the heads of two persons including that of his own daughter and offered the same to the *pir* saying, "Father, you asked me for one human head; I present you with two." Evidence showed that he considered that he was doing a meritorious act which qualified him for heaven. His conduct prior to and subsequent to the act showed that his mind was disordered. The court held that the accused did not know that what he was doing was wrong or contrary to law and, thus, he was entitled to the protection of section 84.

In *Karma Urang* v. *Emperor*,[142] the accused killed his father. He said that he had a dream in which goddess Kali told him that either he would have to kill his father or his father would kill him. This dream contained other features also, the main feature being that his black-tongued father was a descendant of the goddess Kali and that he was to take his father's head to the Court at Silchar. The civil surgeon, under whose observations he was kept, opined that the accused had a definite delusion which passed off after a couple of months and that he could not distinguish right from wrong. Acquitting the accused the court observed :

> It is no doubt plain enough that under the doctrine in M'Naughton's case there may be cases where the correct application of the law is to hold a man amenable for his action, assuming merely that his particular delusion is true, but the provision which governs the present case in the first instance is that contained in sec. 84 of the Indian Penal Code. We are to see whether this man is shown to have had no knowledge of the nature and quality of his act or, as the statute says, incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.[143]

140. (1931) M.W.N. 719.
141. A.I.R. 1941 Cal. 129.
142. A.I.R. 1928 Cal. 238.
143. *Id.* at 240.

In *Seat Ali* v. *Emperor*,[144] the accused deliberately murdered his wife who believed herself to be possessed of evil spirits and who repeatedly pressed her husband to kill her saying that if he killed her the evil spirits would leave her, she would come to life again, and he would acquire money and comforts. The accused made an open confession of his guilt. The court held that the fact that the accused was under some insane delusion and superstitious belief is not per se sufficient to exempt him from criminal liability for his wrongful act, unless the impulse was such as to render him unconscious of what he was doing, or to make him ignorant of the fact that the act which he was about to commit was proscribed.

The same was held in *Emperor* v. *Harka*,[145] where the accused, a *sadhu*, suddenly seized by the legs of a boy who was playing about, dashed his head three times against a stone parapet and thereby caused his death. His allegation was that Shakti (a goddess) told him that if he killed someone, she would appear to him in person, and this impelled him to kill the boy. He admitted that he knew it was wrong to kill a person but said that he acted blindly under the influence of the goddess. The civil surgeon, who had him under observations, opined that he was suffering from delusions, brought on by indulgence in *charas* and *bhang*.

*(iv) Delusions of Persecution*

*In re SANKAPPA SHETTY*[146] a loving husband who had never been known to have beaten or ill-treated his wife on any previous occasion suddenly killed her in a closed room, which was bolted from inside, by battering her head and body brutally and violently with a sitting plank and inflicting as many as twenty wounds and bruises. There was complete lack of motive on the part of the accused who pleaded insanity. The accused was shown to have been strange and eccentric during about three days prior to the occurrence. He was labouring under a delusion that some relation of his had given him drugs and that *krutrim* (witchcraft) had been practised upon him. After the room was broken open by five persons the accused made no attempt to escape but appeared dazed. The court held that in the circumstances of the case the plea of insanity was not established and the accused was guilty of murder.

Similarly in *Kashiram* v. *The State*[147] the accused was labouring under the influence of an insane delusion that his wife had done him injury and was responsible for depriving him of his liberty. The previous insanity of the accused and this persistent delusion of his wife having

144. A.I.R. 1917 Pat. 503. Similar is the case of *Mt. Sukni Chamain* v. *Emperor* A.I.R. 1936 Pat. 245.

145. *Supra* note 128.

146. A.I.R. 1941 Mad. 326.

147. A.I.R. 1957 M.B. 104.

done him some wrong established conclusively that the accused who was in other aspects completely and utterly insane and who had "glimmering knowledge," of the nature and consequence of his act in striking his wife with an axe was absolutely incapable of realizing that it was wrong or contrary to law.

In *Ghinua Uraon* v. *Emperor*[148] the accused, who was labouring under an insane delusion that his uncle had refused assistance when villagers were taking him away for sacrificing him for the good of the village, the court held that even assuming the facts to be true, they afforded no justification for the crime, for there was no evidence to show that the accused did not realize that he was committing a wrongful act.

*(3) Schizophrenia*

Schizophrenia is popularly understood as an aberration inducing a kind of split personality. A patient suffering from this type of insanity loses contact with his environment. Schizophrenia is generally the result of progressive maladaptation of the individual to environment, exhibiting a pronounced silliness of behaviour with a great deal of situationally unwarranted smiling, giggling, odd mannerings, gesturing, and incoherent speech and thought. In *Onkar Datt* v. *Emperor*,[149] it was pleaded that the accused was suffering from Heberphrenia—a variety of schizophrenia. The persons upon whom the accused made the murderous assault were utter strangers to him and he had absolutely no motive in firing at them. There was no attempt at concealment of the crime nor there was any accomplice with him. Not only did he shoot one person, but tried to kill two persons. Also, there was no premeditation in the commission of the offence. The expert evidence regarding the mental condition of the accused was corroborated by the authoritative textbooks and previous history of the accused. The court held that the accused was suffering from Heberphrenia to such an extent as to make him incapable of knowing the nature and character of his act, which he had committed and which made him incapable of understanding that the act he was doing was wrong, or was an offence against the law of the country.

*(4) Epileptic Insanity*

In a large number of cases, epileptic fits do not lead to insanity. But when they become very frequent they may lead to insanity.[150] A person who suffers from epilepsy is liable during a period of lapse from consciousness to act without volition and has no recollection

148. (1918) 19 Cr. L.J. 135.

149. *Supra* note 110. See generally Sakel, *Schizophrenia* (1958) and its appraisal in A. Stanley Webster, "Book Review," 50 *J. Crim. L., C. & P.S.* 172 (1959).

150. See generally Barrow & Fabing, *Epilepsy and the Law* (1956); Gibbs, *Epilepsy Handbook* (1958); Sakel, *Epilepsy* (1959).

whatever of these acts when consciousness returns. This condition, known as post-epileptic automatism, has definite medico-legal bearing inasmuch as, during lapse from consciousness, crimes may be committed by persons suffering from epilepsy.[151] To exonerate the epileptic it is necessary to show that he was suffering from an epileptic seizure at the time when he committed the offence.

In *State of Madhya Pradesh* v. *Ahmadulla*,[152] the Supreme Court negatived the accused's contention that he was suffering from epileptic seizure at the time when he committed the murder because of the following reasons :

(a) The accused bore ill-will towards the deceased.

(b) The act was committed at dead of night when accused would not be seen committing the act.

(c) The accused had carefully planned the act taking a torch with him and obtaining access to the house by stealthily scaling over a wall.

(d) After the act of killing, the accused was found in a mood of exaltation.

In a Rangoon case, *Nga Ant Bwe* v. *Emperor*,[153] the accused murdered his mother and wounded his stepfather in a fit of epilepsy without any apparent cause and without any enmity with them. The accused then hid himself in a ravine. The medical evidence showed that the accused was subject to epileptic fits and he used to be completely unconscious during such fits. It was held that the evidence of this unprovoked attack upon his mother and stepfather with whom he had no quarrel or trouble, and his subsequent hiding in a ravine, were consistent with the attack on the deceased having taken place during or whilst recovering from an epileptic fit for consequences of which he could not be held criminally liable.

