MENTAL ABNORMALITY AND CRIMINAL RESPONSIBILITY

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DECLARATION

I do hereby declare that this work has been originally carried out by me under the guidance and supervision of Prof.(Dr.) P. Leelakrishnan, Head of the Department of Law, University of Cochin. This work has not been submitted either in part, or in whole, for any degree at any University.

Cochin-682 022

7th June, 1993

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CERTIFICATE

This is to certify that this thesis entitled "Mental Abnormality and Criminal Responsibility", submitted by Sri G. Sadasivan Nair, for the Degree of Doctor of Philosophy is the record of bona fide research carried out under my guidance and supervision from 23.7.1979 in the Department of Law, University of Cochin. This thesis, or any part thereof, has not been submitted elsewhere for any other degree.

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GUIDE

PREFACE

This is a study in criminal law. The problem probed is the relationship between mental abnormality and criminal responsibility. The subject is yet an unsolved area in criminal jurisprudence. It is of great interest to many — jurists, lawyers, philosophers and psychiatrists. The study lays special emphasis on the Indian law. Comparative assessment wherever found necessary, especially of positions in England, United States and Germany, is made.

The thesis is in six parts and sixteen chapters. Part I consists of chapter I which examines the jurisprudential basis of criminal responsibility.

Part II has two chapters. Chapter II highlights the evolution of M'Naghten rules and its criticism. Chapter III makes a survey of other tests of responsibility.

Part III evaluates the judicial exposition of the concept of insanity. It consists of chapters IV to VII. Chapter IV looks into the mechanics of judicial moulding of the law of insanity in India. While chapter V speaks of insane delusions, chapter VI examines other forms of mental disorder. Chapter VII delves into the problems

of intoxication. It makes also an assessment of the judicial approach towards different forms of mental disorders.

Part IV deals with burden of proof. It has three chapters. Chapter VIII is a critique of the standard of proof of insanity required under the Indian law. Chapter IX attempts to find out whether there are objective criteria of proof. Chapter X assesses the role of witnesses in proving insanity.

Part V is devoted to law and psychiatry. It consists of four chapters. Chapter XI is a study on the relationship between psychiatry, mental abnormality and crime. Chapter XII makes an appraisal of the developments in the law in the United States. Chapter XIII evaluates the developments in England. Chapter XIV examines the inadequacies of Indian law and highlights the need to keep abreast with the changes that took place in other parts of the common law world bringing about a fusion between law and psychiatry.

Part VI has two chapters. Chapter XV makes a brief account of the results of interviews with lawyers, psychiatrists, jail officials, and mentally abnormal persons in the asylum and the prison. Chapter XVI sums up the conclusions and suggestions. An appendix showing the statistics of the admissions and discharges of

mental patients and other details relating to the Mental Hospital, Trivandrum is given at the end.

Dr.P. Leelakrishnan, Professor and Head of the Department of Law of the University of Cochin guided me in my research. It is with his constant encouragement and strict supervision that I could complete my work. I am indebted to him. I also thank Dr.R. Ramakumar, Special Secretary to the Kerala Legislature, who not only suggested the topic of research but also on many occasions than one spared his busy time with me to discuss certain interesting points. I express my thanks to Dr.N.S.Chandrasekharan, Reader in the Department of Law of the University of Cochin, who went through my manuscript and gave valuable suggestions. I should thank Mr.K.N.Chandrasekharan Pillai, Reader in the Department of Law, for the useful discussion I had with him on certain aspects.

I should be failing in my duty if I do not express my gratitude towards the degree of the Bar at Cochin who spared their valuable time and enlightened me on certain unsolved areas of the subject. My special thanks are due to the Inspector General of Prisons for readily granting me permission to visit the Central Jails at Trivandrum and Trichur and for the discussion I had with him on various aspects of prison administration and prison life. I should

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I acknowledge my thanks to my colleagues in the Department of Law for readily helping in more ways than one. My thesis would not have been completed in time had not the staff in the libraries I visited - Department of Law Library, Cochin University Main Library, Kerala High Court Library, Kerala Legislative Assembly Library - been co-operative and considerate. My thanks are also due to my wife who gave me all co-operation in this endeavour.

Mr.N. Sukumaran Nair deserves my thanks and appreciation for neatly typing out this thesis in time.

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PART I

INTRODUCTORY

CHAPTER - I

BASIS OF CRIMINAL RESPONSIBILITY

The relationship between mental abnormality and criminal responsibility is a perennial problem. Guilt is the basis of criminal responsibility. Generally mens rea is an essential ingredient of guilt. Do mentally abnormal persons possess a guilty mind? Is it just to punish them?

In common law there can be no crime unless the act is committed with mens rea, viz., a guilty mind. Under early criminal law imposition of punishment was without any regard being had to the blameworthiness of the accused and courts were guided only by the acts of the individual.[1] Killing under the king's warrant or in pursuit of justice was, however, exempted. In all other cases of killing, the killer seems to have been held guilty for every death caused by him whether intentionally or not.

The Canon law had a powerful impetus on the criminal law of England in its development.[2] It insisted that mens rea should be an essential ingredient of criminal responsibility. Thus the Church became dominant in gave permanent importance

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1. Kenny, Outlines of Criminal Law, (18th ed., 1962), pp.7-8.

2. Stephen on Crime, (J.W.C. Turner, 12th ed., 1964), Vol.1, pp.13-14.

to moral blame or mental attitude of the accused. The aim of the Church was eradication of sin and wickedness. This had its influence on courts. They began to take into account the mental aspect of the culprit. Thus in cases of accidental murder there evolved a via media, namely, that though courts found the person guilty, the King pardoned him.[3] In course of time the judges themselves began to save persons who kill others accidentally, by returning a verdict of not guilty.

The principle in common law that there can be no crime unless the act is done with a guilty mind is enshrined in the maxim actus non facit reum nisi mens sit rea.[4]

Guilt and involuntary act

The element of mens rea was adopted when courts began to recognise that a man should not be held guilty for his involuntary act.[5] The act must be a voluntary act or a willed movement if one is to be held responsible for it.

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3. Id. at p.23.

4. The principle was first accepted in Fowler v. Padget, (1798) 101 E.R.1103 at 1107 per Kenyon, C.J. "It is a principle of natural justice, and of our law, that actus non facit reum nisi mens sit rea. The intent and the act must both concur to constitute the crime."

5. Suppose X is holding a knife. Y seizes X's arm and by means of greater physical strength causes the knife in X's hand to wound Z. The wounding would, in early law, have been held to be the act of X. But in fact, the action of X is involuntary. It is [illegible] to punish. So he can successfully put a defence of involuntariness under the mens rea development. Also see Russell on Crime 12th edn., p.37.

On the above proposition an act cannot be a crime if it is done by a man who has become unconscious. This is so because he is unable to control his movements and is unaware of making them. This state is called automatism and is recognised as a defence in criminal charge. This concept had a great contribution towards the establishment of a subjective test of liability.[6] It is impossible to find any mental guilt in a person who is deprived of control over his bodily movements. This added support to the adoption of the test of looking into the mental state of the accused in the assessment of criminal liability. An important result is that at the present day all crimes have the same requirement that the 'act' must be done with mens rea so as to be imputable to the accused person unless the statute excludes this rule.[7]

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6. Ibid. Also see S.Provenser, "Automatism and Involuntary Conduct", [1958] Cri.L.R.361; R.D. Mackay, "Intoxication as a Factor in Automatism", [1982] Cri.L.R.146; R.D.Mackay and Barrister,"Non organic Automatism - Recent Developments", [1990] Cri.L.R.150.

7. Sweet v. Parsley,[1970] A.C.132, where the appellant has held not guilty, under s.5 of the Dangerous Drugs Act 1965, for the offence of being 'concerned in the management of premises used for smoking cannabis resin', since the premises were so used without her knowledge and the requirement of mens rea is not excluded by the section. Lim v. Officer-in-Charge Police Contingent,[1965] 2 A.C.256 P.C. on the other hand, case in which the statute excluded mens rea and hence the accused was held guilty even in the absence of mens rea. The accused was charged with possession of prohibited drugs. Under s.1 of the Drugs (Prevention of Misuse) Act, 1964 it was unlawful to be in possession of drugs specified in the schedule to the Act. It was held that the Act created a strict liability excluding the requirement of mens rea and the appellant was guilty even if he carried the prohibited drugs without knowledge.

The act may be voluntary. But the accused may not have contemplated inflicting of any harm by his act. The common law finds a way to serve such cases. The principle has been evolved that a man should not be punished unless he had been aware that what he was doing might lead to mischievous results. He must have had the foresight of the consequences of his conduct. The nature of the previous circumstances, the foresight of which attracts criminal guilt, is fixed by law. It may vary from crime to crime. This is especially so in statutory offences. If the accused foresees the harmful consequences of his action he has mens rea. [8]

Intention is the state of mind which not only foresees but also desires the possible consequences of the act. If one man throws another from a high tower or cuts off his head it would seem plain that he both foresees the victim's death and also desires it. Suppose the man was insane or mentally deranged. The whole picture will change, because the ordinary presumption that a man intends the natural and probable consequences of his act will not apply to such a person.

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8. Voluntariness and the foresight of the consequences of his action are parts of the total mental element in common law liability and not parts of actus reus. See Russell on Crime, 9th. Edn., p.40, n.13.

Intention is distinguishable from knowledge. Knowledge is the awareness of the consequences of an act. But intention and knowledge are interrelated. Intention to commit an offence may sometimes be inferred from knowledge. At times intention and knowledge merge into each other.

Recklessness is another culpable form of mental state. A man may foresee the possible or even the probable consequences of his conduct. But he may not desire that these consequences should occur. None the less, if he persists on his course he is reckless. He then knowingly runs the risk of bringing about the undesired result.

Negligence implies inadvertence. The negligent person is completely unaware of the dangers of his action or inaction. Negligence and intention stand at extreme ends. Recklessness stands in between.

In statutory offences of strict liability none of these states of mind need be present. But juristic thinking is not in favour of indiscriminate exclusion of mens rea in statutory offences. Accordingly, mens rea should be presumed even in statutory offences. Any disadvantage which may attend with it may be overcome by transferring the burden of proof to the defendant without resorting to the more drastic expedient of strict liability. [9]

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9. Francis O.Jacobs, Criminal Responsibility,(1971), p.170.

Purposes of Punishment - Are they met when the insane is punished?

There are different views about the purposes of punishment. Punishment may be viewed as a response to guilt or culpability. It may be a functional means of determrence. It may be a reformation device. It could be viewed as a socio-political means of asserting and maintaining legal prohibitions of guilt. The first view is the one most frequently encountered in our decisional law. An assumption on the correctness of this view leads to a conclusion that a person must not be punished if he is not guilty. The second view leads to the situation wherein a person must not be punished unless the punishment deters either him from repeating the offense or other persons from committing the offense. The third view springs up from the premises that a person who is not culpable ought not to be punished. In the fourth view, the indigence is that a person must not be punished if the purpose of law's assertion is not served. Each potential purpose should be viewed separately and the question whether such purpose is served by punishing the mentally abnormal has to be examined.

From the functional angle punishment as determrence will not serve the purpose in the case of mental patients. True that the individual concerned can be deterred by confining him in prison. But this raises questions of morality, because mental element cannot be completely removed from criminal

responsibility.[10] The mentally ill is not really deterred from committing further offences by punishing him for an offence which he did not consciously commit. Punishment of the insane for a crime does not deter other sane persons from committing the crime. Moreover modern thinking is how a criminal can be reformed and how through reformation he can be deterred from committing the offence again.

