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BURDEN OF PROOF IN CRIMINAL PROCEEDINGS INVOLVING INSANITY AS A DEFENCE AND DIFFERFENCE BETWEEN LEGAL & MEDICAL INSANITY

AUTHOR – AJITESH KOCHHAR, STUDENT AT AMITY LAW SCHOOL NOIDA , UTTAR PRADESH

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In criminal trial, the insanity as a defense is recognized since the time immemorial and has a long and fascinating history that stretches back centuries. During the ancient time, legal system recognized "mental illness" or "madness" could exempt someone from punishment. In Medieval England, the common law began evolving the idea that a person must have "Mens rea" to commit an offence and in case the same is lacking, the person should not be held criminally liable. One of the earliest cases recognizing insanity as a defense in English law was in 1724 when Edward Arnold tried to assassinate Lord Onslow and claimed insanity and this case sparked legal debate about mental insanity. Then comes the landmark case of Danial M' Naghten[1] who attempted to assassinate British Prime Minister but instead killed his secretary. He claimed insanity and was found not guilty. This caused public uproar which results in M' Naghten[1] Rule which became the foundation of modern insanity as a defense in many common law countries. This Rule emphasizes that if a person at the time of commission of offence is suffering from some mental defect or disease in mind and he did not know the nature and quality of act, he should not be punished.

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In 20th century this rule and the law was revisited by holding that a person will not be criminally responsible if the act he is doing was the product of mental illness. This law was also criticized for being too broad and too vague. (Durham rule 1954[2] U.S.)

Later ALI test[3] was devolped by American Law institute according to which a person is not responsible if, due to mental disease or defect, he lacks substantial capacity to appreciate the wrongfulness of his conduct.

In 1981, John Hinckley Jr. attempted to assassinate President Ronald Reagan and was found not guilty by reason of insanity, a verdict that led to widespread public outrage. The case prompted significant legal reforms including the insanity defense Act 1984 which tightened the standards for federal insanity defenses, shifting the burden of proof on the accused.

THE INDIAN CRIMINAL LAW

In India the insanity defense is codified under section 22 of the BNS 2023 erstwhile section 84 of the Indian penal code in the chapter of General Exception.

Insanity as defense is a legal principle allowing the arrayed accused to argue that he is not responsible for his actions because of his insane mental state at that relevant time as he was incapable of understanding the nature of the act. Notably it is not medical insanity that matters but legal insanity which matters to bring the case within the general exception.

The Bharatiya Nyaya Sanhita 2023 or erstwhile Indian Penal Code, 1860 does not contain any provision pertaining to burden of proof of the defense of insanity, but that question come under the gamut of the Bharatiya Sakshya Adhiniyam wherein section 108 Bharatiya Sakshya Adhiniyam of lays down: -

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General exception in the Bharatiya Nyaya Sanhita,2023 or within any special exception or proviso contained in another part of the said Sanhita or any law defining the offence, is upon him and court shall presume the absence of such circumstances,

Illustration

A) The 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 to prove unsoundness of mind at the time of the commission of such act.

House of lords in swerving the questions posed to it in M'Naghten case evolved that every man is presumed to be sane and possess a deficient degree of reason to be responsible for his crime, until the contrary be proved to the satisfaction of court. To establish such defence of insanity it must be clearly proved that, at the time of the committing of the act, the accused was suffering from a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing or if he did know it, that he did not know he was doing what was wrong. Thus it was laid down in M'Naghten case that burden of proof always lies upon accused in order to invoke the exemption from criminal responsibility on the ground of insanity. The law as on today is the same that the onus to prove the defence of insanity is upon the accused.

Initially there were divergent views laid down in various judicial prouncements as to what should be the standard of proof if defence of insanity has been claimed by the accused but now the law is set at rest by the Hon'ble supreme court as well as various High courts in the country that to prove the defence of insanity it has to be proved by the accused that at the time of commission of alleged offence he was suffering from any kind of mental disorder and was not knowing the nature of act he was doing or if knowing , if he did know it, that he did not know he was doing what was wrong i.e. accused has to prove that it was a case of legal insanity and not medical insanity i.e. his

state of mind at the time of commission of offence.