In a recent Kerala case, *U. Kannan* v. *State*[154] (1960), the accused was subject to periodic epileptic fits from his childhood and symptoms of an impending epileptic seizure were seen on the day he killed his aged mother. The evidence showed that three weapons, namely, a bill-book, a wooden reaper and a stick of firewood were used in the attack, that the assault continued for some time, that the accused's reply to the deceased's plea not to kill his old mother was that she deserved something more than mere killing and that the accused made no attempt whatsoever either to conceal his crime or to escape from the scene. It was suggested that the accused's occasional wrangles with his mother over the quality of food which she served him constituted motive for the crime. The court thought it puerile to hold that an occasional

151. See *Baswantrao Bajirao* v. *Emperor*, A.I.R. 1949 Nag. 667.
152. A.I.R. 1961 S.C. 998.
153. A.I.R. 1937 Rang. 99, 100.
154. A.I.R. 1960 Ker. 24.

quarrel over the quality of meals would motivate a mature man to hack to death his old and defenceless mother. The complete absence of motive or provocation, the nature and multiplicity of the weapons used, the duration of attack, the maniacal fury with which the attack was delivered and his subsequent conduct were all indications that the accused was acting under some insane impulse and, therefore, his act was saved by section 84.

*(5) Folie Circulaire*

In *Lachman* v. *Emperor*,[155] the accused Lachman, previous to the occurrence, had shown peculiarities from which it could be inferred that he was at that period insane. His family, believing him to be insane, sent for the deceased man, Lachman chamar, who had a reputation as an exorcisor of evil spirits, to remove the insanity by exorcism. Apparently the presence of Lachman chamar irritated the accused to such an extent that he attacked him with a heavy bullet of wood and inflicted terrible injuries all over his body, smashing his head and breaking both his arms. These injuries resulted in the death of Lachman chamar. Evidence showed that the man was suffering from *folie circulaire* —a type of insanity which commences with abnormality of conduct on the part of the sufferer. That abnormality of conduct increases by degrees until a period is reached when the man is manifestly insane. That is when the disease is at its height. Gradually the man gets better, the abnormality ceases and for a period he again becomes perfectly sane. After a time abnormality begins again and so the circle continues with alternating period of lunacy, abnormality and insanity. The court held that although the accused was of unsound mind at the time when he committed the deed, he knew perfectly well what he was doing was a wrong thing to do; and that being so, he was not protected under section 84.

*(6) Deaf-Mutism*

The law in India does not provide for a sane deaf-mute, who has never been instructed, being exempted from criminal liability for offences committed by him. If his mind is sound his inability to hear and speak will not excuse him. Want of speech and hearing does not necessarily imply want of mental capacity either in the understanding or memory but merely indicates a difficulty in the means of communicating the knowledge. His mind may be sound and, therefore, he cannot escape criminal liability unless he can come under section 84.[156]

155. A.I.R. 1924 All. 413.

156. *King Emperor* v. *Nga San Myin*, (1911) 12 Cr. L.J. 386 (U.B.); *Emperor* v. *Ulfat Singh*, A.I.R. 1947 All. 301 : "An accused cannot be exempted from punishment merely because he is deaf and dumb under S. 84." *State of Kerala* v. *Chaliam Kottah*, (1960) 2 Ker. L.R. 206.

Although a presumption of absence of mind in the case of a deaf and mute is permissible, it cannot always be taken as an irrebutable presumption. Every case has to be judged on the evidence available. In *King* v. *Arakhit*[157] the congenitally deaf and dumb accused was incapable of understanding anything other than a few elementary things through gestures. He committed the murder of his father and his conduct immediately thereafter was very much in his favour inasmuch as he made no attempt either to screen himself or the weapon of murder. The court held that the case fell within the general exception contained in section 84 and that he was incapable of understanding the nature of his act at the time he committed the murder and, therefore, he could not be held guilty of murder.

*(7) Somnambulism*

Somnambulism[158] is that unconscious state which is known as sleep-walking. In *In re PAPPATHI AMMAL*,[159] the accused, who had recently given birth to a child, jumped into a well with the child in the night. When a hue and cry was raised, the accused was taken out, but the child was drowned. The accused was charged with murder and attempting to commit suicide. The accused pleaded that she was a sleep-walker or somnambulist, and that during such sleep-walking she must have walked into the well with the child. The court, *inter alia*, considered whether somnambulism would amount to that insanity contemplated under section 84 and, reviewing a number of standard medical authorities, came to the conclusion that "though there is no decided case-law on the subject, somnambulism, if proved, will constitute that unsoundness of mind, attracting the application of section 84, I.P.C." [160]

*(8) Puerperal Insanity*

In the same case the court discussed puerperal insanity which follows childbirth and is referable to the action on the brain by the toxemia of pregnancy. A woman with puerperal insanity may manifest the condition after childbirth, and it may take a great variety of forms, the most common of which is mania, sometimes of the homicidal type. This may express itself through suicidal or homicidal acts. Where it was possible that the accused was suffering from some sort of puerperal disorder but there was no expert examination or collection of evidence in the light of medical knowedge of puerperal disorders and the specific

157. A.I.R. 1953 Or. 30, 31.

158. Professor Glanville Williams, in his *Criminal Law* 483 (2d ed. 1961), avoids the term " somnambulism " because it is ambiguous, being sometimes used not for sleep-walking but for insane or neurotic automation otherwise than during sleep.

159. A.I.R. 1959 Mad. 239.

160. *Id.* at 241.

defence incumbent on the accused had not been set, the court could not guess that it was a case of puerperal insanity constituting a valid defence under section 84.

*(9) Homicidal Mania*

It is a state of partial insanity accompanied by a destructive impulse in which the patient comes to feel immense surges of energy, well-being and elation. There may or may not be evidence of intellectual aberration. The existence of a destructive impulse is the main feature of the disorder. This dominating impulse leads a person to destroy his loving ones or anyone who may be involved in his delusion. In such cases there may be no distinct proof of the existence, past or present, of any mental disorder. The chief evidence of the disorder is the criminal act itself. A person cannot, as a general rule, be immune from criminal liability merely on the ground that he had the promptings of an involuntary impulse. Yet there are cases of homicidal maniacs whose intellect is so impaired as to bring their case within the exception. Such cases may be divided, according to Sir Hari Singh Gour,[161] into three classes :

(i) Where the propensity to kill has some *absurd irrational motive.*

(ii) Where it has *no discoverable motive.*

(iii) Where it is committed *without interest, without motive,* and often on a person loved by the perpetrator.

This classification ignores the crimes committed with a motive. For, in such cases, there is premeditation and cognition, leaving no room for doubt regarding the criminality of the perpetrator; whereas in the three aforesaid classes, there may or may not be culpability.

The case of *Shibo Koeri* v. *Emperor* [162] can be cited as a case coming in the *first* category. The prisoner, who was charged with committing murder, was a young man of weak intellect, and the motive actuating the offence was trivial and inadequate. As soon as he had killed his uncle by hacking him on the head and neck with a sword, he rushed about, brandishing his weapon and shouting "Victory to Kali." He attempted to strike other persons, including his own father. When the paroxysm had passed off, during the police enquiry, he appeared to be rational, but immediately afterwards, he developed *aphasia,* attempted to commit suicide and was undoubtedly insane from that time for a period of five years. These were the signs and indicia of insanity as expressed in works on the subject of medical jurisprudence. The effects of mere excitement and nervous shock would have passed off after a short interval; they would not have necessitated the detention of the accused in a lunatic asylum, for five years. The accused was suffering from a fit of melancholic homicidal mania at the time he hacked the

161. 1 Gour, *The Penal Law of India* 358 *et seq.* (7th ed. 1961).

162. (1906) 3 Cr. L.J. 469 (Calcutta).

deceased and was by reason of unsoundness of mind, incapable of knowing that he was doing an act which was wrong or contrary to law, and therefore he was not guilty of murder.