When we consider punishment as a means of reform it is doubtful whether even in the case of ordinary criminals punishment by the State has achieved the goal of reformation. If this is so, the chances of reformation are more rare in the case of those suffering from mental diseases. There is an inherent incapacity in the mentally deranged to submit to the process of reformation. The only sanction that can be made applicable to them is perhaps therapeutic treatment. Facility for such treatment may not be available in prisons. Even if available, it may not work well in the prison set up.

An important implication of interpreting punishment as a means of law assertion is the insistence on equal treatment of criminals. Nondiscriminatory punishment is meted out to all those who commit the same category of act in similar circumstances. The State does so as a means of asserting its prohibitions.

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10. See H.L.A. Hart, The Morality of the Criminal Law, (1965), pp.1-29. Also see E.L. Hoban Taylor, "Determinism, Responsibility and Freedom : The Fallacy of Modern Criminal Law from a Biblical-Christian Perspective", (1981) 44 Law and Contemporary Problems, 51 at p.61.

This is based on the premise that the mentally deranged and other criminals stand on equal footing. This premise is not true. Mentally deranged are by themselves a separate class. They merit separate treatment.[11] Punishment cannot act as exertion of guilt in the case of mentally defective persons.

Mens rea and culpability in the mentally ill

Guilt is an elusive concept. When we equate guilt with presence of mens rea or criminal intent there need to make some qualifications to the term intent. For example before he commits an offence, a person suffering from melancholia[12] or paranoia[13] may intend to commit it. But it has been held by overwhelming authority that a person suffering melancholia or paranoia ought to be exempted from punishment. Scholars of both common law and civil law countries support that to intent must mean to intent rationally or to intent with rational motivations and to know must mean to know with feeling and not merely on a verbal level. [14]

Should not lack of mens rea serve as a ground of exemption of the mental patient from criminal liability? One view[15]

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11. Helen Silving, "Mental Incapacity in Criminal Law", (1961) 2 Current law and Social Problems, 4 at p.39.
12. Emotional mental disease marked by depression and ill-grounded fears.
13. Mental derangement marked by delusions of grandeur.
14. See, Helen Silving, op. cit., pp.9-11.
15. Barbara Wootton, "Diminished Responsibility : A Layman's View", (1960) 76 L.Q.R.224.

is that mens rea is relevant only after conviction. It is relevant only as a guide to what measures should be taken to prevent recurrence of the forbidden act. One may not accept this view, for bifurcation of mens rea from offence is likely to lead to abuse of prosecutional powers of the state. Even an innocent man if the mens rea imposed on him is proved can be sent to jail.[16] Professor Hart given cogent reasons for disagreeing with abolition of mens rea as a constituent part of criminal responsibility. Expressing his concern on individual freedom he says,

> "In a system in which proof of mens rea is no longer a necessary condition for conviction, the occasions for official interference with our lives and for compulsion will be vastly increased." [17]

Hart suggests [18] a fair theory of responsibility. Criminal law is designed to control deviant conduct. Why should then the law be concerned at all with the mental state of an alleged offender? The mental element is important because an offender should be stigmatised and punished only when the court, acting for the community, is satisfied that offender could and should have chosen not to engage in the conduct for which he is alleged to be liable.[19] Whether or not we feel that he could have been

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16. The Morality of the Criminal Law (1965), p.26 et seq.
17. Id. at p.26.
18. Punishment and Responsibility : Essays in Philosophy of Law, (1968), pp.40-43.
19. Ibid.

chosen otherwise than he did will depend on our prevailing physiological, psychological and ethical theories about social behaviour and causation of human action.[20] If this is so, should not the concept of responsibility change according to the changes in these theories?

In insanity and mental abnormality cases the real enquiry is into the state of mind of the person at the time of commission of the act. The culpability criterion, namely, criminal intent is absent in the case of the insane person. It cannot be said in his case that he could have or should have chosen not to engage in the alleged act. The purposes of punishment generally applicable to others are of little relevance in his case.

The question of criminal responsibility of the insane person has to be probed from diverse angles. What is the foundation of law on which the exemption from liability due to mental disease or abnormality is based? Are the rules evolved long ago by the judiciary in England sufficient to meet various psychological and psychiatric situations where the plea of exemption is taken? What other satisfactory tests or criteria be adopted? Is the substantive law in India sufficient in view of the modern psychiatric developments? What are the forms of mental disorders judicially recognised? Are all forms of medical insanity recognised in law as sufficient for legal protection? Do the evidentiary rules accommodate psychiatric and

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20. Eric Colvin, "A theory of Intoxication Defence", (1981) 59 Can.Bar.Rev., 750 at 753.

medical evidence in determining the guilt? Is the burden of proof in insanity cases unduly strained? Which aspects of law - substantive, evidentiary or procedural, require change? Should not the mentally ill get therapeutic treatment? Should we not view the question of mental illness in the totality of criminal justice system, crime prevention and social welfare? What role the judiciary and the Legislature have to play in improving the law and the lot of the abnormal? What are the views of the jurists, lawyers, psychiatrists and the public on these questions? A host of questions rush in when one looks at the subject. The following chapters deal with these questions.

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PART II

TESTS OF RESPONSIBILITY

CHAPTER II

DEFENCE OF INSANITY IN CRIMINAL LAW

The idea of exempting the insane from punishment for their otherwise criminal acts is a thousand years old.[1] From ninth century, law provided that "If a man be born dumb or deaf, so that he cannot acknowledge or confess his offences, his father must pay his forfeitures".[2] The same proportional treatment was extended to the insane and those who were incompetent to stand trial.

The advent of the system of trial by jury in the thirteenth century gave impetus to a new system. A new judicial form and a new procedure for the disposal of insane offenders emerged. For example Justice Hill decided in 1353 not to try a man who had killed four people while the man was in an enraged state. Instead he allowed the accused time to recover his senses in prison. In course of time in cases where there was no hope of cure the king pardoned the prisoner and let him free.[3] When years passed, as soon early,[4] courts began to

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1. J.Goldstaber and A.Ky Hayman, "In Defence of the Insanity Defence", (1968) 21 Rutgers Law Journal, 9 at p.10. For a complete account of the history of insanity defence, see generally Nigel Walker, Crime and Insanity in England, (1968), Vol.I.
2. Nigel Walker, Id. at p.210.
3. Id. at pp.210, 220. Also Goldstaber and Hayman, Op. Cit. fn 1 at p.11.
4. Supra, Ch.I, n.3.

consider the insane criminals free from liability in cases when the moral pardon was due. Nevertheless, it is said that in accordance with the ancient doctrine of strict liability the defence of insanity was to a large extent restricted. The mentally deranged person did not escape punishment except in exceptional circumstances when he acts like a wild beast or an infant without any memory or understanding. [5]

The real development of the modern law of insanity in criminal offences starts in the middle of the Nineteenth century. The Daniel M'Naghten's case [6] is a remarkable milestone in this path.

M'Naghten's case

Mr.Daniel M'Naghten was a paranoiac. He believed that he was being persecuted by the Tories. Sir Robert Peel was his political enemy. Suffering from delusions of persecution, M'Naghten had determined to kill Sir Robert Peel. But by mistake he shot and killed Edward Drummond, Secretary to Sir Robert Peel. He was charged for murder. Medical evidence was called on behalf of the accused to prove that he was not, at the time of committing the act, in a sound state of mind. Evidence was adduced to the following effect.

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5. Russell on Crime, Vol.I (1964), p.106.

6. 10 C& F. 200 (1843), 8 E.R.718 per Lord Tindal, C.J., Erskine, Campbell, Cottenham, Wyndard, JJ, with him. Mr. Justice Maule dissenting.

Persons of otherwise sound mind might be affected at times by morbid delusions. The accused was in that condition. A person labouring under a morbid delusion might have a moral perception of right and wrong. But in the case of M'Naghten it was a delusion which carried him away beyond the power of his own control. This left him with no such perception of right and wrong. He was not capable of exercising any control over acts which he committed in a state of delusion. It was the nature of the disease, with which the accused was affected, was to go on gradually until it had reached a climax. Then it burst forth with irresistible intensity. A man might go on for years quietly while suffering from the disease. But at the climax unpredictably he might all at once break out into the most extravagant and violent paroxysms of rage. Some witnesses who gave this evidence had previously examined the accused. Others had never seen him till he appeared in court but they formed their opinion on hearing the evidence given by other witnesses.

Taking all the above factors into consideration M'Naghten was acquitted on the ground of insanity. This raised many eyebrows. Many people believed that the story of delusion was a cock and bull story and that the murder was a political assassination, pure and simple. After a debate to 'strengthen the law' on the point, the House of Lords resorted to an unusual procedure of eliciting an advisory

opinion from the law lords. The House addressed a series of questions to the fifteen judges of England to ascertain the law on the subject. The answers given by the judges to the said questions are known as the M'Naghten rules. There were five questions. [7]

1. What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?
2. What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?
3. For what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?
4. If a person under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?

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7. Id. at pp.722-723.

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

Chief Justice Tindal gave the following answers. [8]

> ". . . every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved . . . . . to establish a defence on the ground of insanity it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong". [9]

He continuously

> "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". [10]

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8. Ibid. Mr.Justice Maule, wrote a separate opinion often pertaining at the question of answering to hypothetical questions. at pp.720-722.
9. Id. at p.722.
10. Id. at p.722.

he again said,

> " If . . . he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which delusion exist were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be entitled from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment . . . . " [11]

To the question whether a medical man who never saw the accused but who watched him during trial could be asked about the state of mind of the accused at the time of the commission of the offence, Lord Chief Justice Tindal said,

> ". . . . we think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the opinion cannot be insisted on as a matter of right". [12]

The observations can be summed up as follows:

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

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11. Ibid.

12. Ibid.

(2) It is a defence to a criminal prosecution for the accused to show that when he committed the act he was labouring under such a defect of reason, due to disease of the mind, as either, (a) not to know the nature and quality of the act he was committing, or (b) if he did know this, not to know that that 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 commits a criminal act under an insane delusion and if he is under a partial delusion only, and is not in other respects insane, he must be under the same degree of responsibility as he would have been on the facts as he imagined them to be.

(5) Evidence of a medical man who has seen the accused only at the time of trial cannot be let in to prove the disputed fact of the state of mind of the accused.

It is true that when insanity is pleaded, the onus of proof is on the accused. It is for the person who takes the plea of special circumstance as a defence to a criminal charge to prove that circumstance. He may rebut the presumption of sanity by adducing evidence. The evidence should satisfy the court or the jury on the balance of probabilities that he was insane when he committed the alleged act.

Discussion of the second rule of M'Naghten

In order to get exemption from liability the accused has to show that when he committed the act he was labouring under such a defect of reason, due to disease of the mind, as either, (a) not to know, the nature and quality of the act he was committing, or (b) if he did not know this, not to know that he was doing was wrong.[13] This means that something more than 'brutish stupidity without rational power' must be proved. The disease may be physical in origin. A temporary blockage of the transition of cognition which is complete and more than a momentary confusion will be sufficient to constitute the defence.

R v. [redacted][14] is an example. In this case the accused caused grievous bodily harm to his wife. He was suffering from arteriosclerosis or hardening of the arteries. Although this disease had not reached a stage at which he displayed any general sign of mental trouble, it led to a congestion of blood in the brain and caused a temporary lapse of consciousness. In this state the attack was made. The Court held that the defect of reason the accused suffered so as not to know the nature and quality of the act he was doing arose 'from a disease of the mind' within the M'Naghten rules.[15]

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13. See [redacted], n.9.
14. [1957] 1.Q.B. 399.
15. Cf. [redacted] Devlin, J. at 402.