Insanity as defence is a legal principle allowing the arrayed accused to argue that he is not responsible for his actions at the time of commission of alleged offence because of his insane mental state at that relevant time as he was incapable of understanding the nature of the act that it was contrary to law. Notably it is not medical insanity that matters but legal insanity which matters to bring the case within the general exception.

JUDICIAL ATTITUDE

The Allahabad High Court in Chandan Lai v The crown[4] held that 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 ones of proof which ties on the accused. The Supreme Court in State of Madhya Pradesh v Ahmadulla[5] held" the burden of proof that the mental condition of the accused was at the material point of time such as is described by this Section (84) lies on the accused who claim the benefit on this examination."

Subba Rao, J said in Dayabhai Chhaganbhai v State of Gujrat[6] "the prosecution must prove beyond reasonable doubt that the accused had committed the offence with requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense lay down by Section 84' of the Indian Penal Code, the accused may rebut it by placing before the Court all the relevant evidence oral, document or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.

Even if the accused was not able to establish that he was insane at the time he committed the offence, the evidence placed before the Court by. the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including mens-rea of the accused and in that case the court would to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

In Jail Lai V Delhi Administration[7] the Supreme Court observed that the general burden is on the prosecution to prove beyond reasonable doubt not only the actus reus but also the mens-rea in a criminal case. In Ratan Lai v State of M.P.[8] the burden of proof to the plea of unsoundness of mind was the issue and placing reliance of D. C. Thakkar's Case was further approved that the crucial point of time, at which unsounded has to be proved is the time when the crime is factually committed. The burden, proving these things can be discharged by the accused from the circumstances, which preceded, attended and followed the crime. In State of M.P. v Lai Din216 High Court of M.P. observed that it seems to us that the burden of accused's illness of the constant bickering and unhappiness at home took the accused to the point of ultimate despair when decided that he could take no more. The culminated in decision to put an end to himself and his family. Psychologists would perhaps have a word for this morbid condition of mind. But that is still a long way from the finding that he was of unsound mind children when he murdered his wife and children

In Jail Lai V Delhi Administration[9] the Supreme Court observed that the general burden is on the prosecution to prove beyond reasonable doubt not only the actus reus but also the mens-rea in a criminal case. In Ratan Lai v State of M.P.[10] the burden of proof to the plea of unsoundness of mind was the issue and placing reliance of D. C. Thakkar's Case was further approved that the crucial point of time, at which unsounded has to be proved is the time when the crime is factually committed. The burden, proving these things can be discharged by the accused from the circumstances, which preceded, attended and followed the crime. In

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"Since the appellant has raised plea of insanity while admitting the commission of the act, it is to be seen how far he has been successful in establishing each plea. In a criminal prosecution it is well settled that the burden on the prosecution in establishing the commission of the crime by the accused never shifts and it is to be proved beyond reasonable doubt that it is the accused who is the author of the offence. But if the accused wants the prosecution of any of the exception from criminal prosecution, the onus is, upon him to establish the facts consisting the exceptions, since as is required under

section 105 of the Indian Evidence Act, such facts brings within his special knowledge, can only be established by him. The onus cast upon the accused, however, is not of the same standard as it required of the prosecution, but consists of furnishing a reasonable explanation might be true. In other words, if the occurred is able to show, either from prosecution evidence itself or even by independent evidence that the offence might have accused in the manner or under circumstances as pleaded by him he will be entitled to the benefit of the exception"