Similarly, the case of *Subbigadu* v. *Emperor* [163] can be taken as an illustration of homicidal manics falling in the *second* category. The accused asked one Vodde Nadduleti and his wife to give him some water and after it was given he behaved in an extraordinary manner muttering that some people had spoilt him. In the same afternoon the accused murdered Nadduleti and his wife when they were returning home. There was also absence of motive. The accused was held, in the circumstances of the case, as suffering from homicidal mania at the time he did the act.

In the *third* category the impulse to kill is sudden, instantaneous, unreflecting, and uncontrollable, and often on persons who are most fondly loved by the perpetrator. This has been called impulsive insanity, which has not been treated as a valid defence in India. A discussion of such homicidal manics follows under the separate heading "irresistible impulse."

*(10) Irresistible Impulse*

Recent advances in medical science and psychology have shown that many insane persons may be fully able to distinguish between what is right and what is wrong, yet they have no power to choose and do the right because they are driven by some uncontrollable, free or irresistible impulse to do the wrong. Deep-seated emotional currents may move men to act more often than their realistic reason. Courts in India have, however, consistently adhered to the "right and wrong" test requiring the aberration of intellectual faculties. [164]

Taken chronologically, *Queen-Empress* v. *Lakshman Dagdu*,[165] discussed earlier, is probably the first important case raising the problem of irresistible impulse. The Bombay High Court said that though the opinion of physicians was distinctly in favour of the accused, it was not sufficient

163. A.I.R. 1925 Mad. 1238.

164. See *Bazlur Rahman* v. *Emperor*, A.I.R. 1929 Cal. 1, 7 : "Uncontrollable impulse co-existing with the full possession of the reasoning powers is no defence in law nor is moral insanity...." Also see *Hemu Bechar* v. *The State*, A.I.R. 1951 Sau. 19.

Dr. R. B. Tiwari seems to suggest that in *U. Kannan* v. *State*, A.I.R. 1960 Ker. 24, the court accepted such a defence. Our reading of the judgment, however, does not lead us to this conclusion. See The Indian Law Institute, *Essays on the Indian Penal Code* 79 n. 28 (1961).

See S. Dhar, "Weakness of Section 84 I.P.C.," 1 *Vyavahar Nirnaya* 16 (1952) for an excellent treatment of the subject.

165. (1886) I.L.R. 10 Bom. 512. [Also see *Queen-Empress* v. *Venkatasami*, (1889) I.L.R. 12 Mad. 459.]

under section 84 as showing actual intellectual aberration. The court, however, recommended the case for the sympathetic consideration of the local government observing

> that there is good ground for classing the case with those of Greensmith and Brixey, as to which so high an authority as Dr. Taylor has observed that they fairly established the occasional existence of a state of homicidal mania, in which the mental condition of the accused persons at the time of perpetrating the acts of murder is such as to justify their acquittal on the ground of insanity.[166]

The course adopted in this decision was followed in *Queen-Empress* v. *Kader Nasyer Shah*[167]—a case, which in turn, has been followed by may cases.[168] In this case, the accused Kader, a cultivator, had his house and property destroyed by fire. Since then he neglected his house and field work and frequently complained of headache and spoke to no one when his pain was severe. He played and went about with children much more than was to be expected from a man of his advanced age. He was very fond of the boy whom he subsequently killed without any sensible motive, though he observed some secrecy after the act. His actions seemed unaccountable. The court, having regard to the circumstances attending the act, was constrained to hold the accused guilty but recommended the case to the state government for very indulgent consideration as the accused was suffering from mental derangement of some sort.

## V. Proof of Insanity

The Indian Penal Code, 1860, does not deal with the question of proof and its quantum to avail of the defence of insanity. And it is a question falling within the ambit of the Indian Evidence Act, 1872. However, the treatment of the subject here becomes necessary in order to find out the practical limits of the defence of insanity in its evidential requirements.

### *A. Burden of Proof and Its Quantum*

There is a presumption of sanity until evidence to the contrary is

166. *Id.* at 518-19.

167. (1896) I.L.R. 23 Cal. 604. Also see *Queen-Empress* v. *Venkatasami*, *supra* note 165.

168. See *Chajju* v. *Emperor*, (1910) 11 Cr. L.J. 105; *Muthusawami Asari*, *In re*, (1919) 20 Cr. L.J. 828 (Mad.); *Tola Ram* v. *Emperor*, A.I.R. 1927 Lah. 674; *Emperor* v. *Gedka*, A.I.R. 1937 Pat. 363; *In re KULANDAI THEVAR*, A.I.R. 1950 Mad. 692.

*Contra*: *In re RAJAGOPALA*, A.I.R. 1952 Mad. 289, in which the accused clubbed four of his children to death and attempted to murder his wife with no apparent motive, the Madras High Court refused to follow the course adopted in above cases regarding the mitigation of punishment. Somasundaram, J., found the basis of these cases, that is to say, the *Lakshman Dagdu* case, based on discredited medical opinions.

offered.[169] Also, the burden of proof, where the defence of insanity is interposed, rests on the accused.[170] There is, however, considerable conflict as to the scope and extent of this burden. In order to appreciate the controversy on this point, section 105 (with illustration) of the Indian Evidence Act, 1872, is quoted :

> 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 Indian 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.
>
> *Illustration*
>
> (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....

Although the recent Supreme Court decision in *Dahyabhai* v. *State of Gujarat*[171] (1964), seems to have resolved this controversy, yet an analysis of these conflicting viewpoints is necessary to evaluate the Supreme Court view. Three different points of view emerge from the conflicting decisions of various High Courts :

(1) The onus must be fully discharged by the accused by clear and cogent evidence. It would not be sufficient to create a doubt in the mind of the court about the quantum of insanity exculpating him from criminal responsibility. Where the evidence as to the state of mind pleaded is conflicting, he should be convicted because the burden of proving the defence lies on him, which in the case of conflicting evidence cannot be said to be sufficiently discharged.[172]

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169. The *State* v. *Kartik Chandra*, A.I.R. 1951 Ass. 79, 82 : "The law presumes every person at the age of discretion to be sane unless the contrary is proved; and even if a lunatic has lucid intervals the law presumes the offence of such person to have been committed in a lucid interval, until it has been proved that it was committed during a state of derangement." *Barelal* v. *State*, A.I.R. 1960 M.P. 102, 104 : "A person is presumed to be responsible for his acts and the natural consequences thereof unless he affirmatively proves that he is entitled to exemption from criminal liability." *Channabasappa* v. *State*, A.I.R. 1957 Mys. 68, 69 : "A person is presumed to be sane, possessed of understanding as to what is right or wrong, to have sense enough to anticipate what will or may happen in certain cases. That is the rule and the burden of proving the exception is on those who rely on it." *State* v. *Chhotelal*, A.I.R. 1959 M.P. 203, 205 ; *Rustam Ali* v. *State*, A.I.R. 1960 All. 333 ; *Ramdulare* v. *State*, A.I.R. 1959 M.P. 259 ; *Kalicharan* v. *Emperor*, A.I.R. 1948 Nag. 20 ; *Mahomed Ashraf* v. *Emperor*, A.I.R. 1940 Sind 161 ; *Hemmu Bechar* v. *The State*, A.I.R. 1951 Sau. 19 ; *Thangal Kunhikoya* v. *State*, (1963) 1 Ker. L.R. 47.

170. See *State of Madhya Pradesh* v. *Ahmadulla*, *supra* note 152.

171. A.I.R. 1964 S.C. 1563.

172. *Chandu Lal* v. *The Crown*, A.I.R. 1924 All. 186 ; *Pancha* v. *Emperor*, A.I.R. 1932 All. 233, 233 : "The fact that the prosecution evidence raises grave suspicions that the accused might have been of unsound mind in the legal sense of the term, is not by itself to discharge the onus of proof which lies on the accused." *Nga San Pe* v. *Emperor*, A.I.R. 1937 Rang. 33 ; *Baswantrao Bajirao* v. *Emperor*, *supra* note 151.