Reference was made in Kemp to R v. Charlson[16] where the accused was acquitted on the ground that he was, on the relevant time, suffering from a 'black out' so that his acts were done without his volition and indeed without his knowledge that he was doing those acts. In Charlson the defence was supported by the police who noticed his strange behaviour immediately on his arrest and also by all medical men who diagnosed an incipient tumour on Charlson's brain. Although he did not set up insanity the accused contended that he was not conscious of his act over which he had no control. But Charlson[17] was not considered in Kemp[18] saying that in the former the medical evidence was beyond doubt for the mental abnormality. In R v. Kemp[19] the accused set up his defence, on the lines of Charlson.[20] He pleaded that he was unconscious at the material time. The prosecution accepted that he did not know what he was doing. All the medical men gave evidence that the accused struck his wife not knowing anything about it, and not having any real memory of it. But there was divergence of medical opinion.

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16. [1955] 1 All E.R.859. A father invited thirteen year old son to look out of window at a rat in the river below and, when the boy did so, struck him on the head with a mallet and threw him out of the window, causing him grievous bodily harm. There was no provocation or motive. Father stated that he did not remember anything. There was history of ill health in the father's family.
17. Ibid.
18. Kemp, n.14.
19. Ibid.
20. Kemp, n.14.

According to one view the loss of consciousness, caused by congestion of blood in the brain, had resulted in the patient's acting irrationally and irresponsibly, but this was not such a degeneration of the accused's brain cells as to amount to disease of the mind.[21] According to another opinion arteriosclerosis induced 'a condition of melancholia' as a result of which the accused committed the acts; and that melancholia was 'a disease of the mind'.[22] Obviously the views clashed. According to one, degeneration of the brain was not disease of the mind. According to the other melancholia of the accused was a disease of the mind. Lord Justice Devlin had no doubt that the accused was 'labouring under a defect of reason from disease of the mind'. He said, [23]

> "The law is not concerned with the brain but with the mind, in the sense that "mind" is ordinarily used, the mental faculties of reason, memory and understanding . . . . In my judgment, the condition of the brain is irrelevant and so is the question of whether the condition of the mind is curable or incurable, transitory or permanent .... The primary thing that has to be looked for is the

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21. Ibid., n.14 atp.405.

22. Ibid.

23. Id., pp.407, 408. On this passage, Russel comments: "This passage, as a whole is indeed difficult to follow. It states, in effect, (a) that the condition of the brain is irrelevant, (b) that hardening of the arteries (which is undeniably a deterioration from the normal i.e., a disease of the material substance of the arteries) is not irrelevant because it is capable of affecting the mind by causing even temporary defect in its reasoning, etc., and is therefore a disease of the mind". See Russell, Crime, at p.114.

> defect of reason . . . . In my judgment, the words, 'from disease of the mind' are not to be construed as if they were put in for the purpose of distinguishing between diseases which have a mental origin and diseases which have a physical origin, distinction which in 1843 was probably little considered. They were put in for the purpose of limiting the effect of the words 'defect of reason'. A defect of reason is by itself enough to make the act irrational and therefore normally to exclude responsibility in law. But the rules was not intended to apply to defects of reason caused simply by human stupidity without rational power . . . . The words ensure that unless the defect is due to a diseased mind and not simply to an untrained one there is insanity within the meaning of the rule.
>
> Hardening of arteries is a disease which is / shown on the evidence to be capable of affecting the mind in such a way as to cause a defect, temporarily or permanently, on its reasoning, understanding and so on, and so is in my judgment a disease of the mind which comes within the meaning of the rules".

The next doubt that may be expressed in the second rule of M'Naghten is in what state of mind the defect of reason should result in order to claim exemption from liability. The words 'as not to know the nature and quality of the act'[24] should mean that the accused must be insane in every possible sense of the word though some authorities[25] regard the existence of such forms of insanity as a mere legal fiction. The terms 'nature and quality' refer to the

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24. Supra, n.6 at 722. Also see supra, n.9.

25. Taylor, Principles and Practice of Medical Jurisprudence, (11th ed. 1956), p.578.

physical character of the act, and are not intended to distinguish between its physical and moral aspects.[26]

The last part of the second rule namely, if the prisoner did know the physical nature of the act, he did not know that what he was doing was wrong,[27] has given place to various interpretations. It has been argued that 'to know' means 'to appreciate', 'to comprehend' or 'to realise in its full meaning'. Another question that may arise is whether 'wrong' means a 'legal' wrong or a legal and 'moral' wrong. Should the position be that the accused was not aware not only that he was doing what was contrary to law but also that it was contrary to the moral notions and to law?

The question was squarely put in R v. Chisam.[28] It was a case of a husband killing his wife. As the court viewed, the distinction between what is morally wrong and what is legally wrong opens wide doors. What are the standards applicable in judging whether or not the appellant could have thought that the act was not morally wrong? There was no doubt that the standard to be applied was the standard adopted by reasonable men to decide that the act was right or wrong.[29] The Court

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26. R v. Chisam, (1916), 12 Crim.App.R.21.✓
27. Supra, n.6 at 722. Also see supra, n.9.
28. (1916), 12 Crim.App.R.21.
29. Id. per Lord Reading at p.27. ✓

went on.

> ". . . once it is clear that the appellant knew that the act was wrong in law, then he was doing an act which he was conscious he ought not to do, and as it was against the law, it was punishable by law assuming therefore that he knew the nature and quality of the act, he was guilty of murder, and was properly convicted. The difficulty no doubt arises over the words 'conscious that the act was one which he ought not to do' but, looking at all the answers in M'Naghten's case, it means that if it is punishable by law it is an act which he ought not to do, and that is the meaning in which the phrase is used in that case." [30]

The following propositions emerge from the foregoing discussion as put by the court. [31]

(1) A moral test to be applied in this connection must be objective, 'according to the ordinary standard adopted by reasonable men';

(2) if an act done is punishable by law then it must be regarded as wrong according to ordinary standard adopted by reasonable many

(3) if, therefore, the prisoner was aware that the act was wrong in law, then he was thereby conscious that the act was one that he ought not to do and thus can be held to know he was doing that was wrongy and

(4) the words 'nature and quality' have nothing to do with the moral aspect of the case at all, and refer solely to the physical character of the act. ✓

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30. Ibid.
31. Ibid., nn.29 and 30.

In English law, in fixing criminal liability, it is enough that the accused should know that he was doing what was contrary to law. This view again, finds support in R v. Windle.[32] The accused was a feeble-minded person. More feebleminded seemed to be his wife who had frequently spoken of committing suicide. Upon that she had suffered severe pain from an incurable disease. The accused induced her to consume a large number of aspirin, realising that this was contrary to law but thinking that it was beneficial[33] for her and, therefore, not morally wrong. The Court 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 claiming exemption from liability under M'Naghten rules. The Court applied an objective test and said, [34]

> "A man may be suffering from a defect of reason, but if he knows that what he is doing is 'wrong', and by 'wrong' is meant contrary to law, he is responsible

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32. [1952] 2 Q.B.826.

33. Id. at 831. "It may well be that, in the misery in which he had been living, with this mopping and mowing wife who constantly suggested device to commit suicide, he thought that she would be better out of this world than in it. He may have thought that it would be a kindly act to release her from what she was suffering from - or thought she was suffering from - but that the law does not permit."

34. Id. per Lord Goddard, C.J. at 831, 832.

> . . . . Courts of law can only distinguish between that which is in accordance with law and that which is contrary to law."[35]

Another question may arise. Suppose that the accused has full knowledge of what he is doing. But he is not able to prevent himself because of some disorder or imbalance of the emotions rather than of a defect of reason. Should or not the rule be extended to cover that situation? This takes one to still another question. Can irresistible impulse[36] be

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35. For a discussion on the meaning of "wrong", see Norval Morris, "Wrong in the M'Naghten Rules", 16 Mod.L.Rev.435 (1953) and J.L.Montrose, "The M'Naghten Rules", 17 Mod. L.Rev. 393 (1954).

36. Irresistible impulse was no defence at all for a long time in English law. But there was a change in law later on. Infanticide Act 1922 as re-enacted in 1938, (1 and 2 Geo. 6 c. 36; [1938] L.R. Statutes 139) and the Homicide Act 1957 (5 and 6 Eliz. 2 c. 11; [1957] L.R. Statutes 15) provide for the defence. In these laws irresistible impulse was admitted as a ground for establishing diminished responsibility, a concept of partial defence previously known to Scots law. The Infanticide Act provides that if a mother killed her new born child while she was suffering from the effects of child birth or lactation feeding she should not be convicted of murder if the balance of her mind was disturbed. S.2 (1) of the Homicide Act 1957 provides that a person 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. See infra, Ch.XII, n.13.

pleaded as a defence coming within the definition of the second Rule? The Rules as a matter of fact did not recognise any grounds of excuse based on innate weakness of will power, disease of the emotional system, nor on irresistible impulse due to mental disease. Irresistible impulse may be accepted as a ground of diminished responsibility and not as a ground for total exemption from liability.

M'Naghten Rules Under Criticism

The M'Naghten Rules had to face a heavy weather in their future voyage. The main challenge came from Sir James Stephen. He strongly criticised the exclusion of irresistible impulse as a defence. He argued that when one loses self control, one loses his ability to know the nature of his act, and that therefore such an act should not be made subject of punishment. He said, [37]

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37. Stephen, A History of the Criminal law of England, Vol.II (1883), reprint, p.171. Stephen continued to say,
"The fear of punishment can never prevent a man from contracting disease of the brain, or prevent that disease from weakening his power of controlling his own actions in the sense explained; and, whatever the law may declare, I suppose it will not be doubted that a man whose power of controlling his conduct is destroyed by disease would not be regarded as morally blamable for his acts. If a man is punished by law for an act for which he is not blamed by morals, law into that extent put out of harmony with morals, and legal punishment would not in such a case, as it always should, connote, as far as may be possible, moral infamy.

Such punishments are not really necessary, or even useful, for the protection of society. They cannot by the hypothesis be useful by way of example, for I am dealing with the case of those who cannot control their conduct.

contd...

> "Knowledge and power of self-control are the constituent elements of all voluntary action, and if either is seriously impaired and the other is disabled. It is as true that a man who cannot control himself does not know the nature of his acts as that a man who does not know the nature of his acts is incapable of self-control . . . . I do not think that it is expedient that a person unable to control his conduct should be the subject of legal punishment."

Many other jurists[38] and psychologists[39] criticised the rules. It is wrongly assumed under the rules that the list of insanity is whether the person does not know right from wrong or the 'nature and quality' of a given conduct.[40] The capacity of knowing right and wrong may be completely intact. It may function perfectly. Even then a person may be of disordered mind.[41] Insanity affects not only the cognitive or intellectual faculties but also the whole personality.