Kerala High Court in Parapuzha Thomban v State of Kerala[11] held that it recognized law that the provision consisted in Section 84 of Indian Penal Code being an exception, the burden is on the defence to establish insanity in view of the provisions consisted in Section 105 of Indian Evidence Act. However, it is not absolutely necessary that the defence must put forward specifically an argument of insanity. The circumstances emerging from the prosecution evidence may indicate that the person must have been suffering from the insanity and in such a case the accused is entitled to get benefit of doubt. The burden which rests on the accused is, however, not higher than that which rests upon a party in a civil litigation. To put in other words that the accused will have to rebut the presumption that such circumstances do not exist by placing material before the court sufficient to make it consider the existence of such circumstances so probable that prudent man would act upon them. The material produced before the court may be sometimes be enough to discharge the burden upon under Section 105 of Indian Evidence Act. However, it may raise a reasonable doubt in the mind of the court as regards one or the other of the necessary ingredients of the offence itself, either act us reus or mens-rea. It raises a reasonable doubt in the mind of the court whether the accused had the mens rea required for the offence, accused would be entitled to the benefit of doubt. In such an even, prosecution must be taken to have failed to prove the guilt of accused beyond reasonable doubt Karnataka High court in Sunil Sandeep v State of Karnataka lays down following principles in respect of burden of proof in case of insanity.

(a) "That burden of proof of legal insanity is on the accused, though it is not as heavy as on the prosecution.The prosecution in discharging its burden in the face of the plea of legal insanity has merely to prove the basic fact and rely upon the normal presumption of law that

everyone know that the law and the natural consequences of his act"

In another case Bombay High Court observed that Section 84 of Indian Penal Code does not confer exemption from criminality in every of insanity of the accused. Along with the insanity the accused have the burden to prove the fact that at the time of commission of the act he was, in view of. Insanity, incapable of knowing the nature of the act or which was doing either

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wrong or contrary to law in Kuzheyaramadiyil **Madhava v state** in his statements under Section 313 32 Criminal Procedure Code 1973 accused said that he does not recollect as to what

May at any stage without previously warning the accused put such questions to him, as the court considers necessary

(a) Shall, after the witness for the prosecution has been examined and before he is called on for his defence, question him generally on the case.

Provided that in a summons case, where the court has dispensed with the personal attendance of the accused, it may also dispense with his examination under Clause (b)

2No. 5 shall be administered to the accused when he is examined under sub-clause (1)

3Accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answer to them.

4The answer given by the accused may be taken into consideration in such inquiry or trial, and but in evidence for or against him in any other inquiry into, or trial, for any other offence which such answer may tend to show he has committed.

Happened and that when he regained consciousness he was in the lock up of Monteri Police Station, Though the laid statement of the accused would amount to defence of insanity, thereby the burden of prosecution to prove the prosecution case beyond the shadow of reasonable doubt will not be affected. When an accused raises a plea coming under section 84, Indian Penal Code. It is being in the nature of an exception the burden of proof is on him to establish the same according to Section 105 of Indian Evidence Act. Every person is presumed to know the law, the natural consequences of his act and according to Section 105 of Evidence Act court shall presume the absence of the exception. In such situation in discharging its burden the prosecution need prove the basic facts and can rely upon the normal presumption, the prosecution is not bound to show that the accused at the relevant time was not insane

In **Sankern** v **state** Kerala High Court held that "a madman is like one who is absent "furious absents loco est. That is why in case of insanity extreme degree of proof cannot be insisted upon in all circumstances. What is required here is that the accused will have to rebut the normal rebuttable, presumption that he is not insane by placing materials before the court enough to make it consider the existence of the circumstances so probable that a prudent would man act upon them. In other words, the accused has only to satisfy the standard of a prudent man and he need not establish his plea beyond all reasonable doubt. To do so the entire evidence is required to examine on basis of preponderance of probability. However, Court observed that an accused taking the plea of insanity has only to satisfy standards of a prudent man and he need not establish his plea beyond all reasonable doubt. What is required is that the accused will have to rebut the normal rebuttable presumption that he is sane by placing materials before the court sufficient to make it consider the existence of the circumstances so probable that a prudent man would act upon them. Thus, it is apparent from above discussion that in order to invoke the protection of section 87 of Indian Penal Code or in other words to plead the defence of unsoundness of mind the burden rests upon the accused to adduce the evidence which prove the insanity or

unsoundness of mind at the time of the commission of the offence but such burden is not more than that of civil suit or any other words burden of proof of accused is not same as to the prosecution accused merely required to create doubt into mind of judge that a prudent man or a man of ordinary prudence could not commit such act.