(2) If the evidence adduced fails to satisfy the court affirmatively, of the existence of circumstances bringing the case within the general exception pleaded, the accused person is still entitled to be acquitted if upon a consideration of the evidence as a whole, including the evidence given in support of the plea of the said general exception, a reasonable doubt is created in the mind of the court whether or not the accused person is entitled to the benefit of the said exception. [173]

(3) Proof has not to be as meticulous as that required of the prosecution in demonstrating the guilt or the complicity of the accused. But the accused must establish his insanity. He is not required to do it by evidence more cogent than a plaintiff or a defendant is required to give in a civil litigation. While the burden of proof may not go higher than that, merely creating a doubt about sanity is not that proof. [174]

The first view is obviously based on the literal meaning of section 105 of the Indian Evidence Act, 1872, read with the definition of the word "proved" as found in section 3 of the said Act, which says that

> A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

According to this view the burden placed on the accused does not substantially differ from the burden placed on the prosecution to establish its case. This view overlooks the cardinal rule of criminal law that the prosecution, in addition to proving the case in accordance with the definition of the word "proved," will have to go further and prove its case beyond all reasonable doubt, whereas an accused has only to fulfil the definitional requirements of the word "proved."

The second view taken in *Kamla Singh* v. *State* [175] by the Patna High Court and now approved by the Supreme Court in *Dahyabhai* [176] renders section 105 of the Indian Evidence Act superfluous. Subba Rao, J., lucidly summarizes the doctrine of burden of proof in the context of the

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173. *Kamla Singh* v. *The State*, A.I.R. 1955 Pat. 209; *Nitai Naik* v. *State*, A.I.R. 1957 Or. 168; *State* v. *Durgacharan*, A.I.R. 1963 Or. 33.

174. *Ramhitram* v. *State*, A.I.R. 1956 Nag. 187; *Kashiram* v. *The State*, *supra* note 147; *State* v. *Chhotelal*, *supra* note 169; *In re RAJU SHETTY*, A.I.R. 1960 Mys. 48; *In re JINNAPPA*, (1961) 2 Cri. L.J. 253; *Etwa Oraon* v. *State*, A.I.R. 1961 Pat. 354; *Ambi* v. *State of Kerala*, (1962) 2 Cri. L. J. 135. Also see *Goverdhan* v. *Union of India*, (1961) 2 Cri. L.J. 475; *Narayanan* v. *The State of Kerala*, (1956) M.L.J. (Cri.) 387.

175. *Supra* note 173.

176. *Supra* note 171.

plea of insanity in the following propositions: [177]

(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite *mens rea*. The burden of proving that always rests on the prosecution.

(2) There is a rebutable presumption that the accused was not insane when he committed the crime. He may rebut it by placing all the relevant evidence—oral, documentary, circumstantial—but the burden of proof upon him is no higher than that rests upon a party in civil proceedings.

(3) Even if the accused fails to establish conclusively his insanity at the time he committed the offence, the evidence placed by the accused or by the prosecution may raise a reasonable doubt as regards one or more of the ingredients of the offence, including *mens rea* and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

The judgment does not make a close scrutiny of the cases on the point; it simply relies on the Patna view [178] which, it appears, was arrived at on an incorrect reading of the three cases none of which deal with the plea of insanity: *Woolmington* v. *The Director of Public Prosecutions*; [179] *Emperor* v. *U. Damapala*; [180] *Parbhoo* v. *Emperor*. [181] These cases deal with other exceptions. Viscount Sankey, L.C., who delivered the judgment of the House of Lords in the *Woolmington* case observed:

> *M'Naughton's* case stands by itself. It is the famous pronouncement on the law bearing on the question of insanity.... It is quite exceptional and has nothing to do with the present circumstances. In *M'Naughton's* case the onus is definitely and exceptionally placed upon the accused to establish such a defence...[T]he only general rule that can be laid down as to the evidence... *is that insanity, if relied upon as a defence, must be established by the defendant*.... It is not necessary to refer to *M'Naughton's* case again in this judgment, for it has nothing to do with it. [182]

He further said:

> Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to *what I have already said as to the defence of insanity and subject to also to any statutory exception*. [183]

In *Emperor* v. *U. Damapala* [184] Roberts, C.J., who delivered the opinion of the court, found the *Woolmington* doctrine in no way inconsistent with the law in British India in forming a valuable guide to the correct

177. *Supra* note 171, at 1568.
178. *Supra* note 173.
179. [1935] A.C. 462.
180. A.I.R. 1937 Rang. 83.
181. A.I.R. 1941 All. 402.
182. *Supra* note 179, at 475-76. [Emphasis supplied.]
183. *Id.* at 481. [Emphasis supplied.]
184. *Supra* note 180.

interpretation of section 105 of the Indian Evidence Act, but observed :

> It is unnecessary to decide any question relating to insanity in the present reference, *and the effect of our decision in no way alters the existing law on the subject.*[185]

Likewise, the Allahabad decision in *Parbhoo* v. *Emperor* [186] does not deal with the defence of insanity.

A question may arise whether the words of section 105 of the Indian Evidence Act justify any differentiation to be made between the plea of insanity and the pleas under other exceptions coming within its purview as regards the nature of the burden placed on the accused. The Supreme Court decision in the *Dahyabhai* case [187] seems to have answered this question in the negative. It is unnecessary to discuss this aspect of the problem, because it does not affect the central problem about the scope of section 105. Suffice it to say that the view taken by the Patna High Court (and now approved by the Supreme Court) is not supported by the language of section 105 of the Indian Evidence Act.

One would have appreciated an elaborate discussion of the various conflicting viewpoints in the Supreme Court judgment. It is not explicitly clear from the decision whether the acquittal is due to benefit of doubt or that the plea of insanity is taken as established. Although the judgment is progressive since it extols the dignity of the individual in criminal jurisprudence, it is likely to be misused as it would not be uncommon to raise doubts through flimsy evidence.

The third view that the burden placed on an accused (taking the plea of insanity) is in the nature of the burden placed on a party in a civil litigation appears to be more rational. It does not ignore the requirements of section 105 of the Indian Evidence Act, nor the definition of the word "proved." At the same time the burden in question is not made unduly heavy by requiring the accused to establish his defence beyond all reasonable doubt.

However, the law on the point is now settled and we are no longer free to give any interpretation regarding the scope of section 105 other than the one which the Supreme Court has approved.

### *B. Evidence to Determine Insanity*

In order to determine the question of "insanity," courts in India have primarily resorted to (1) expert testimony, (2) non-expert testimony, and (3) some other facts showing mental condition.

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185. *Supra* note 180, at 86. [Emphasis supplied.]

186. A.I.R. 1941 All. 402. This full bench decision is by a majority of 4: 3, *per* Iqbal Ahmad, C.J., Bajpai, Ismail and Mulla, JJ.; Collister, Allsop and Braund, JJ., dissenting. To us the dissent of Collister, J., struck as a more reasoned and logical judgment.

187. *Supra* note 171, at 1566. Also see *K. M. Nanavati* v. *State of Maharashtra*, A.I.R. 1962 S.C. 605.

*(1) Expert Testimony*

*(i) Tools of an Expert*

Evidence of experts is relevant to judge insanity.[188] A qualified expert may testify to the accused's mental condition either upon his personal examination, or on the testimony in the case, if he has been in court and heard it all. He may also give his opinion upon hypothetical cases propounded by counsel.

*(a) Personal Examination*: An expert on insanity, who has made a personal examination of the accused after the commission of the offence, may tell about his mental condition at the time of the examination, as also about its probable duration, and thus whether it may have existed at the time of the crime charged. He may also testify that the accused is feigning and simulating insanity.