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f.n.37 continued

> To threaten such a man with punishment is like threatening to punish a man for not lifting a weight which he cannot move. The protection of society may be provided for by confining the mad man.
>
> I should be sorry to countenance the notion that the mere fact that an insane impulse is not resisted is to be taken as proof that it is irresistible ..." (pp.171, 172)

38. Fridshmann, Law in a Changing Society, (2nd ed. 1972), pp.219 221; H.L.A.Hart, The Morality of the Criminal Law, pp.10-11 (1965); Reid, "Understanding the New Hampshire Doctrine of Criminal Responsibility", 63 Yale L.J.367 (1960); Graham Hughes, "The Decline of Mental M'Naghten", [1967] Crim.L.R.327.
39. See Sheldon Glueck, "Psychiatry and the Criminal Law", 12 Mental Hygiene 573 at 580 (1928), as quoted in Friedmann, ibid. at pp.214, 215.
40. Ibid.
41. Ibid.

of the patient, including both the will and the emotions. [42] The Rules not only over simplify the problem of criminal responsibility by the 'right and wrong' test, but also leave nothing between black or white, no intermediate stage between responsibility and irresponsibility.[43] On this point Friedmann says.

> "In other words, a person must be seen in his entirety, and the faculty of reason, which is only one element in that personality, is not the sole determinant of his conduct . . . . It is almost universally conceded some persons, who are perfectly capable of intellectually distinguishing between right and wrong, are yet driven to commit a criminal act by forces outside their control. This makes it improper to hold them criminally accountable in a legal system that bases criminal liability on personal responsibility". 44

The Rules were exhaustively studied and investigated by the Royal Commission on Capital Punishment. The Commission recommended, by a large majority, against blind adherence to the Rules.

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42. Report of the Royal Commission on Capital Punishment, Cmd. 8932, H.M.S.O. at p.80 (1953).
43. Id. at p.213.
44. Op. cit., p.215. After examining the irresistible impulse test, he proceeds to say,
"Clearly, the development in modern psychiatry which, between the fully normal and the fully abnormal person, recognises an infinite variety of shades of disturbance lessening, to a varying degree, the emotional powers and capacities of self-control rather than intellectual discernment, calls for a corresponding elasticity in the legal approach to the problem of responsibility. But this very development makes it very difficult to devise precise legal formulae, by either statutory or judicial legislation" at p.216.

The test formulated in M'Naghten was adopted throughout British Commonwealth and in a large majority of United States jurisdictions. The test rests on the criterion of knowledge of 'right and wrong'.[45] Such simplification of complex problems of human mind, guilt and criminal responsibility leads to imperfection. It is vague and uncertain, narrow and out-moded.[46] The Rules proceed upon dubious assumptions of an outworn era. Lack of knowledge of the 'nature and quality' of an act, or incapacity to 'know right from wrong' is not the exclusive or even the most important symptom of mental disorder. Personality is integrated and not divisible. Inspite of all these defects strangely the 'right-wrong' test of M'Naghten Rules is widely accepted as the exclusive yard stick of mental disorder even today.

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45. See, Henry Weihofen, The Urge to Punish, (1957), pp.11, 12, 174, 175. He listed twentynine states as providing solely the 'right and wrong' test (pp.174, 175 n.3). Also see Weihofen, Mental Disorder as A Criminal Defence, (1954), p.51.

46. Glueck, Law and Psychiatry, (1962), p.48.
"Not only is the famous test vague and uncertain, and not only does it embalm outworn medical notions, but even from the point of view of assumedly separate, insulated mental functions it is also too narrow a measure of irresponsibility. It does not take account of those disorders that manifest themselves largely in disturbances of the impulsive and affective aspects of mental life".

CHAPTER XIX

OTHER TESTS OF RESPONSIBILITY

The previous chapter revealed the inadequacies of the M'Naghten Rules. Efforts were made in different countries to evolve more satisfactory test of responsibility. Many tests emerged. Some were later rejected in the lands of their origin. Some have come to stay either as alternative or supplementary test of responsibility to the M'Naghten Rules. This chapter is a study on all these tests.

Irresistible Impulse Test

One major objection to M'Naghten Rules was that it ignores 'those disorders that manifests themselves largely in disturbances of the impulsive and affective aspects of mental life.' So one taking into account of the mental disorders and as supplementing to the M'Naghten Rules emerged the test of 'irresistible impulse'. Recommending adoption of such a test the Committee on Insanity and Crime presided over by Lord Justice Atkin said,

> ". . . it shall be made clear that the law does recognise irresponsibility on the ground of insanity where the act was committed under an impulse which the prisoner was, by mental disease, in substance deprived of any power to resist." 1

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1. Cmd. 2005, (1924), p.21.

This test sought to broaden the area of mental illness coming under the purview of legal non-responsibility recognising established psychological and psychiatric phenomena.[2] This recommendation, had a welcome support by medical profession. But it was opposed by many of the Judges and ultimately dropped by the Legislature in England. [3]

The Royal Commission on Capital Punishment examined the whole topic. But it did not favour the concept of 'irresistible impulse.' On the other hand the Commission seems to have dubbed the concept as 'largely discredited' and 'inherently inadequate and unsatisfactory'. [4] The commission noted as follows,

> ". . . it is too narrow, and carries 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 severest of impulsive. It may be coolly and carefully prepared; yet it is still the act of a mad man ... similar states of mind are likely to lie behind the criminal act when murders are committed by persons suffering from schizophrenia or paranoid psychoses ... " [5]

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2. See, Friedmann, Law in a Changing Society, (2nd. ed., 1972), p.215.
3. Russel on Crime, Op.cit., p.116.
4. Report of the Royal Commission on Capital Punishment, 1953, (Cmnd.8932), para 214.
5. Id. at p.110.

Irresistible impulse test exempts from punishment those persons who, acts under an impulse. They are unable to resist this impulse. They are aware of the wrongfulness of their conduct. In some American States it is a ground for total exemption and in some others for partial exemption.[6] In England, it is a ground now only for diminished responsibility in crime.[7] In India, it is no defence at all.[8]

The critics of the test focus their attention on the term 'impulse'. It has been said that there are cases of grave mental illness such as melancholia, characterized by brooding and meditation, where the ultimate criminal act is by no means spontaneous but was prepared and premeditated.[9] Some statutes, meeting this criticism, modify the irresistible impulse test so by adopting another test, namely,

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6. See supra, Ch.XII, nn.17-28

7. See supra, Ch.XI, n.26

8. Queen Empress v. Lalubhai Hamla, (1886) 10 I.L.R.Bom. 111; Queen Empress v. Indar Narain Singh, 1894, 22 I.L.R. Cal. 656; Kalicharan v. Emperor, A.I.R.1948 Nag.20; In re Rajkumarlal Akhoury, A.I.R.1933 Pat.200; In re Ramchandra Ramji, A.I.R.1950 Nag.239; Amin v. State, 1960 K.L.T.1115; Nihal v. State, 1978 K.L.T.177; Bhagwan Balmukund v. State of Maharashtra, 1978 Cri.L.J.455. Though this test is not statutorily recognised in India, courts allow the plea in extreme cases where even otherwise it will be governed by irresponsibility under the right and wrong test, for e.g., see Bhimsenji v. Emperor, A.I.R.1925 Nag.1230; U. Kaung v. State, A.I.R.1960 Mani. 24.

9. See supra, n.5.

inability to conform one's conduct to the appreciation of criminality. The term 'irresistible' also has been attacked as inadequate. When is a person unable to resist an urge or a temptation? It is said that many of those alleged to be unable to resist do resist temptation or impulse when a 'police man is at the elbow'. But, the fact that such person can restrain themselves under these, but not under other circumstances does not imply that they are to be held responsible. It only implies that incapacity to resist cannot be a proper standard of exemption without additional circumstances. Prof.H.L.A. Hart remarked on the point:

> 'When Lord Atkin's Committee recommended in 1923 an addition to the M'Naghten Rule 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 M'Naghten 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.' [10]

Doctrine of Diminished Responsibility

The Royal Commission on Capital Punishment recommended in their report, with one dissent, that if the law on the

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10. Hart, The Morality of the Criminal Law, (1965), pp.10-11.

subject were to be changed by extending the scope of the M'Naghten Rules a formula on the following lines should be adopted:

> "The jury must be satisfied that, at the time of committing the act, the accused, as a result of disease of the mind or mental deficiency, (a) did not know 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." [11]

A majority of the Commission, on the other hand, 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 opposed to the elimination of the rule's but rather 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 which the majority also viewed as improvement on the present law.

The Homicide Law was passed in 1957.[12] Although it did not contain provisions as exactly recommended by the

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11. Cmd. 8932, p.256, paras 317 (1953).
12. The Homicide Act 1957. For the text of the Act 5 & 6 Eliz. 2c ,11. 1957, L.R.Statutes 15. The Act was an outgrown of the Report of the Royal Commission on Capital Punishment. See, Ch.V of the Report of the Royal Commission, Cmd. 8932, pp.130-144, paras 371-413 and Appendix 9

contd...

Commission, this law incorporates the doctrine of diminished responsibility as an extension of M'Naghten Rules. Relevant part of the provision reads,[13]

> "2.(1) 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.
>
> (2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.
>
> (3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter ... ."

The burden of proving non-liability, according to s.2 (2) of the Act, is on the accused. In one case[14] it was held that the burden on the accused will be discharged on a preponderance of probabilities; the accused need not establish

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f.n.12 continued
of the Report. The topic of diminished responsibility as a ground for reducing a charge from murder to manslaughter is discussed at length in respect to the existing law and practice in England, Scotland and Wales. The Commission concluded in their summary of Conclusions and Recommendations: "Although the Scottish doctrine of 'diminished responsibility' works well in that country, we are unable to recommend its adoption in England (para 413). But this recommendation was not accepted.

13. Id., s.2.
14. R v. Dunbar, [1958] 1 Q.B.1 per Lord Goddard, C.J., at pp.11-12.

his diminished responsibility brought reasonable doubt. However, in R v. Byrne[15] the judge left it to the jury, as though it were a matter of fact, to determine the meaning of the expression 'abnormality of mind' and 'mental responsibility'. This was confirmed by the Court of Appeal.[16] In R v. Matheson[17] the Court of Appeal quashed a conviction for murder and substituted it with manslaughter where there is sufficient evidence to shift the onus of proof with regard to diminished responsibility.

The judiciary in England continued to give a verdict of manslaughter on the ground of diminished responsibility. R v. Byrne[18] is an example. The accused, a sexual psychopath, strangled his wife and mutilated her body. He was charged for murder. He pleaded diminished responsibility. The trial judge told the jury that the accused would not have established the defence even if he satisfied them that he found it difficult or impossible to control his perverted sexual impulses. The conviction for murder by the trial court was substituted by the Court of Appeal with a verdict of manslaughter on the ground of diminished responsibility, without however, altering the

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15. [1960] 1 Q.B.370.
16. Ibid. per Lord Goddard, C.J. at pp.376-377.
17. [1958] 2 All E.R.87 per Lord Goddard, C.J. at p.90.
18. [1960] 2 Q.B.396.

sentence of life imprisonment. It was also held in this case that the term 'abnormality of mind' means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal and that they were wide enough to cover the mind's activities in all its aspects including the ability to exercise will power to control physical acts in accordance with rational judgment. [19]

Section 2(1) of the Homicide Act 1957 makes it clear that the accused may rely on diminished responsibility although he knew what he was doing and knew it was wrong. In the decisions discussed above killings are premeditated. But this factor does not destroy the plea of diminished responsibility. Self-control is not fully impaired but only substantially impaired. These cases are not instances where M'Naghten Rules are to be applied. M'Naghten Rules imply full impairment of cognitive faculties or of self-control leading to automatism. In cases where M'Naghten rules do not apply the plea of diminished responsibility can be relevant. An uncontrollable impulse to kill can bring the case within the rules of diminished

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19. Id. per Lord Parker, C.J. at p.405. Later the Privy Council approved this in Bone v. Queen, [1961] A.C.496 per Lord Tucker, J. at p.507. Also see R v. Ahmad Din, [1962] 2 All E.R.133. The accused's plea of diminished responsibility was supported by medical evidence to the effect that he suffered delusions that the man he killed had committed adultery with his wife. The Court of Criminal Appeal punished him only for manslaughter. (For a detailed discussion of Ahmad Din, see Ch.XIII, R.17)

responsibility.