Based upon the various judicial pronouncements, the difference between medical insanity and legal insanity which are

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essential to get a fair idea of denfence of insanity

The following are the fundamental Differences which distinguished each other:

(1) The legal and medical criterion ascertaining insanity are not similar. From legal point of view, a man must be deemed to be of sound mind so long as he is Abel to differentiate between right and wrong, so long as he knows that the act done is wrong or contrary to law.

"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 the incapable of knowing the nature of the act or that he doing is wrong or contrary to law".From the medical point of view, it is appropriate to state that every man at the time of committing the offence is not is a sound health normal condition is insane and required treatment. In **Dhani Bux v Emperor** Sind High Court held "it is not an excuse for a person who has committed crime that he had been goaded to it by some impulse which medical men might choose to say he could not control."

Further, if a person declared insane medically does not compulsorily take leave of his emotions and feelings, such as hope, fear, frustration, ambition, revenge etc, fear my exercise its impact over him, and threats may have a deterrent effect Such person, though insane, would refrain from committing any acts of violence or mischief if more powerful men are present.

II) In order to invoke the defence of insanity the mental state of the accused described in both M'Naghten rules as well as Section 84 of Indian Penal. Code must exist at the time when the act was committed, if a man is found to be insane subsequent to committing the offence it raises no presumption that he was of unsound mind at time of the, commission of the offence. In **Ratan Lai V State of M.P.** Supreme Court observed that the crucial point of time at which unsoundness of mind should be established is the time when the offence was committed. Orisa High Court in **Mitu Khadia V State of Orissa** held that the crucial point of time at which unsoundness

of mind should be established is the time when the crime is actually committed. The court is concerned with legal insanity and not medical insanity and law presumes that every person of the age of discretion knows consequences of his act and defence of insanity cannot be accepted upon arguments derived merely from the character of the crime. The mere absence of proof of motive would not show that a person was insane perse. For the purpose of "Legal insanity", unsoundness of mind at the crucial or vital time of the commission of the act only is relevant while for the purpose of medical insanity, a person may be insane at any time.

III) A court of law looks for some clear and distinct evidence 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, spring up in the mind suddenly, and not revealed by the previous conduct or conversation of the accused. Mayne quoting from the Draft of 1879 and stated the principle applicable to cases of delusion in following words:

"A person labouring under specific delusions but in other respects sane, shall not be acquitted on the ground of insanity, unless the delusion, caused him to believe in the existence or some state of things which, if it existed, would justify excuse his act."

So, the criterion used to ascertain medical insanity is distinct from those which used to ascertain the legal insanity. Medical insanity may infer from the absence of motive, of any attempt to escape, and of any accomplice and the person was conscious of the offence is immaterial,. In Sheralli Wall Mohammed v State of Maharastra[12] Supreme Court held that the mere fact that no motive has been proved why the accused committed an offence would not

indicate.

That he was legally insane or that did not have the requisite mens-rea for the commission of the offence. While the test to determine the legal insanity is "conduct". A lawyer means by madness 'conduct of certain character' while 'physician means by madness" a certain disease one of the effects of which is produced such conduct.

Gauhati High Court in **Nandeswar Kalita V State of Assam** observed that it is settled law that whether an accused was in such a state of mind as to entitle him to the benefit of section 84 Indian Penal Code it can only be established from the circumstances which preceded, attended and followed the crime. In this case, the conduct of the accused does not show any abnormality prior to and at the time of the occurrence. It is in evidence from the testimony of witness that the accused did not do any household work and he remained loitering in the village and accused used to quarrel with his mother from this behavior of conduct, it cannot be concluded that the accused had developed insanity prior to the occurrence.