*(b) Opinion Based on Evidence*: An expert who has not known the accused, but has only heard the trial, cannot strictly be asked his opinion as to the state of accused's mind at the time of the commission of the alleged offence. For, if the expert were permitted to state his opinion, "based on all the evidence," it would, in case of disputed and conflicting evidence, require him to determine its truth and value and then make the scientific inference therefrom. However, where the facts are simple and undisputed, and the question becomes consequently one of science only, an expert witness may be permitted to state his opinion based on the evidence, without recapitulating the facts proved.

*(c) Hypothetical Questions*: Witnesses qualified as experts in mental diseases may be asked their opinion upon hypothetical factual situations even though they have no personal knowledge of the accused. What requires, however, to be avoided is a facade of knowledge which cloaks a lack of information.

*(ii) Expert Opinion as to "Responsibility" and Knowledge of "Right and Wrong"*

The question of whether or not the illness was such as to satisfy the legal criterion or test is a legal issue on which the expert witness is not competent or qualified judge. The legal inference from facts is a matter of judicial opinion and not of expert testimony. The reason for excluding such opinions is that these are the very questions that the court is to decide, and expert witnesses should not be allowed to usurp the function of the court.[189] Some eminent psychiatric[190] and

188. The Indian Evidence Act, 1872, § 45. The discussion has been taken from Weihofen, *Mental Disorder as a Criminal Defense* (1954).

189. *State* v. *Koli Jeram*, A.I.R. 1955 Sau. 105; *Baswantrao Bajirao* v. *Emperor*, *supra* note 151.

190. Dession, "Psychiatry and the Conditioning of Criminal Justice," 47 *Yale L.J.* 319 (1938).

legal[191] writers have supported this view, although its soundness appears to have been denied in some cases,[192] which appears to be of great practical utility.[193] In most cases, relying on the plea of insanity, it is fairly easy to determine whether the accused was afflicted with some kind of mental disorder or was of sound mind. The difficult cases are those where it is admitted that the accused is to some extent abnormal, but where the question at issue is whether or not at the time of the act he was so disordered mentally as to be incapable of knowing right from wrong. It is upon this question that the court needs the help of the experts to avoid conjectures.

*(iii) Weight and Value of Expert Testimony*

The court is not bound by the opinions of experts. It should, however, analyze such opinions meticulously to accord them proper importance.[194] In some cases[195] medical opinion played an important role while in some others it did not.[196] The Oudh Chief Court in one

191. Mayne, *Criminal Law of India* 181 4th ed. (1914):

> In dealing with the evidence of medical witnesses, it must always be remembered that their function is to assist, not to supersede the judge. The medical witness states the existence, character, and extent of the mental disease. The judge has to decide, or to guide the jury in deciding, whether the disease made out comes within the legal conditions which justify an acquittal on the ground of insanity.

Also see *State* v. *Koli Jeram*, *supra* note 189.

192. In *Karam Urang* v. *Emperor*, A.I.R. 1928 Cal. 238, and *Onkar Datt* v. *Emperor*, A.I.R. 1935 Oudh. 143, experts were also permitted to say if in their opinion the accused could distinguish right from wrong.

193. In England also experts are now permitted to say whether in their opinion the accused knew what he was doing, and knew that it was wrong, as well as to testify on the issue of insanity. See *R.* v. *Holmes*, [1953] 1 Weekly L.R. 686.

194. [T]he opinion of a medical witness, however, eminent he may be, must not be read as conclusive of the fact which the Court has to try. Such opinion may be invited in exceptional circumstances where there is no dispute as to facts or their interpretation but it must be considered by the Court as nothing more than relevant.

*Per* Hidayatullah, J. (as he then was), in *Baswantrao Bajirao* v. *Emperor*, *supra* note 151, at 73.

195. *Onkar Datt* v. *Emperor*, *supra* note 192: In this case the opinion of Col. Overbeck-Wright proved decisive in acquitting the accused; *Bazlur Rahman* v. *Emperor*, A.I.R. 1929 Cal. 1.11: Major Hodge's opinion was relied in reducing the sentence: "[T]hough the appellant is guilty of an atrocious and dastardly murder, in view of the evidence as to his mental condition at the time, and particularly the evidence of the Civil Surgeon...this is a case in which a sentence of transportation for life will meet the ends of justice;" *Karam Urang* v. *Emperor*, *supra* note 192; *Sibbigadu* v. *Emperor*, *supra* note 163; *Anandi* v. *Emperor*, A.I.R. 1923 All. 327; *Shibo Koeri* v. *Emperor*, *supra* note 162; *Lachman* v. *Emperor*, *supra* note 155.

196. In *Queen* v. *Pursoram Doss*, (1867) 7 W.R. 42, the court acquitted the accused notwithstanding the contrary opinion of Dr. Russell, civil surgeon about the sanity of the accused; in *Bagga* v. *Emperor*, (1931) 32 Cr. L.J. 1230, though the accused was found to be a "raving lunatic" by the civil surgeon, the court held him liable. Also see *Queen* v. *Sheikh Mustaffa*, (1864) 1 W.R. 19; *MUTHUSAMI ASARI, In re*, (1919) 20 Cr.L.J. 826. The most disgraceful compliment to medical evidence appears to be in *Queen* v. *Musst. Poochee*, (1865) 3 W.R. 9. Also see *Muhammad Husain* v. *Emperor*, (1913) 14 Cr. L.J. 81.

case[197] seems to have held that the uncontradicted expert testimony must be taken as controlling. But it is a mistake to suppose that in order to satisfy a court that the plea of insanity is well-founded, scientific evidence must be adduced. If the existence of facts is such as to indicate an unsound state of mind, that is quite sufficient.[198]

A somewhat different ground for not giving controlling weight to expert testimony on insanity is that the legal concept of irresponsibility is different from the medical concept of mental disorder.[199] But while it is undoubtedly true that responsibility is a legal concept, which must be determined by social objections rather than by medical data, we are more likely to attain those objectives if our legal concepts are consonant with scientific facts.

*(2) Non-Expert Testimony*

Lay witnesses,[200] sufficiently acquainted with a person, whose sanity is in question, may give evidence as to his actions. The courts have not succeeded in formulating any definite rule as to how much opportunity or acquaintanceship is necessary. No generalization is possible; the qualifications of each particular witness to give an opinion on another's mental condition rest in the discretion of the court.[201] The witness must, however, precede or accompany his opinion with a statement of the facts and circumstances upon which it is founded.

*(3) Other Facts Tending to Show Mental Condition*

In addition to the evidence of experts and laymen, an accused's mental condition may be proved by circumstantial evidence. Whether the accused was in such a state of mind as to be entitled to the benefits of section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.[202] Whether there was deliberation and preparation for the act; whether

197. *Onkar Datt* v. *Emperor*, *supra* note 192, at 150: " The opinion of the expert on lunacy cannot be brushed aside upon the strength of the lay opinion of the...trial judge."

198. See *Bazlur Rahman* v. *Emperor*, *supra* note 195.

199. See *supra* notes 98-116 and accompanying text.

200. Eminent psychiatrists like Hoag and Williams have insisted that laymen are incompetent to form a sound judgment about insanity on the bais of acquaintanceship or observation. See Hoag & Williams, *Crime, Abnormal Mind and the Law* 112 (1923).

201. *Hemu Bechar* v. *The State*, *supra* note 169, at 22 : " The evidence of insanity by near relations of accused should be accepted with caution, specially when accused acted as normal man immediately after crime." Also see *Sarapada* v. *The State*, A.I.R. 1953 Tri. 9.

202. *Dahyabhai* v. *State of Gujarat*, *supra* note 171 ; *In re GOVINDASWAMI*, A.I.R. 1952 Mad. 174.

it was done in a manner which showed a desire to secure concealment; whether after the crime, the offender showed consciousness of guilt, and made efforts to avoid detection and whether after the arrest he offered false excuses and made false statement,[203] are factors which are taken into consideration by the court to determine insanity of the accused.