A few civil law systems follow the concept of diminished responsibility.[20] But the approach may vary from country to country. In some, reduction of punishment is mandatory while in others it is discretionary. Some lay down that there will be a fixed reduction of punishment if the plea is established. The German example is significant. Some others leave the matter entirely to judicial discretion. Switzerland is an example.

The New Hampshire Doctrine

The New Hampshire doctrine of criminal responsibility was evolved over more than a century ago. According to this doctrine,[21] crime must be the product of intent or will. When anything that would be otherwise a crime is produced by something other than the intent, the requirements of law are not met. The otherwise criminal act is not punishable. In simple, "a product of mental disease is not a contract, a will, or a crime".[22] So there is a distinction between the conduct produced

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20. For a detailed discussion on the variety of penalties, see, Nalini Silving, "Mental Incapacity and Criminal Law", Comparative Law and Mental Problems, Nederveld, (ed) (1960), Vol.XII, p.77.
21. In fact the judiciary drew an analogy with contract and last will. This is clear from the following observation in Stokes v. Bibb. See infra, n.23.
22. Stokes v. Bibb, (1857), 30 N.H.389 at p.430, as cited in Nalini Silving, op. cit., p.62.

by mental disease and the one produced by intent. The doctrine formulated in Smith v. Pike [23] may be stated.

> ". . . if the alleged act of a defendant, was the act of his mental disease, it was not, in law, his act, if it had been the act of his involuntary intoxication, or of another person using the defendant's hand against his wishes punishment".

'Mental disease' or 'insanity' in the New Hampshire cases were conceived of either as an ontological entity that entered the human being as an extraneous agent and that acted and produced effects independently of him, as though he had no part in this. It is apparently thought that the existence of this entity called insanity or mental disease and the activities and products of that entity were realities that had nothing to do with law and were phenomena which only science could observe, detect and attest to. According to Judge Ladd, they were matters to be determined by the jury. "upon the question whether the act was the offspring of insanity; if it was, a criminal intent did not produce it; if it was not, a criminal intent did produce it, and it was crime". [24]

The crux of the doctrine is that the accused is not responsible if his act is "the offspring or product of mental disease". [25] A host of problems arise. In those such a mental

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23. Id. at p.441.
24. Smith v. Pike, (1871) 50 N.H.399 at pp.406, 409.
25. Ibid.

disease, for example, dipsomania? What is the proper test of mental disease? Is there only a single test or are there several tests for such disease? When is an act a product of such disease? These are by nature and logic issues of fact and not those of law.

A commentator[26] quotes an instance of a scholarly communication between a well-known medical expert and a judge who was opponent of the doctrine. According to the medical expert, it is said, since the law recognized only a certain kind or degree of insanity as having any legal consequences, the courts could not very well avoid the duty of defining by tests and rules what the kind or degree is.

The Durham Rule

The more psychiatry advances the greater are the hopes in finding a solution through psychiatric approach.

The psychiatric developments of the twentieth century had its impact in the United States. In 1954, in a case[27] decided by a Court of Appeal in the District of Columbia, a

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26. Communication Between Judge Dee and Dr.Isaac Ray, 1868, quoted in Louis E.Reik, "The Doe Ray Correspondence: A Pioneer Collaboration in the Jurisprudence of Mental Disease", 63 Yale L.J.183 at 189 (1953-54).

27. Durham v. United States, 214 F.2d. 862, (1954), as cited in Glanville Williams, The Mind, at p.67. For a discussion of the facts see n.6 in Ch.XII, infra.

test, popularly known as the Durham rule was evolved. The test is that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect".[28] Durham is considered by some[29] as a great improvement over M'Naghten and the irresistible impulse test. This is so because it makes medical testimony on the defendant's mental disability permissible whereas application of the M'Naghten rules limits medical testimony to the defendant's capacity to make moral judgment.

However, this test is not followed in subsequent cases. The U.S. Appeal Courts felt bound by the 'right and wrong' test adopted by the U.S.Supreme Court in Davis v. U.S.[30] on the lines of M'Naghten rules or by the Model Penal Code test adopted in U.S. v. Freeman.[31] Under the Durham rule critical terms like 'product', 'disease' and 'defect' are undefined. The criterion of product also is problematic. The test whether the act is the product of mental disease or not is

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28. Id. at p.874.

29. Sheldon Glueck, Law and Psychiatry, (1962), pp.91-94; also see John Biehl, "Understanding the New Hampshire Doctrine of Criminal Responsibility", 69 Yale L.J., p.367 (1959-60); Graham Parker, "The Decline of Model M'Naghten" 1967 Cr.L.R.387.

30. 160 U.S.469 (1895), (477-489) per Harlan, J. The accused and the deceased had some disputes over a quintessence on a property leased out by the deceased to the deceased. He shot the victim while working in the field and fled away. Conviction of the accused was set aside.

31. United States v. Freeman, 357 F.2d. 606 (1966) per Hamilton, J., as cited in Graham Parker supra., p.387. Also see Supra, n.27.

deficient because it fails to give the fact-finder any standard by which the competency of the accused can be measured. Therefore psychiatric evidence tends to usurp the jury's or the courts' function. There are dangers hidden in applying this test. Psychiatric assessment being the basis of the test, one cannot overlook the position that psychiatrists are notoriously divided as to the diagnosis of various forms of human behaviour. [32] Our notions of logic, semantics and legal doctrine, particularly regarding the law-fact dichotomy, have undergone a thorough change. The statement that an act is the product of mental disease is psychologically fallacious. It is said that what is mental disease and that are its products are matters of fact. It is alleged that the Durham rule and the New Hampshire doctrine signify a surrender to doctors' notions and are the product of defeatism. The two rules have been linked together by many[33] while according to some this linkage is unfortunate. [34]

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32. Graham Parker, op.cit., pp.332-333.

33. For instance see, Helen Silving, op. cit. at pp.80, 81.

34. John Reid, op. cit., p.367; see also Graham Parker, op.cit. at p.332. The New Hampshire rule has been misunderstood and equated with the Durham product test. The latter is a medical test where as the former is basically an evidentiary rule.

The Model Penal Code

The American Law Institute proposed a Model Penal Code.[35] This Code suggests three tests - one principal test and two alternative tests. The principal test in paragraph (1) provides: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law".[36] The first alternative test provides that "his capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law is so substantially impaired that he cannot justly be held responsible". The second alternative test provides, that "he lacks substantial capacity to appreciate the criminality of his conduct or is in such state that the prospect of conviction and punishment cannot constitute a significant influence upon him". Paragraph (2) is identical in all the tests. It reads: "The term 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct".

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35. Tentative Draft No.4 (1955), 4.01, p.27, as cited in Helen Silving, op. cit.

36. Emphasis added.

The Model Penal Code 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. This is an innovation based on psychiatric realities.

The Federal Court of Appeals in New York accepted in United States v. Freeman[37] the formula adopted by the Model Penal Code instead of M'Naghten Rules. The facts were as follows. The accused was a drug addict for fifteen years and a confirmed alcoholic. He was charged with selling narcotics. The psychiatrist called by the defence had testified that the accused 'displayed no depth or variation in his emotional reactions', that his drug habits had caused 'frequent episodes of toxic psychosis' as well as delusions, hallucinations, epileptic convulsions and amnesia. The appellant had experienced innumerable brain trauma with such organic and structural changes as destroyed brain tissues. The psychiatrist was asked to answer questions of the cognitive element based on M'Naghten Rules. He had to admit that although the accused did not know right from wrong he possessed cognition that he was selling heroin. However, in his opinion the accused was neither aware of the 'social implications' of selling heroin nor conscious of the 'nature or meaning of what this meant to him'. The psychiatrist called by the prosecution

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37. 357 F.2d. 606 (1966). See also supra, n.31.

showed that the accused realised the wrongfulness of his acts and possessed the capacity to enter into purposeful activity such as sale of narcotics.

The accused had been found fit to stand trial. The hospital which examined him for this determination reported that he showed 'no evidence of acute psychosis or mental deficiency', that he could 'best be described as a sociopathic personality with schizoid traits'. The trial judge had felt himself bound to follow the M'Naghten Rule. He did not consider the alternative Durham rule. The Court of Appeal on the other hand, did not feel restricted to an application of the M'Naghten rule but satisfied itself that the U.S.Supreme Court had not ruled conclusively that the M'Naghten Rule was the true test of legal insanity. [28]

According to the court the formula adopted by the U.S. Model Penal Code had many advantages. Firstly, the test views the mind as a unified entity and recognised that mental disease or defect may impair its functioning in numerous ways. Secondly, the words 'lacks substantial capacity' negated the old idea that mental deficiency had to be in absolute black or white terms.

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28. The use of M'Naghten in the U.S.Federal Jurisdictions is purely judge made. There was no Congressional legislation on this point. The Model Penal Code test has been adopted in Acquin in modified form in several jurisdictions, e.g., Vermont, Connecticut, New York. See, Graham Parker, Criminal., pp.329-335.

The word 'appreciate' was considered a much better word to apply to an examination of criminal behaviour than the previously adhered one 'know'. Mere intellectual awareness that the conduct is wrongful, when divorced from appreciation or understanding of the moral or legal aspect of behaviour can have little significance. Finally, the Court felt that the new test while gave opportunity for an inquiry based on meaningful psychological concepts, such evidence would be simply expert testimony to assist the jury or the Court and not a moral or legal pronouncement. [39]

However, it is doubted by many whether the formulation is an improvement on the models which they replace. On closer examination, it is a combination of the M'Naghten rules and the concept of irresistible impulse.[40] It is open to the same charge as the predecessors are. It does not meet all cases;[41] it is not in line with the practice of psychiatrists and is likely to produce a great deal of verbal jugglery.[42] Perhaps the word 'appreciate' may not be better than the word 'know' as contended by psychiatrists that it does. [43]

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39. See Ibid.
40. cf. Glueck, op.cit., at pp.60-66. "The A.L.I. test is apparently a something. In more sophisticated language, of the familiar M'Naghten and irresistible impulse rules".
41. In the model Penal Code psychopaths are specifically excluded from the exemption. See supra, para 2 of the Code.
42. Peter Nash, An Examination into Criminal Guilt, (1963), p.168.
43. Graham Parker, op. cit., at 126.

[redacted]

The German Penal Code provides for partial exemption under conditions of diminished responsibility in addition to the provision for total exemption on account of the incapability of the perpetrator of the act either to appreciate its unlawfulness or to act in accordance with such appreciation by reason of mental conditions. The old German Penal Code of 1871 contained the provision of irresponsibility on account of mental incapability under section 51.[44] The new German Penal Code of 1975 provides for irresponsibility and diminished

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44. Chapter IV: "Grounds Excluding or Mitigating Punishment": As it originally stood it did not provide for diminished responsibility. Reform was suggested in various Reform Drafts, for e.g., those of 1954 and 1960 and ultimately the old Code itself provided for diminished responsibility under Section 51 (2). Section 51 of 1871 Code dealing with irresponsibility due to mental incapability as stood on April 1, 1961 provided:

    S.51 Irresponsibility -

    1. No act constitutes an offence if its perpetrator at the time of its commission was incapable of appreciating the unlawfulness of his deed or of acting in accordance with such appreciation, by reason of derangement of the senses, morbid disturbance of mental activity or mental deficiency.