IV) In order to establish medical insanity the motive for an act is very significant while native is not of conclusive significance in ascertaining legal sanity. Same was held by Supreme Court in Sheralli Wali Mohammed v state of Maharshtra that law presumes every person of the age of discretion to be sane unless the contrary is proved It would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive has been proved why the accused murdered his wife and child or, the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have the necessary mens-rea for the commission of the offence. Queen Empress v Lakshman Dagu[13] the accused mercilessly killed his young children with a hatchet and after killing 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 office. He had shown no symptoms of insanity at any previous time. His manner was clam when he was questioned and there was no attempt of concealment. He showed no signs of sorrow or remorse, and made a full confession of his guilt. He was no proof of premeditation the idea having accused to the accused with suddenness. He took no precautions to conceal the crime and made no attempt to escape. 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. The court conceded that if he had to be decided by medical tests, the accused would have to be acquitted, but it felt considered to apply principles which were judicially recognized, through it recommended the care for governmental clemency.

Mohammed Hussain v Emperor[14], the accused killed his wife as he alleged to have found her with father in an illicit liaison. The evidence showed that for three and a half years prior to the killing the accused had suffered, at intervals, from fits and mental unsoundness in course of which he was subject to delusions. Evidence showed that his allegations were false as his father was 70 to 75 years old and his wife was 8 months pregnant. The court held that he had killed his wife under the influence of delusion which had produced in his mind a bonafide belief that the woman had been guilty of the above mentioned abominable conduct, but that delusion did not prevent him from knowing the nature of his act. The court found the accused's conduct showing that though he believed that in killing his wife he would do something morally justifiable, he was at the same time aware that the law would punish him and still he chose to kill. The court accordingly denied him the assistance of Section 84 of Indian Penal Code.

Lachman v Emperor[15], the accused had shown symptoms of insanity. The family of the accused though that he wa possessed by evil

spirit. Apparently, the presence of Lachman irritated the accused to such an extent that he attached him and breaking both his arms and smashing his head. These injuries proved fatal. Evidence showed that the accused was suffering from folie circulaire a type of insanity, which commences, with abnormality of conduct on the sufferer. The abnormal conduct slowly increase until a peak is reached, when one is manifestly insane and then gradually one got better by degree until one perfectly sane. After a time, the abnormality of accused begins against and so the circle alternating period of sanity, abnormality, insanity, abnorm and sanity again. The court held that even though, the accused was not normal when he committed the above-mentioned crime, yet he knew perfectly well that when he was doing was a wrong thing to do and so he was not protected under Section 84 of Indian Penal Code.

In re Rajagopala[16] the accused murdered four of his children by clubbing them and also attempted to kill his wife. No motive could be assigned for these attacks. The accused was held guilty. The court refused to follow similar causes regarding mitigation of punishment, as it was of the view that the basis for that lay in discredited medical opinions.

Ambi v State of Kerala[17] involved the same of an accused who had killed his wife on Jan. 4, 1 960 by hitting choppar and on seeing there neighbors coming towards him, threatened them with dire consequences if they dared to enter the house, and closed the door and sent inside. Therefore, he told these persons that had killed his wife and that they would inform the appropriate authorities. At the trial the superintendent of the mental hospital, madras disposed that he had treated the accused between April 1 9, 1959 and May 7. 1 959 and in his opinion the accused was suffering from schizophrenia. The doctor spoke of the symptoms which he noticed no inclination to secure employment, less 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. Court said, "The evidence of the doctor would ate the most show that the accused was not mentally a normal person. This cannot amount legal sanity." Further court held that the conduct of the accused was consistent with that of sane, but highly jealous husband. His conduct was indicative of his being conscious and the nature of the act in that he was prepared to suffer the consequences of the nature of the act, he must be presumed notwithstanding the medical evidence to have been conscious of its criminality. It is pertinent to mentioned here that in Kerla v Ravi Kadar[18] J. said:

"A court of Law is concerned only with legal insanity and not with medical insanity. An accused person may be suffering from some form of insanity in the sense in which the term is used by medical men but may not be suffering from unsoundness of mind as contemplated under Section 84 of Indian Penal Code. There can no legal insanity unless cognitive faculties of the mind are, as a result of unsoundness of mind, so completely impaired as to render the accused incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. As principle medical science, insanity is another name or term for mental abnormality due to various causes and existing in various degrees, and even uncontrollable impulse driving a man to kill or would comes with its ambit. It is not every kind of insanity or madness that is recognized by law as a sufficient excuse, to earn exemption under Section 84 Indian Penal Code.