*(i) Conduct of the Accused*

Hiding or attempted escape, immediately after the commission of a crime, has been viewed as a strong circumstance in deciding the question of insanity. In two cases,[204] the accused were acquitted *primarily* on the ground that they had made no attempt to escape—a circumstance which was construed as having proved their unsoundness of mind at the time of the commission of the offence.

In some cases[205] abscondence or attempt to escape proved fatal to the plea of insanity. Thus in *The Queen* v. *Jugo Mohun Malo*[206] the court held that attempt to escape showed that the accused knew that his act was a wrong one, and that, if caught, he would be punished for it. Similar are the observations of Stanyon, J.C., in *Emperor* v. *Katay Kisan*,[207] where the accused wounded two men and laughed when questioned about his conduct: "[H]is conduct in running away and concealing himself in the house of a friend in another village, immediately after he had wounded the two men, seems to me a strong indication of the existence of a consciousness in his mind that he had done what was wrong."[208] Resisting arrest coupled with an attempt to escape after committing the crime has also been held as a circumstance negativing the plea of insanity.[209]

*(ii) Previous and Subsequent Insanity*

Since mental disorder is usually not a phenomenon of a moment, but requires some time to develop, it is competent, in order to prove

203. *Deorao* v. *Emperor*, A.I.R. 1946 Nag. 321; *State* v. *Chhotelal*, *supra* note 169; *Ramdulare* v. *State*, *supra* note 169; *In re GOVINDASWAMI*, *supra* note 202.

204. *Emperor* v. *Somya Hirya*, (1918) I.L.R. 43 Bom. 134; *Dil Gazi* v. *Emperor*, (1907) I.L.R. 34 Cal. 686. Also see *U. Kannan* v. *State*, A.I.R. 1960 Ker. 24, 26; *In re SUBRAMANIAM*, A.I.R. 1964 Mad. 526.

205. *Public Prosecutor* v. *Devasikamani*, A.I.R. 1928 Mad. 196; *Queen-Empress* v. *Kader Nasyer Shah*, (1890) I.L.R. 23 Cal. 604; *MUTHUSAMI ASARI, In re*, *supra* note 196; *Bagga* v. *Emperor*, *supra* note 196.

206. (1875) 24 W.R. 5.

207. (1924) 1 Cr. L.J. 854.

208. *Id.* at 862.

209. See *Bazlur Rahman* v. *Emperor*, *supra* note 195.

the accused's responsibility or irresponsibility at the time of the crime, to introduce evidence of his mental condition before and after that time.[210] The mere fact that the accused had been formerly subject to insane delusions or had suffered from derangement of the mind or that subsequently his behaviour was like a mentally deficient person[211] or that he was in a bewildered state of mind a day or two before the day of occurrence [212] is per se insufficient to bring his case within the exception.[213] In *Bagga* v. *Emperor*,[214] the Lahore High Court observed that if a man was found to be insane six or seven hours after the commission of the offence, it raised no presumption of insanity at that time.

The evidence that the accused had prior to the act or afterwards exhibited symptoms of insanity is relevant, though he may have been perfectly sane at the time of the trial, for the question to be considered is the state of the accused's mind at the time of the act[215] and not his state of mind at the time of the trial, though the latter fact is also relevant for the purpose of procedure.[216] However, while considering whether the accused was insane when he committed the act, a fit of insanity which he had ten years before the act is irrelevant.[217]

In all cases, where previous insanity [218] is proved or admitted, a presumption of sanity at the time of commission of the act would be greatly weakened. Thus is *Kashiram* v. *The State*,[219] the accused's persistent delusion of wifely persecution, coupled with his previous *insanity*, established conclusively that the accused who was in other respects completely and utterly insane and who had "glimmering knowledge" of the nature and consequence of his act in striking his wife with an axe, was absolutely incapable of realizing that it was wrong or contrary to law.

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210. *The State* v. *Kartik Chandra*, *supra* note 169. Also see *In re JINNAPPA*, *supra* note 174.

211. *Tola Ram* v. *Emperor*, A.I.R. 1927 Lah. 674 ; *Godhan* v. *State*, (1958) I.L.R. 2 All. 867.

212. *John D. Moon* v. *Emperor*, A.I.R. 1928 Pat. 363.

213. *Kerala State* v. *Madhavan*, A.I.R. 1958 Ker. 80, 81 ; *In re GOVINDASWAMI* A.I.R. 1965 Mad. 283.

214. *Supra* note 196.

215. *Queen* v. *Pursoram Doss*, *supra* note 196 ; *The Queen* v. *Jugo Mohun Malo*, *supra* note 206.

216. The Code of Criminal Procedure, 1898, §§ 464, 465.

217. *State* v. *Koli Jeram*, *supra* note 189.

218. Relevant evidence for the purpose is, for example, (i) previous confinement in a mental institution, or (ii) treatment for insanity, or (iii) a decision by a civil court, or (iv) a preliminary finding by the criminal court at the time of trial : *Emperor* v. *Somya Hirya*, *supra* note 204 ; *Onkar Datt* v. *Emperor*, *supra* note 192 ; *Shibo Koeri* v. *Emperor*, *supra* note 162. However, the proof of previous insanity may not be of help when at the trial there is other evidence to the contrary : *Muhammad Husain* v. *Emperor*, *supra* note 196. The mere fact of detention in an asylum, too, was held insufficient as establishing the desired degree of unsoundness of mind : *Mahomed Ashraf* v. *Emperor*, *supra* note 169.

219. A.I.R. 1957 M.B. 104.

*(iii) Hereditary Insanity*

The mere facts that the conduct of the accused had been of late in some respects unusual[220] and that his father was insane were in one case held to be insufficient to establish the exception;[221] these facts by themselves would be insufficient to establish insanity in any case. But though insufficient, they are not irrelevant, and indeed, in an enquiry touching the accused's mind at the time of the act, there can be nothing irrelevant that relates to his physical and mental history. For this purpose, evidence as to insanity in his parents and collaterals is relevant as not affording independent proof of his insanity, but as corroborative of other testimony as to the insanity of the accused. In other words, evidence of ancestral insanity is corroborative of the evidence of the accused's insanity.

*(iv) Motive*

Insufficient or no motive is not, in itself, sufficient evidence of legal insanity,[222] but it is, of course, a factor and an important factor, to be taken into consideration together with the other facts and circumstances of the case in determining the accused's state of mind.[223] Absence of sane motive is one of the indicia of the act being done by some kind of insane impulse. Presumably, unmotivated and pointless offence would carry considerable weight in support of a plea of insanity even though at first sight the plea may appear somewhat unsubstantial.[224] However, in the absence of other evidence mere want of motive is not enough to support an inference of unsoundness of mind ; [225] but if there is other evidence of insanity, such a fact may be of importance as helping to prove insanity.[226] Thus, absence of all motive, when corroborated by independent evidence as to previous insanity of the accused, has been held to be not ineffective.[227] Also, the circumstances of an act of murder

220. *Hemu Bechar* v. *The State*, A.I.R. 1951 Sau. 19.

221. *Reg.* v. *Jeeva Amtha*, (1868) Unrep. Cr. C. 10 ; *Queen* v. *Arzo Bebee*, (1865) 2 W.R. 33.

222. *Ambi* v. *State of Kerala*, (1962) 2 Cri. L.J. 135; *Madho Singh* v. *State*, A.I.R. 1953 Pep. 17 ; *Jalal* v. *Emperor*, (1929) 30 Cr. L.J. 1024 ; *Hemu Bechar* v. *The State*, *supra* note 220 ; *The State* v. *Kartik Chandra*, A.I.R. 1951 Ass. 82 ; *Gulab* v. *The State*, (1951) I.L.R. 1 Raj. 800. *Thangal Kunhikoya* v. *State*, (1963) 1 Ker. L.R. 47.