    2. If the ability to appreciate the unlawfulness of the deed or to act in accordance with such appreciation was substantially impaired at the time of commission, for one of these reasons, the punishment may be lessened in accordance with the provisions on the punishment of attempt.

    (11.23.1933) as quoted from The American Series of Foreign Penal Codes - Germany, Sweet and Maxwell (London), 1961, p.41.

responsibility in sections 20 and21 respectively.[45] They read as follows.

Section 20: Incapability of committing a crime due to mental disturbance: no act constitutes an offence if the perpetrator at the time of the commission was incapable of appreciating the unlawfulness of his deed or of acting in accordance with such appreciation, by reason of derangement of senses, endless disturbances in cognitive faculties, mental retardness or any other serious mental peculiarity.

Section 21: Diminished capability of committing a crime: If the ability to appreciate the unlawfulness of the deed or to act in accordance with such appreciation is substantially impaired at the time of commission due to reasons mentioned in section 20, punishment can be lessened in accordance with the provisions in the code.[46]

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45. Under Chapter IX: "The Act" in Title I: "Fundamentals of Punishability" of the 1975 German Penal code as translated and quoted from Strafgesetzbuch mit Nebengesetzen, Deutscher Taschenbuch Verlag (Publishers), 17th ed. 1976.

46. Under section 49 (1) life imprisonment can be reduced to 3 years imprisonment.

The old provisions[47] were substantially the same as the provisions in the new Common Code put together. Thus that the scope of the irresponsibility is widened a little further under the provision in Section 20 of the new Code. In the new provision, 'any other serious mental peculiarity' is also included as a ground for exemption from responsibility. Again for total irresponsibility there should be a total incapability of appreciating the unlawfulness of his deed or of acting in accordance with such appreciation by any of the reasons thereunder. For diminished responsibility under Section 21 of the new Code there need only be a substantial impairment of the ability to appreciate or act in accordance with such appreciation. The main features of the Common Code provisions are in common with the American Model Penal Code formulation. They are,

(1) a dualistic approach expressed in the requirement that there be a defined incapacity at least as regards the principal exemption category.

(2) specificity of incapacity in the sense of its limitation to the specific act that has been committed, and

(3) division of incapacity into cognitive and connative incapacity.[48]

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47. Supra, n.46.

48. Eliava, Encyclo. at 32. Commenting on the provision of the old code which are substantially the same under the new code. Eliava remarks on three features that a uniform policy, reflected in a consistent treatment of the law of crime and of that of mental incapacity, is one of the great merits of the Common approach. It contrasts favourably with the lack of a consistent philosophy in the American Model Penal Code.

The 'incapacity' rule in German law

The terms 'incapacity to appreciate' and 'incapacity to condemn' are related to the specific act that has been committed. Within the framework of the German Penal Code these terms have connotations different from the content of the American Model Penal Code. Mental incapacity will be the one disabling the actor with regard to the specific act charged and the statute on incapacity to know the law under German Penal Code reflects a consistent policy oriented to an elaborate philosophy of guilt and punishment. The German Penal Code is often viewed by commentators as a guilt oriented code.[49] The notion of guilt is principally expressed in the rule on 'error of law'.[50] If an accused person did not know the prohibition that he violated, he is excused unless he acted negligently in not ascertaining the prohibition. Rationally, therefore, there is a need for enquiring whether the accused did or did not have capacity to know that prohibition

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49. See generally Jerome Hall, "Comment on Structure and Theory", (1976) The American Journal of Comparative Law, Vol.XXIV, No.4. (Symposium: The New German Penal Code) p.615; Paul H. Ryu, "Comment on Structure and Theory", (1976) The American Journal of Comparative Law, Vol.XXIV, No.4, p.[illegible]; Eberhard S. Schmidhäuser, "The Structure and Theory of the German Penal Code", (1976) The American Journal of Comparative Law, Vol.XXIV, No.4, p.[illegible].

50. Eiselen, Gerald, op.cit. p.52, citing a landmark decision rendered by the Great Senate in Criminal Matters of the German Supreme Court. "The defence of such error has been admitted in Germany judicially, on the ground that it is implicit in the requirement of guilt".

or to conform to such knowledge. Such an enquiry is not consistent with the general principle of [illegible] in the Model Penal Code.

The test shows a mixed approach - a'biological and psychological' approach - indicating the source of incapacity and specific state of mind at the time of the act. Though the term'biological' continues in use, it includes psychic determinants of mental incapacity. [51] In Common Law it is not enough to have a psychological state of mind of the account for exemption. There must be a specific form or source of incapacity which produced that state of mind. This may be in consonance with the dominant philosophy of guilt in Common Penal Law. But this is open to one objection. It is akin to the obsolete psychiatric notion of monomania in common law. However, drafters of Common Penal Code point out that one person may be incapacitated with respect to some act but not to other acts at the same time.[52]

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51. Mental disease was once believed to have an exclusively biological foundation.

52. This is, in any way, inconsistent with the view of modern psychology that a mental disability affects man's total personality and he may do anything. In fact, the major criticism against M'Naghten rules is exactly on this count.
In his critique of the insanity formula, Silving, (on. cit. at 54-56) says,
"The Model Code's substantial impairment of incapacity is certainly more in accord with psychological reality ...

contd...

In Common law the biological concept of insanity is conceived as both pathological as well as non-pathological. Many typical personality features, like excessive suggestibility, mental dependence, character weakness, afford no basis of exemption. A 'disturbance of consciousness' in Common law may have its source in normal non-pathological phenomena, such as drowsiness, exhaustion, affect, however a considerable reduction or dimming of consciousness is sufficient.[53] Thus, acts committed in states of extreme anger or anxiety have been excused. Similarly, to exempt, drunkenness need not be such as to exclude consciousness; impairment is sufficient, for example, a heavy drunkenness produced by alcohol consumption. Insanity may be caused either by disturbance of consciousness or by pathological state of mind.

Disturbance of consciousness

This circumstance is well illustrated by a case[54] decided by the Common Court. The accused, a quiet, warm

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(f.n.53 continued)

> Actually, the conformity test is but a disguised version of the older concept of 'free determination of the will' ... . There is objection, of course, to a basis from will policy, as indicated in, for example, that policy in a legal test, such as the customary test of mental incapacity, must fail, since a test of that type cannot operate harmonically, being ultimately referable to the issue 'would the subject have acted otherwise than he did act?'"

53. Silving, Op. cit., at pp.56-57.
54. Reported in (1956), 11 U.J.M.266, cited in Silving, Op.cit. at p.57. The Court was profoundly moved by the fact that

hunted, good natured person of peaceful disposition was for years exposed to the nagging of both his domineering wife and mother-in-law. In the course of a violent controversy, accompanied by a struggle, he cut his wife's throat with a knife accidently on hand. He was declared by psychiatric experts to be perfectly normal. Still it was held that he had acted in a state of 'disturbed consciousness' that made him eligible for total exemption. The trial court found that he administered the cuts 'in an excessive effect' without at the time having regained control of himself' and without the 'capacity of cognition'. The prosecution contended in appeal that a 'disturbance of consciousness' within section 51 of the old code required the presence of certain specific circumstances such as sleep, drunkness, hypnosis, brain damage, fever, or poisoning and that a normal person, in the absence of 'other defects in the mental and moral sphere', even at the peak of excitement remains capable 'to realise his own emotional excitement and motives of action depressed on the object'. The appellate court did accept this view and held that high grade effects or anger and anxiety may exclude responsibility.

(f.n.54 continued)
after killing his wife, the accused had lifted her body and kissed her. The history of the marriage was indeed pathetic as he was completely dependent on his wife economically. She constantly threatened to divorce him. Nevertheless, they had normal intercourse. The struggle that followed began when he tried to prevent her from leaving and it then developed into violent battle when she wanted to open the window so that neighbours might hear their quarrel.

pathological state.

This can be again differentiated nationally into 'pathological or morbid disturbance of mental functioning' and 'other mental debility or peculiarity'.

The German courts gradually enlarged the class of states of mind in the category of 'pathological disturbance of mental functioning'. Included even under the old code were all types of psychoses, whether inherited or acquired, whether somatogenic, which are based on organic or physiological phenomena, or psychogenic, in which 'the organic bases' referring to bodily causes have not yet been clarified. An attempt was made to follow the developments of psychiatric knowledge. Thus the concept of lucida intervalla, i.e. the lucid intervals in manic depressive psychosis which fall outside the stage of acute illness, was included in the exemption. [55]

There is some uncertainty which is reminiscent of the use of the terms 'disease of the mind'[56] or 'unsoundness of the mind'[57] respectively in English law and Indian law. The disturbance must be of disease or pathological in origin.

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55. Silving, Mn. Hib. at p.50.
56. See supra, Ch.II, nn.14, 15.
57. See infra, Ch.IV, nn.9, 10.

But neuroses and psychopathies are not to remain excluded. In psychopathic cases characterised by 'incapacity to conceiving moral notions', it has been held that an exemption will lie if the incapacity is based either on a pathological cause or defect of mental organisation. A doctrinal distinction is being drawn between instances in which the psychopathy is constitutionally acquired and those due to environmental influences. The latter are without any clear reason believed not to fall within the exemption. The same criterion is applied to kleptomaniac or pyromaniac. In one offences, the test of exemption is said to be whether or not the deviation is of pathological origin. Pathological disturbance of mental functioning also includes mental defect.

Mental weakness

There was considerable uncertainty on the meaning and scope of the term 'mental debility' in the old German code which literally means 'mental weakness'. The legislative purpose of adding this category was to include borderline cases in an expression accessible to the layman. The difference between this and the pathological disturbance category is said to be one of degree rather than of kind. Mental debility, as well as pathological disturbance, may consist in a disturbance in the sphere of thought or in the sphere as of the will, feeling or drives. Psychopathy is sometimes labelled as 'mental debility'. It may be pointed

out that in the new Common Code the terms 'mental debility' do not find a place. But instead the terms 'any other serious mental peculiarity' are used. These terms now may be said to cover the borderline cases which previously was covered by 'mental debility' or 'mental retardness'. [58]

Evaluation

The purpose of criminal law is to punish the guilty and save society from anti-social elements. Under the Rules, if conscious violation of law was there it is no defence to say that he was unable to resist the temptation because of some impulse. It is equally no defence to plead that he was doing it on account of some disease over which he has no control. But how can one be held completely responsible for acts over which he has no control? The recognition of irresistible impulse as a ground, though only for diminished responsibility, under the Homicide Act of 1957 in England is in line with the principle of recognition of extenuating circumstances under which a person could be held not fully responsible for his acts and hence liable only to lesser punishment. In some jurisdictions irresistible impulse is a ground for complete exemption. ~~In common law~~, if the impulse reaches the stage of insanity, within the right and wrong test, even in common law, it is a ground for complete exoneration. This is so because there is no criminal intent in acts committed in a state of impulsive insanity.

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58. Silving, English., p.60.

The New-Hampshire test placed emphasis on intent. This was because of the assumption that if that which produced the act was not one's intent, the act was of an extraneous force alien to the actor and he could not be held responsible for it. The test was meaningful to the New Hampshire Judges because they thought that mental disease actually excluded intent, a constituent element of crime.