In Lala SK v State[19] Calcutta High Court observed that it is only legal insanity which furnishes a ground for exemption and there can no legal insanity unless the cognitive faculties of the accused are, as a result of unsoundness completely impaired as to make him incapable of knowing the nature of the act or that what is doing is wrong or contrary to law. In that case, the accused who was charged with murder emerged by the very idea that somebody else had invaded upon his property even though for a negligence purpose. Before the occurrence he

prevented the prosecution witness from them i.e. accused and the deceased. Immediately after occurrence he ran away from the scene of occurrence and washed away his garments and the stains from the hasua with water and threatened his pursuers by saying that he had committed one murder and would do so if the chasers continued to ran after him. Court after considering all facts held that the conduct of the accused immediately, preceding and following the act clearly indicates that he was not unsound to the extent of not being able to distinguish right from wrong or from understanding the nature of the act done by him.

In Siddheswari v State of Assam[20] High Court had an occasion to discuss as to when defence of impulsive insanity could be available to an accused. It pointed out there in "The mental impulse which had led to the commission of the crime has to be irresistible and not only unresisted to regard the sane as impulsive insanity. The mere factor that it was committed on a sudden impulse is not sufficient in this context.

In State of Assam v Inush All[21] Gauhati High Court observed that 'irresistible impulse' is perhaps a defence under Section 84 Indian Penal Code when due to such impulse the accused is incapable of knowing the nature of the act is doing and what he is doing was either wrong or contrary to law. Such impulse or abnormal urge to perform certain activity due to mental disease might be covered by Section 84 Indian Penal Code, further the court observed that to establish 'insane delusion' the first essential required to be preyed is the existence of a fixed belief in the mind of the accused about the existence that it was purely a figment of his imagination. Second essential is the belief was firmly fixed in the mind of the patient that he was incurable. The appellant was labouring under the belief that he could be killed by the disease. He does not say that it was a figment of his imagination. His mental faculty was quite rational. There is no existence of any disabled mind in the instant case. He had an apprehension and he could have averted it if it were true by taking assistance from there ic charge of law and order. There is no materia! that his mind was diseased or he was mental deranged. Therefore, the appellant had no delusion. In Uchhab Sahao v State[22], Orissa High Court observed that it is not a mere plea of insanity will keep the accused beyond the pale of punishment, even establishment of fact of medical insanity would not aid the accused to earn an acquittal unless legal insanity is also proved which means that he is to be shown that he was not in possession of his cognitive faculties at the time of commission of the crime. It is only when the use at the relevant time not in conscious control of mental faculties which derived him of his power of judgment between the right and the wrong to discriminate between the legal and illegal by reason of insanity, that he could properly avail of the exception. In establishing such plea, history of previous insanity including any medical history of the sane, the behavior or the accused on the day of the occurrence and his past occurrence behavior are, besides other factors also relevant to be taken into consideration as aid to judge the mental condition of the accused, if the time of commission of the crime.

In Basanti v State[23] it was observed that a mere insanity as is known in the medical science is not adequate to dismiss a charge of criminal prosecution unless the insanity alleged in one which is shown to have been suffered at the time the commission of the offence, it is necessary for court to reach the conclusion that at the time the offence

was committed the accused was deprived of his cognitive faculties to such an extent that he was incapable of distinguishing between the right and wrong or the legal and illegal so that he could not be held responsible for his own actions.