223. *Narain Sahi* v. *Emperor*, A.I.R. 1947 Pat. 222 ; *Emperor* v. *Bahadur*, A.I.R. 1928 Lah. 796 ; *Etwa Oraon* v. *State*, A.I.R. 1961 Pat. 354 ; *Deorao* v. *Emperor*, *supra* note 203, at 330 ; *Vithoo* v. *Emperor*, (1912) 13 Cr. L.J. 165, 166; *Nga San Pe* v. *Emperor*, A.I.R. 1937 Rang. 33 ; *Chuttu* v. *Abdul Jabbar*, A.I.R. 1956 Bhopal 57, 59.

224. *Queen-Empress* v. *Kader Nasyer Shah*, *supra* note 205 ; *Subbigadu* v. *Emperor*, A.I.R. 1925 Mad. 1238.

225. *Emperor* v. *Bahadur*, *supra* note 223, at 793 ; *Deorao* v. *Emperor*, *supra* note 203 ; *Pancha* v. *Emperor*, A.I.R. 1932 All. 233.

226. *Deorao* v. *Emperor*, *supra* note 203, at 330. Also see Maudsley, *Responsibility in Mental Disease* 166 (1874).

227. *Queen* v. *Sheikh Mustafja*, *supra* note 196 ; *Ramhitram* v. *State*, A.I.R. 1956 Nag. 187.

being apparently motiveless are not a ground to induce the inference of the existence of a powerful and irresistible influence or homicidal tendency.[228] A *total* lack of apparent motive, may, however, in some cases, along with other facts, give rise to an inference that the act was done under an insane impulse.[229] In some cases,[230] absence of motive, considered along with other circumstances, proved favourable to the accused inasmuch as it established the presence of mental derangement, whereas in some cases[231] it did not prove so. Although absence of any motive for the crime does not necessarily lead to an inference of insanity, it is a circumstance that may be considered while awarding punishment.[232] For sudden, spontaneous, unmotivated violence is more likely to be the result of a disordered mind than more carefully contrived or premeditated crimes.

*(v) Nature of Crime*

The act itself may be so utterly senseless and abnormal as to furnish satisfactory proof of a diseased mind. But a crime is not excused by its own atrocity or uncommon ferocity.[233] The court has to look outside the act itself for the evidence as to the knowledge of the accused.[234] It is not because a man commits a very horrible murder or commits it while under the influence of strong passions and feelings that the public at large is to assume that he must have been insane when he committed the deed.[235] The number of blows or ferocity of the attack might perhaps reflect one's vengeful mood or the depth of hatred and anger against his victim. One does not count his strokes when he commits murder.[236]

228. *Inayat* v. *Emperor*, (1928) 29 Cr. L.J. 1006 ; *Sobha* v. *Emperor*, (1905) 2 Cr. L.J. 714 ; *State* v. *Durgacharan*, A.I.R. 1963 Or. 33, 34.

229. *In re SANKAPPA SHETTY*, A.I.R. 1941 Mad. 326 ; *State* v. *Koli Jeram*, A.I.R. 1955 Sau. 105 ; *In re RAJAGOPALA*, A.I.R. 1952 Mad. 289.

230. *Queen* v. *Sheikh Mustaffa*, *supra* note 196 ; *Emperor* v. *Bheleka Aham*, (1902) I.L.R. 29 Cal. 493 ; *Dil Gazi* v. *Emperor*, *supra* note 204 ; *Emperor* v. *Somya Hirya*, *supra* note 204 ; *Anandi* v. *Emperor*, *supra* note 195 ; *Nga Pyan* v. *Emperor*, (1912) 13 Cr. L.J. 49 ; *Wazir* v. *Emperor*, (1948) 49 Cr. L.J. 279 (Oudh) ; *King-Emperor* v. *Tincouri Dhopi*, A.I.R. 1923 Cal. 460 ; *Local Government* v. *Sitrai Arjuna*, A.I.R. 1933 Nag. 307 ; *Subbigadu* v. *Emperor*, A.I.R. 1925 Mad. 1238.

231. *Queen-Empress* v. *Kader Nasyer Shah*, *supra* note 205 ; *Mahommad Sarwar* v. *Emperor*, (1930) 31 Cr. L.J. 164 ; *Queen-Empress* v. *Venkatasami*, (1889) I.L.R. 12 Mad. 459 ; *Queen-Empress* v. *Razai Mia*, (1895) I.L.R. 22 Cal. 817; *Bazlur Rahman* v. *Emperor*, *supra* note 195 ; *Mahomed Ashraf* v. *Emperor*, A.I.R. 1940 Sind 161 ; *In re SANKAPPA SHETTY*, *supra* note 229 ; *Kalicharan* v. *Emperor*, A.I.R. 1948 Nag. 20 ; *Channabasappa* v. *State*, A.I.R. 1957 Mys. 68.

232. *Mahommad Sarwar* v. *Emperor*, *supra* note 231.

233. *Rustam Ali* v. *State*, A.I.R. 1960 All. 333, 336. Also see *Kerala State* v. *Madhavan*, *supra* note 213 ; *Bhawaru* v. *State*, (1956) Madh. B.L.R. 1152.

234. *Kalicharan* v. *Emperor*, *supra* note 231 ; *Emperor* v. *Gedka*, A.I.R. 1937 Pat. 363.

235. *The Queen* v. *Nobin Chunder Banerjee*, (1873) 20 W.R. 70.

236. *Dahyabhai* v. *State of Gujarat*, A.I.R. 1964 S.C. 1563, 1572 ; *Paily* v. *State*, (1959) Ker. L.R. 1345, 1353.

Another problem, though not directly related to the scope of our subject, involves the offender's mental condition at the time of the criminal proceedings—whether he is presently sane enough to plead or be tried. Since the problem of insanity at the time of trial does not involve the determination of the question of "guilt" or "innocence" of the offender, its discussion is deferred to some future publication.[237]

## VI. Conclusion

The foregoing discussion is a brief survey of the judicial review of the defence of insanity in Indian criminal law from 1860 (October) to 1965 (December). The basis of the defence and the underlying philosophical assumptions of the relevant provision of the Indian Penal Code have also been examined. The problem of insanity has assumed a new significance due to developments in modern scientific thought reflected in Freudian and post-Freudian psychology.

The ancient Hindu literature, as also the Muhammadan jurisprudence, do not have any specific references to the plea of insanity, although some stray references are available. The foregoing analysis examined the two tests of insanity adopted by the courts while interpreting section 84 and pointed out the unfavourable social implications of the third test laid down by the Calcutta High Court. The Indian law 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 revealed that an immense gulf exists between mental illness as a medical fact and legal insanity as a casuistic formula. No amount of moral, mental or educational deficiency is permitted to excuse an offence, although in the more enlightened High Courts it served to mitigate punishment when the legal test was not satisfactorily met. The law continues to search for and find "a wicked and malignant heart." The two important problems of the nature and extent of burden of proof to establish insanity were examined in the light of the Supreme Court decision. The Supreme Court judgment does not seem to be clear on the point whether the acquittal is due to the benefit of doubt or that the plea of insanity is assumed to be established.

The above survey would show that the law in India needs change. The commonplace criticisms of the M'Naghten Rules referred to earlier

237. Dr. Bhattacharya's book *Insanity and Criminal Law* (2d ed. 1964) makes an excellent examination of the procedural law on the subject. He asserts the thesis that the "M'Naghten rules are themselves too narrow in their content, but the machinery provided by the procedural law of India for applying the substance of even those rigid rules is not only defective in structure but also crude and callous in its working." See *id.* at xi.

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.