Is the Durham test scientific in using the phrase, 'product of mental disease or defect'? It has been shown by psychiatrists to be fallacious and meaningless. Psychiatrists are unable to answer the question whether an act is or is not 'the product of mental disease'. Their assertion that they are unable to testify whether an accused 'knew that what he was doing was wrong' is also fallacious.

The Model Penal Code formulation and the Common rule are structured in terms of certain incapacities and excuses of such incapacities. A major drawback of these rules is that they do not make clear the ground that justifies the defect. Whether the incapacity indicates merely the degree of disease required for exemption, or the incapacity itself? So there is a confusion about the policy followed by these rule. The incapacity may affect the faculty of knowledge or that of conformity.

Capacity to conform to the appreciation of illegality of the act can be ultimately reducible to the actual capacity to have acted otherwise than he did. Psychiatrists have

asserted that it is practically impossible to answer this question. The ultimate problem of capacity to conform must be reduced to the question whether the actor can be justly held criminally responsible for his act. It may leave the judge without any definite legal criterion.

However, this and the partial and diminished responsibility concepts have an advantage from the practical point of view. They can accommodate psychiatric developments which call for reducing the responsibility of those who fall below the level of completely insane and at the same time not completely normal.

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PART III

CONCEPT OF INSANITY - JUDICIAL EXPOSITION

CHAPTER IV

JURISPRUDENCE OF INDIAN LAW

The substantive law on the defence of insanity is incorporated in the Indian Penal Code. The provision reads,

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

Evidently, the above provision is based on M'Naghten Rules. A close look will bring to light some semantic differences between the Rules and the Indian provision. Although this is so there is no difference in applying the rule in both countries. This chapter deals with the attempts in moulding the Indian substantive law on insanity by the judicial techniques of interpretation of the provision of the statute.

THE TESTS

There are two tests under the provision. One is whether by reason of unsoundness of mind the accused was incapable of knowing the nature of the act he was doing. The other is whether by reason of unsoundness of mind the accused was incapable of knowing that he was doing what is either wrong or contrary to law. Are these tests a clear recognition of M'Naghten rules?

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1. Indian Penal Code 1860, s.84. (Hereafter referred to as 'the Code' unless the context other requires).

The essential difference between M'Naghten rules and the Indian law seem to be the following. The M'Naghten rules refer to the "nature and quality" of the act whereas the Indian provision refers to the "nature" of the act only. This distinction is of little consequence. R v. Codere,[2] which was already discussed in the previous chapter, does not relate to the Indian position. Nevertheless, it laid down that both expressions, 'nature' and 'quality' refer to the physical character of the act. The expression "contrary to law" in section 84 of the Code does not find a place in the M'Naghten rules which refer only to an act which is wrong. Wrong act includes and has even been held to mean acts wrong in law.[3] Consequently if the accused knows that the act was morally wrong, knowledge of law will be presumed.[4] The test of insanity in the Indian provision is, according to various High Courts,[5] substantially

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2. (1916) 12 Cr.Lp.App. R.21. This was discussed in Ch.IX, supra, pp.28-31.

3. R v. Windle, [1952] 2 Q.B.826; Queen Empress v. Pulin Behari Dass, (1896) I.L.R.23 Cal. 808; Emperor v. Ali, A.I.R.1941 Cal.123; Lakshmi v. Bhola, A.I.R. 1938, All. 834.

4. Ibid.

5. The 'right and wrong' test of M'Naghten rules has been considered by the courts in India as the correct guide to determine the criminal responsibility of persons taking the plea of insanity. Queen Empress v. Laxman Dagdu, (1896) 10. I.L.R. Bom.512 at 516; Queen Empress v. Pulin Behari Dass, (1896) 23. I.L.R. Cal.808 at 837; Bala Ram v. Emperor, A.I.R.1927 Lah.674 at 677; Emperor v. Gopinath Bhola, A.I.R.1937 Pat.263 at 266; Lakshmana v.

contd...

the same as the one in the M'Naghten case. If this is so considerable assistance in understanding the content can be had[6] from the English decisions on the question.

Of the two tests under Indian law, the first relates to consciousness of the offender. He should not know that the act has a bearing on those who are affected by it. The second test relates to another consciousness. He should not know that there will be some consequence to himself.[7] Suppose that one element is absent. Can the accused be relieved of his liability? He can be. The presence of both or either of them is sufficient. Situations such as extremism, mistake and grave mental confusion are covered by

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(f.n.5 continued)
[illegible], A.I.R.1948, Nag.30 at 33; [illegible] v. [illegible], A.I.R. 1954, Cuth. 179 at 180; [illegible] v. [illegible], A.I.R.1933 All. 213 at 218; [illegible] v. [illegible], A.I.R.1961 Ass. 79 at 81; [illegible] v. [illegible], A.I.R.1960, Cuj.1 at 2; [illegible] v. [illegible], A.I.R.1959, M.P.203 at 205; In re [illegible], A.I.R.1959, Mad.239 at 241; In re [illegible], A.I.R.1965, Mad.283 at 286; [illegible] v. [illegible], A.I.R.1958, Punj.104 at 108; [illegible] v. [illegible], A.I.R.1970, Cuj.1 at 6; [illegible] v. [illegible], 1960, K.L.T.1114 at 1116; [illegible] v. [illegible], A.I.R.1961, Cri.33 at 36; [illegible] v. [illegible], 1964, Cri.L.J.1005 at 1007 (Calcutta).

6. For instance, see [illegible] v. [illegible], (1896), 23 I.L.R. Cal. 604 at 607; [illegible] v. [illegible], A.I.R.1959, M.P.203 at 206. See also [illegible], S.3.

7. See [illegible] v. [illegible], (1934), 2 Cri.L.J.854 at 856, (Criminal Appellate); [illegible] v. [illegible], A.I.R.1959, M.P.203 at 207.

the first category. Cases where mental disease has only partially extinguished reason are in the second category. The latter category is of great significance because it is usually the test to be applied in numerous cases. [8]

The expression 'unsoundness of mind' used in the section includes insanity, madness or lunacy and these terms are often used synonymously.[9] They differ only in degree and kind. Precise definitions are hard to arrive at. Unsoundness of mind may be temporary or permanent. It may be natural or supervening. It may arise from disease or may exist from the time of birth. All these types are there in the expression 'unsoundness of mind'. But one thing is important. Courts are concerned with 'unsoundness of mind' as defined in the section and not with the same as understood in medical science. Speaking medically, 'unsoundness of mind' would admit of a variety of conditions. These conditions are of varying degrees of severity. These characterization make it difficult to articulate any precise definition.

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8. See Queen Empress v. Lalchman Pandit, (1886) 10 I.L.R.Bom. 512 at 515; Queen Empress v. Nidhi Lachmi Singh, (1894) 23 I.L.R. Cal.604 at 607; Hussain Alias v. The State, A.I.R. 1958 Punj.104 at 108; See also R.R.Tikmani, "Exemption from Liability - Law Governing Insanity", Lectures on the Indian Penal Code, The Indian Law Institute, (1963), p.76.

9. Modi, Medical Jurisprudence and Toxicology, (17th ed.1969) p.388: "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".

But in law the expression is given a different content according to the nature and degree of protection intended to be given to a person. Under Section 84 of the Code, the emphasis is 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 and every case decided under the section is authority to this proposition.[10]

In the aforesaid phrase the word 'mind' has been used as the term generally understood in the sense of mental faculties of reason, memory and understanding. Consequently, it is sometimes said that only unsoundness of mind which substantially impairs the cognitive faculties of mind can form the ground for exemption. [11]

Thus an idiot, a person who cannot count by sickness, a lunatic who has lucid intervals of reason, a person by nature mad and/or delirious, and a person whose reason is clouded by drugs or alcohol are all persons of unsound mind provided their mental unsoundness makes them unaware of the

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10. See Bhola v. Chhabilal, A.I.R.1959 M.P.203 at 205-206. The Court took support from the English decision R v. Kemp, [1957] 1 Q.B.399 at 408 explaining defect of reason from 'disease of the mind' parallel to 'unsoundness of mind' in Indian law. See Ch.II, nn.14, 15.

11. Ibid. Also see Queen Empress v. Nafar Nabvar Shah, (1896) 23 I.L.R. Cal.604.

nature and criminality of the act. An illustrious Indian jurist says. [12]

> "The use of the more comprehensive term 'unsoundness of mind' has the advantage of doing away with the necessity of defining insanity and of avoidingly 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 ... . The wide expression 'unsoundness of mind' covers mental defects both congenital and post natal, such as idiocy, madness, delirium, melancholia, mania, hypochondria, dementia, hallucination and every other possible form of mental affection known to medical science by whatever name designated".

Three Test Theory

Can there be a third test? Suppose the accused does not know what he does is wrong though he knows that it is contrary to law. Will he get exemption? Answering in the affirmative the Calcutta High Court formulated a third test in Ashiruddin Ahmed v. The King.[13] It was a case of divine delusion. The accused, according to his version, in his dream was commanded by someone in paradise to sacrifice

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12. Mulla, The Principles of the Law of Crime in British India (1908), 271-272, Bangalore, (1964), Eastern Book Company (Lucknow).

See also K.N.Sharma, "Defence of Insanity in Indian Criminal Law", (1965) 7 J.I.L.I.at p.341, he says, that Macaulay's draft of the Indian Penal Code used terms like idiocy, 'and' and 'delirium' which were obviously dropped in the final draft because of the air of uncertainty and varying degrees hanging around these words. Macaulay's draft reads (as cited in Sharma, supra, p.131)

"Section 66 - Nothing is an offence which is done by a person in a state of idiocy.

Section 67 - Nothing is an offence which a person does in consequence of being mad or delirious at the time of doing it."

13. A.I.R.1949 Cal.188.

his five year old son. On the next morning the accused took his son to a nearby mosque and killed him by thrusting a knife in his throat. Then he went straight to his uncle, but, finding a village chowkidar nearby, took the uncle to a tank at some distance, and then narrated the whole story to him. On trial, the accused protested his confession but the evidence was not seriously challenged. On these facts the Court laid down that in order to get the benefit of Section 84 the accused need only establish any one of the following three elements,

(1) that the nature of the act was not known to the accused,
(2) that the act was not known to him to be contrary to law,
(3) that the act was not known by him to be wrong.

The Court held on evidence that the third element was established by the accused. He believed that his dream was a reality, though he knew the nature of the act and knew that it was contrary to law. This was evident from his conduct of not saying what he did in front of the chowkidar. According to the Court, the accused was clearly of unsound mind because acting under delusion of his dream he made this sacrifice believing it to be right. [14]

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14. Id. per Yarbrough and Sinha, JJ., at p.183.

Juristic comments are against the formulation of these three independent tests[15] and go to say that such a formulation has serious consequences. An accused will be privileged to plead that he had a divine dream commanding to do certain criminal act and believing that his dream was a command by a super natural power, he was impelled to translate the dream into action, and he would thus be protected by Section 84. It is said that the Court having no independent means of ascertaining the truth of the accused's statement, the defence of insanity is likely to be misused.[16]

The interpretation of the Court in Ashiruddin Ahmed [17] that 'wrong' or 'contrary to law' are two independent tests runs counter to its earlier interpretation in Gayan Ali v. Emperor[18] that 'wrong or contrary to law' form only one test. Facts are more or less the same, namely sacrificing human beings under a divine delusion.[19] Justice Roxburgh, who was

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15. For example, see K.M.Sharma, Defence of Insanity in Indian Criminal Law, (1965) 7 J.I.L.I. 325 at p.343.