In **parapuzha Thambhan** v **State of Kerla** High Court observed that it is true that the rules formulated in the M'Naghtgen case have been attacked by the medical profession and also by

certain lawyers. The doctrine of uncontrollable or irresistible impulse and impulsive insanity has never been accepted as a valid defence coming within the purview of Section 84 Indian Penal Code. Every crime is committed under an impulse and the great object of the criminal law is to compel or induce persons to control or resist these impulses and under the Indian Law an accused person is not entitled to exemption from criminal responsibility on the ground of loss of power of self-control at the time of the commission of the offence unless it was attributable to unsoundness of mind satisfying the requirements under Section 84 Indian Penal Code

in Gour Chandra v State[24] Orissa High Court observed that under Section 84 of Indian Penal Code it is not every mental derangement that exempts an accused person from criminal responsibility for his acts, but that derangement must be shown to be one which impair the cognitive faculties of the accused i.e. the faculty of understanding the nature of his act in its bearing on the victim of in relation to himself, that in his own responsibility for it. In the medical world there are many kinds of insanity, but in law insanity is of two kinds one which would exempt the person from criminal responsibility and the other which would not. There is clear distinction between medical and legal insanity. Every kind of insanity recognized in medical science is not legal insanity. Every minor mental aberration is not insanity. There can be no legal insanity unless cognitive faculty of mind is destroyed as a result of unsoundness of mind to such an extent as to render the accused incapable of knowing the nature of the act or that act what he was doing was contrary to law.

Karnataka High Court in S.Sunil Sandeep v State of Karnataka[25] lays down the following principles to be considered in applying

Section 84 Indian Penal Code: -

1) Every type of insanity is not legal insanity, but the cognitive faculties must be so destroyed as to render one incapable of knowing the nature of his act or that what he is doing is wrong or contrary to law.

2) The Court shall presume absence of such insanity.

3) The court must consider whether the accused suffered from legal insanity at the time when the offence was committed. William G. Cook in his book defines the medical definition of insanity as 84: -

"According to an eminent specialist in mental disease, insanity is disorder of brain producing disorder of mind, in other words, it is disorder of the supreme nerve centers of the brain the special organs of mind producing derangement of throughout, feeling and action, together or separately of such degree or kind as to incapable but individual relations of life" i.e. the social relation of life." The modem legal definition is that:-

"A lunatic is a person of unsound mind (not being an idiot or an imbecile) who has either (I) been found to be a person of unsound mind by judicial inquisition or (ii) been medically certified to be of unsound mind, and who is either incapable of managing his own affairs or is dangerous to himself or to others." In **Kuzhiyarsamadivil Madhavan v State** Kerala High Court observed that is case of a murder that fact that no perceivable motive is established perse would not show that the accused was suffering from mental malady which would amount to legal insanity. When there is occurrence witness, motive has only 'academic role to play. Therefore, it cannot be said that when there is no evidence as the motive the act should be seemed to be the act of a mad man. Every mental aberration cannot constitute legal insanity. Every type of insanity cannot amount to legal insanity unless it is shown that his mental condition was such that it destroyed his capacity to understand the nature of his act. Minor mental, aberration hot temperament, lack of self-control or feeling easily provoked are not sufficient to absolve one from the liability of his act. Thus, what is crucial in such circumstances is his mental state at the

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time of the commission of the offence. In that regard his conduct immediately before and after the occurrence may be of relevance, if the accused has a previous history of mental disease that also would be a relevant factor in considering the probability of the case pleaded.

In **Shankaran** v **State,** Kerala High Court observed that some minor deviation in the regular conduct of person will not make him 'insane'. A person with a frustrated and perplexed mind may exhibit operations for his normal behavior but thatbe itself do not pronounce that he is having unsoundness of mind'. The court is primarily concerned with the existence of legal insanity. What is contemplated under Section 84 Indian Penal Code is not medically insanity but legal insanity which if proved would entitle the accused to get an order of acquittal.. Even if the entire evidence including the circumstances of that case specially marshaled is scanned, the court will not find its way to hold that the accused has proved the plea of legal insanity or created a reasonable doubt in the mind of the Court as regards the one or more of the ingredients of the offence.