Difficulties start with the very controversial expression "unsoundness of mind." It is used in different[238] contexts at different places with so many diverse and contradictory meanings that it becomes practically useless as an effective symbol. The difficulty arises because "unsoundness of mind" has a lay meaning, a medical meaning, and a legal meaning, and all of these differ considerably. The lay meaning is vague and may connote anything from eccentric conduct to raving madness. Medical men are not agreed upon a definition of "unsoundness of mind" for legal purposes. And courts are aware that not every kind of "unsoundness of mind" has legal significance. The difficulties in using the term as a tool in accurate thinking have become so pronounced and well recognized that this expression should be discarded. We need a new term to denote the particular kind or degree of insanity or mental disorder which produces legal consequences. The problem is, thus, to connect the physician's diagnosis of the mental condition of a particular individual with the legal tests of criminal responsibility.

Some 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 it, 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. There are great differences of opinion, for instance, among sects and nations on the subject of polygamy and polyandry or even promiscuity; the *thugs* are said to die of remorse when prevented from killing the requisite number of human beings deemed necessary to secure *nirvana*, or immortal bliss.[239] It is more difficult for an individual to distinguish right from wrong in the complex social context of today than it was in a simple, homogeneous society of the past when cultural values were relatively uniform. Except in cases of gross moral turpitude where there could be said to be a social consensus

238. See *supra* note 60.

239. See 1 Burdick, *Law of Crime* 281 (1946); Venugopala Rao, *Facets of Crime in India* 125 (1962); Sleeman, *Rambles and Recollections of an Indian Official* (Smith ed. 1843).

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 test of right and wrong cannot be a dependable one in these areas of the umbra and penumbra of moral assessment.[240]

Since modern psychiatry recognizes gradations of disturbances from the normal to the abnormal, juristic thinking should be no less elastic in its approach to the problem of responsibility. The Indian criminal law of insanity is at least a century out of date. It incorporates the faculty psychology of the early nineteenth century which conceived of the brain as a bundle of functions, each working independently. The rule that has thus come down to us is an over-intellectualized conception of mental disorder, neglecting volitional and emotional aspects of these disorders. There is ample confirmation of the idea that responsibility implies reasonable integration of the total personality which includes emotions as well as instincts. Medical psychology teaches that the mind cannot be split into watertight, unrelated, autonomously functioning compartments like knowing, willing and feeling. The mind and body are one continuum in which each part influences and is influenced by the whole. These functions are closely interlinked and interdependent. The consequence of the present law is that every case where insanity has been pleaded as a defence has to be fitted into the straitjacket of this section notwithstanding the current advances in psychiatric knowledge.

And so the defence of irresistible impulse is not recognized by section 84. 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, judgment and conscience, and his power to properly perceive the difference between the right and wrong side of the alleged wrong act, this would be suitable defence of 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 it as wrong, then the mere fact that an alleged irresistible or emotional impulse constrained him to commit the act will not amount to a defence from criminal liability.

The underlying reason for exemption of an insane person from liability for the commission of an offence is that the sane has a "free will" and can choose for himself while the insane man has no freedom

240. See George Bernard Shaw in his famous play *Major Barbara* :

*Stephen* : I know the difference between right and wrong.

*Undershaft* : You don't say so. No capacity for business, no knowledge of law, no sympathy for art, no pretention of philosophy; only a simple knowledge of the secret that has puzzled the philosophers, baffled all the lawyers, muddled the business men, and ruined most of the artists, the secret of right and wrong. Why, man, you're a genius, a master of masters, a god....

of choice. If he cannot distinguish between right and wrong, the freedom of will and the intent are certainly lacking. But it is not as certainly lacking in a case where the poor victim is seized with an irresistible influence which impels him to do something which, if his will were free, he would not do. In either case, the fundamental element of "freedom of will" is not present and because of its absence, criminal intent is lacking in both. The law should not hold a man guilty under such circumstances. Even under the assailable concept of "freedom of will" the exclusion of the defence of irresistible impulse is open to criticism.

In England, however, in view of overwhelming medical and psychiatric authority and also of a sizable legal opinion in its favour, various attempts have been made to recognize "irresistible impulse" as an additional test of responsibility in criminal cases. Thus, while England, where the M'Naghten Rules were first born, has modified them,[241] no attempt has been made in India to soften their rigour.[242]

This does not mean that the judicial opinion in India is not conscious of the need of reorientation of the law on the subject. As early as in 1896, the Calcutta High Court, though admitting that insanity affects emotions and will also, felt constrained to administer the law as it existed.[243] And in a case in 1948 the Oudh Chief Court lamented: "Though a century has elapsed during which the science of psychology has made great advances the law as then laid down has remained unmodified."[244] Recently, in a Madhya Pradesh case, *State* v. *Chhotelal*[245]

241. Lord Devlin supports the retention of the M'Naghten Rules on the ground that the criticism levelled against them should really be directed to those circumstances which are not a part of the rules. These circumstances are: automatic death sentence and the indefinite detention in a lunatic asylum. Stripped of these "illogical encrustations" or "excrescences" these rules, according to Lord Devlin, can be seen as a significant clause in the individual's charter of liberty. See Devlin, "Mental Abnormality and Criminal Law," in *Changing Legal Perspectives* 70 *et seq.* (Macdonald ed. 1963). Professor Jerome Hall also says that the M'Naghten Rules, properly interpreted, are adequate for the purpose of exempting the truly insane. See Hall, *Studies in Jurisprudence and Criminal Theory* ch. 5 (1958). Also see Harding, "Individual Responsibility in Anglo-American Law," in *Responsibility in Law and Morals* 41, 65-72 (Harding ed. 1960). Even assuming Lord Devlin's reasoning that the abolition of automatic death sentence and the provisions of the diminished responsibility render it useless to abrogate the M'Naghten Rules as correct, it offers no justification for their continuance in this country, because the "excrescences" spoken of by Lord Devlin have not been done away with in our country.

242. Although the Editorial of *The Times of India*, November 30, 1960, tells us that the Government of India are seriously thinking of amending the law relating to lunatics "to bring it in tune with the modern concept of social life," nothing appears to have been done so far in this regard.

243. See *Queen-Empress* v. *KaderNasyer Shah*, *supra* note 205.

244. *Wazir* v. *Emperor*, A.I.R. 1948 Oudh 179, 180-81.

245. A.I.R. 1959 M.P. 203.

Naik, J., expressed :

> With the development of psychiatry as a recognized branch of medical science, we may have to revise our opinion regarding what constitutes unsoundness of mind for the purpose of section 84 I.P.C. as laid down in some of the old cases.[246]

It seems fairly evident that what is required now is not necessarily the abrogation of the M'Naghten Rules by statute, but a more flexible sentencing policy which would allow the courts to dispose of the accused in a manner most appropriate to the offence and his mental state. This can be done by adding an exception to section 300 of the Indian Penal Code to the effect that in cases falling short of the M'Naghten insanity the murder would be culpable homicide not amounting to murder. The judiciary would thus be armed with a power to recognize the borderline cases of insanity and take into account the variations in human behaviour which have infinite ramifications.

But looking to the magnitude of the problem, a commission consisting of members of all the three branches of law and of the medical profession and behavioural scientists should be set up to examine the possibility of introducing such changes in the existing law of insanity as would make it reflect the modern advances of medical knowledge which have brought to light that loss of free will may not be due only to the lack of reason but also to forms of biological and psychological imbalance or some unconscious *deus ex machina* over which the accused could have no control. The old Shakespearean notion of a tragedy based upon "character is destiny" is only a poetic licence and should, as far as possible, not colour thinking in criminal law where the paramount objective should be to ascertain the offender's potential of being a danger to society rather than his moral blameworthiness.

246. *Id.* at 206. Naik, J., reiterates the same view in *Ramdulare* v. *State*, A.I.R. 1959 M.P. 259.