In Brushabha Digal v State[26] Orissa High Court observed that in order to constitute an offence, the intent and act must concur, but in the case of insane persons no culpability is festened on them as they have nor free will (Furicsis null volutes est.) Section 84 itself provides that the benefit is available only when it is proved that at the time of committed the act the accused was laboursing under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or he did not know it that he did not know he was doing what was wrong. The vital point of time for determining whether the benefit of Section 84 should be given or not is the material time when the offence is taken place. If at that movement the man is found be labouring under such a defect of reason as not of know the nature of the act he was doing or that even if he know it, he did not know it was either wringer contrary to law the protection of Section 84 is available, behavior, antecedent, attendant, and subsequent to the even may be relevant in finding the mental condition of the accused at the time of the event, but not remote in time. It is difficult to prove the precise state of the accused's mind at the time of the commission of the offence, but some signs thereof are after furnished by the conduct of the accused while committing or immediately after the commission of the offence. It would be hazardous to do lay down in general principle material which would be sufficient to bring the existence of circumstances warranting application of Section 84 Indian Penal Code. Thus all pathological crimes perse invoke the application of Section 84 of Indian Penal Code. Where a person's cognitive faculty is sufficient unaffected so as to realize what he is doing, he is presumed to intend the outcome:, of his actions.

Instantly in order to attain the state of irresponsibility must satisfy the test evoked in M'Naghten case on which the Section 84 Indian Penal Code substantially based, these century old rules, however, were framed at a time when very little was known of psychiatry. They fall short of the standard of present day knowledge. But the main objection to expansion the M'Naghten rules is that it is difficult to distinguish clearly pathological crime from non-pathological in the present stage of development of psychiatry and that any relaxation may afford asylum to offenders. It is indeed difficult to formulate a hard and fast principle for ascertaining criminal responsibility at a time when psychiatry has not achieved the status of full grown science. But the door should be kept upon for appropriate relaxation and extension and the rules so that criminal trials may be rationalized, if not humanized though the task will not be an easy one and some of the difficulties may be baffling. Conservatism apart it may indeed be difficult to translate the extension of knowledge in the psychiatric filed into adequate legal formula. Nor should it be forgotten that the 'right and wrong formula

has not stood in the way of taking any evidence

the entire mental condition of the accused.

--- Footnotes ---

[1] M'Naghten's Case, (1843) 10 Cl & Fin 200; 8 ER 718 (HL).

[2] Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).

[3] Model Penal Code § 4.01 (American Law Institute, 1962).

[4] Chandan Lal v. Crown, AIR 1951 All 233.

[5] State of M.P. v. Ahmadullah, AIR 1961 SC 998.

[6] Dayabhai Chhaganbhai Thakkar v. State of Gujarat, AIR 1964 SC 1563.

[7] Jai Lal v. Delhi Administration, AIR 1969 SC 15.

[8] Ratan Lal v. State of M.P., AIR 1971 SC 778.

[9] Jai Lal v. Delhi Administration, AIR 1969 SC 15.

[10] Ratan Lal v. State of M.P., AIR 1971 SC 778.

[11] Parappuzha Thomban v. State of Kerala, 1984 CriLJ 1322 (Ker).

[12] Sheralli Walli Mohammed v. State of Maharashtra, AIR 1972 SC 2443.

[13] Queen-Empress v. Lakshman Dagdu, (1890) ILR 14 Bom 213.

[14] Mohammad Hussain v. Emperor, AIR 1914 All 30.

[15] Lachman v. Emperor, AIR 1933 Lah 89.

[16] Re Rajagopalan, AIR 1956 Mad 520.

[17] Ambi v. State of Kerala, AIR 1969 Ker 137.

[18] State of Kerala v. Ravi Kadar, 1981 CriLJ 395 (Ker).

[19] Lala Sk. v. State, 1987 CriLJ 827 (Cal).

[20] Siddheswari v. State of Assam, 1981 CriLJ 784 (Gau).

[21] State of Assam v. Inush Ali, 1980 CriLJ 1090 (Gau).

[22] Uchhab Sahoo v. State, 1981 CriLJ 864 (Ori).

[23] Basanti v. State, AIR 1981 Ori 71.

[24] Gour Chandra v. State of Orissa, 1982 CriLJ 1807 (Ori).

[25] S. Sunil Sandeep v. State of Karnataka, ILR 2011 KAR 4790.

[26] Brushabha Digal v. State, 1990 CriLJ 2470 (Ori).