16. Ibid.

17. A.I.R. 1949 Cal.182.

18. A.I.R.1941 Cal.129 per Sen and Roxburgh, JJ. at p.130.

19. Ibid. The accused was a disciple of a pir. He was 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. The accused cut off the heads of his own daughter and another person and offered the same to the pir saying, "Father, you asked me for one human head, I present you with two". On evidence it appeared that he was considering himself

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a member of the Division Bench in both the cases did not take note of or clarify these obviously conflicting opinions. The Court would have given a more reasoned and elaborate judgment, particularly in view of the fact that it represented a departure from its earlier decision on the point. [20]

Under the section the accused should be incapable of knowing, at the time of the act, whether the act being done by him is right or wrong. Criticising the Calcutta view in Ashiruddin, the Allahabad High Court said in Lalmani v. Shahi,[21]

> "The significant word in the above section is 'incapable'. The fallacy of the above view lies in the fact that it ignores that what s.84 lays down is not that the accused claiming protection under it should not know an act to be right or wrong, but that the accused should be 'incapable' of knowing whether the act done by him is right or wrong. The capacity to know a thing is quite different from what a person knows. The former is a potentiality, the latter is the

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(f.n.19 continued)
to do a meritorious act which qualified him for heaven and that his prior and subsequent conduct showed that his mind was disordered. The Court held that the accused did not know that what he was doing was wrong or contrary to law and thus he was entitled to the protection of Section 84. 'Wrong or contrary to law' was thus taken to be a single test.

20. In England with the decisions in R v. Codere, (1916) 12 Cri.App.R.21; and R v. Windle, [1952] 2 Q.B.826 it is settled that what is legally wrong is wrong otherwise too. See Ch.II, nn.28-34. In India decisions are legion on the point. For e.g., see infra, nn.21, 26.

21. A.I.R.1969 All. 534. The appellant who was addicted to ganja and wine, used to beat his wife and mother, killed his step brother. The deceased was opposed to the

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> 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". [22]

A person might believe many things. According to the Court, his beliefs never protect him once it is shown 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. Where the light that enables a man to distinguish between right and wrong and between legality and illegality is gone, the law should extend its hand to protect him. Where such light is found to be still flickering, a man cannot plead for protection. He might be misled by his own misguided intuition or by any fancied delusion which had been haunting him and which he mistook to be a reality. Our beliefs are primarily the offsprings of the faculty of intuition. On the other hand, the content of our knowledge and our realisation of its nature is born out of the faculties of cognition and reason. [23]

(f.n.21 continued)
> accused's way of life and denied money for such purpose and even chained him to prevent him from beating his own wife and mother. The accused absconded from the village after the murder with the weapon and surrendered to the police after 2 days.

22. Id. at p.158 per Ray, J.
23. Ibid.

The Gujarat High Court supported the three tests theory in Kashi Ramji Jha v. State.[24] The accused here considered himself to be a pure blooded Shrikrishna and Arjuna of the Mahabharat and regarded his wife as Shrenji, presumably meaning thereby a woman who gave birth to an illegitimate son and his eldest son to be Karna, the inveterate enemy of Arjuna. Suffering from these delusions and hallucinations, the accused killed his wife and son believing that he being Arjuna there would be nothing wrong in causing the death of his son whom he believed to be Karna and of his wife, whom he believed to be contemptible and did in fact call as Shrenji. After killing them, he went to the Sar Panch and addressing him as Shikrna Pitamaha told him openly that he had killed Shrenji and Karna, meaning thereby his wife and son. According to the Court 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. Instead he boasted of his act and made no attempt to abscond or conceal. Evidence disclosed eccentric and unusual behaviour of the accused. The Court held that of the three elements in Section 84 of the Code, anyone of which could be established by the accused to get exemption. Though he knew the first

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24. A.I.R. 1969 Guj. 1.

element,i.e., the nature of the act, he was not in a position to realise that what he was doing was either wrong or contrary to law. The cumulative effect of all the circumstances clearly indicated that the accused was suffering from the infirmity of the mind, by reason of his being subject to the hallucination.[25]

The decision of the Court suffers from the following infirmities. The Court was not correct in holding that the accused did have absolutely no motive. He entertained a motive in his delusions and there is good ground even to think that he suspected the chastity of his wife in real life which is apparent from his addressing her as Khunqdi. Secondly, the three test theory is one rejected by the same Calcutta High Court and various other High Courts. Moreover, the finding of the Court is misleading in the sense that though three alternatives were suggested, the Court applied the test of the action being "wrong or contrary to law" as a single test. "Consciousness of the nature of the acts committed" being the second alternative, one will have to search in vain for the third alternative under the formulation.[26]

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25. Id. at p.5 per J.N.Shaikh and V.B.Raju, JJ.
26. Ibid. Acquitting the accused Shaikh, J. said,
"In these circumstances, we are of the view that the evidence on record clearly indicates one of the three alternatives provided for in Section 84 of the Penal Code, namely, that through consciousness of the nature of acts committed by him, the accused was not in a position to appreciate and realise that the acts committed by him were either wrong or contrary to law".

Thus instead of these tests, the Court applied only two tests. Even assuming the Abhinandan decision to be correct, the non-disclosure of facts by the accused before the chowkidar, a link of law, whom he happened to see in the uncle's house was held these to be proof of knowing it to be against law. Differently, in Ramkishanlal case, the fact that, of all the people in the village, the accused straight away went to the Sar Panch to disclose what he had done, would have been held to be a proof the accused's knowledge of the legal import of his act.

The law was in such a confused state that an authoritative pronouncement by the Supreme Court was warranted. In a recent decision, Bhuwan Das v. State of Punjab,[37] the Supreme Court seized of the matter. It was a case in which the father and his relatives sacrificed his four year old son by beheading him at the crossroads of a supernatural warning bhajan. The Court held that the supernatural act did not provide proof of insanity. Once the accused knew he was doing something contrary to law he cannot invoke the 'right' and 'wrong' of his action. On the question of punishment the Court observed.

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37. (1981) 2 S.C.C. 835, per V.R.Krishna Iyer and R.S. Sarkaria, JJ.

"The palpably psychological grip of massive superstitions on some crude Indian minds in the shape of desire to do human and animal sacrifices, in defiance of the scientific ethos of our cultural heritage and the scientific impact of our technological century, shows up in crimes of primitive horror such as the one we are dealing with now, where a blood-curdling butchery of one's own beloved son was perpetrated, aided by other 'pious' criminals to propitiate some blood thirsty deity. Secular India, speaking through the court, must administer shock therapy to such antisocial 'piety', when the manifestation is in terms of inhuman and criminal violence. When the disease is social, deterrence through court sentences must, perforce, operate through the individual culprit coming up before court. Social justice has many facets and judges have a sensitive, secular and civilising role in suppressing grievous injustice to humanist values by inflicting condign punishment on dangerous deviants".28

Nature of Unsoundness of Mind

What should be the nature of unsoundness of mind in order to attract exemption. Every form of mental abnormality or derangement is not immune from criminal liability. so is every mental aberration or deviation from normal conduct. In order to get exemption from liability the insanity must be of a particular and appropriate kind. There are a few deciding factors.

Degree of Insanity

It may be said, that between the normal and the abnormal there is only difference of degrees but not of kind.

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28. Id. ; MMK V.R.Krishna Iyer; and R.S. Sarkaria, JJ at 508.

the mind may be unsound, affected by disease, disorderly or disturbed or abnormal. These factors must be of such a degree which renders the accused incapable of knowing the nature of his act or that what he is doing is either wrong or contrary to law. It should obliterate the perceptual or volitional capacity.[29] In Hazara Singh v. The State,[30] the Punjab High Court said:

> "In order to earn immunity from criminal liability, the disease, disorder, or disturbance of mind must be of a degree, which should obliterate perceptual or volitional capacity. A person maybe a fit subject for confinement in a mental hospital, but that fact alone will not permit him to enjoy exemption from punishment. Obsessiveness of genius, feeble mindedness, any mental irresponsibility, mere frenzy, emotional imbalance, heat of passion, uncontrollable anger or jealousy, fits of inveterate hatred or revenge, moral depravity, determining reason, incapable perversion, hypersensitive excitability, unpremeditable fits of temper, stupidity, clumsiness, lack of self-control, gross eccentricity and idiosyncrasy and other similar manifestations, evidencing derangement of mental functions, by themselves, do not either relief from criminal responsibility ... . Such persons in the words of Lord Brougham would not have yielded to their insanity if a police man had been at their elbow. The presence of these disorders of mind is not in law equivalent to want of capacity so as to prevent the punitive edict of criminal act".[31]

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29. Hiranr Singh v. State, A.I.R.1954 Pepsu 4 at 6; Hazara Singh v. The State, A.I.R.1958 Punj.104 at 108.

30. A.I.R.1958 Punj.104, per Mehar Singh and Tekchand, JJ. The accused laboured under a strong delusion of unfaithfulness of his wife. Brooding over the character of his wife he practised the stage of temporary insanity and caused her death by throwing nitric acid upon her. Court held him guilty.

31. A.I.R.1958 Punj.104 per Tekchand, J. at 108. Also see The State v. Chhotelal, A.I.R.1959 M.P.203 at p.206.

The test as to whether the fear of punishment would have acted as a control over the accused's action or not, is a good pointer supporting his degree of insanity so as to exempt him from punishment. Every criminal when he commits a crime has an instinctive dread of the consequences. To a normal man the sanction provided by criminal law acts as a deterrent, influencing, guiding and controlling his conduct. But this cannot be said to be true in the case of a lunatic.[32] Even then, no hard and fast rule can be laid down as to what kind and degree of insanity would amount to a defence under the section[33] and all that can be

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32. Majumdar, Criminal Law of India, (1914), p.176. "There is no ordinary standard of which this, at least, may not be stated with certainty. But can this be said of all lunatics? of many, no doubt, it can, but certainly not of all." See also Tej Singh v. Chhangali, A.I.R. 1959 M.P.203 at 207, 208.

33. Tej Singh v. Commissioner, Delhi, A.I.R.1963 Cri.38. The accused, a lunatic who was staying a persons suddenly stopped chasing that man, changed over to the chair where the deceased was having his shave done by another barber and started chasing the deceased. There was a talk between the deceased and other customers regarding a theft involving a persons intimately known to the deceased. After a while the accused gave money out to the deceased. He ran out, but the accused followed him and gave two more cuts. He sat on the chest of the deceased and thrust his fingers to the eye-opening and pulled some cords from inside as a result of which he died. Trial court convicted the accused. He did not appeal. On confirmation petition by the state, the High Court confirmed the sentence of death holding him guilty. Justice S.Hussain said, at p.38.

"To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness

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said is that whatever may be the nature of insanity or delusion, so long as unsoundness of mind is not such as to render the accused incapable of knowing the nature of his act or incapable of knowing that he is doing what is either wrong or contrary to law, he cannot be excused. [24]

Impairment of cognitive faculties

The cognitive faculties of mind are very much responsible for human conduct. Therefore exemption from liability is confined to those cases of insanity that materially affects the cognitive faculties of the accused. In other words exemption is available when the insanity affects the faculty of understanding the nature of his act in its bearing on the victim and in relation to the accused person's own responsibility for the act. Those cases that affect only the emotions and the will of the offender, whilst they leave the cognitive faculties unimpaired, have been left out of the exemption. Decisions of courts are

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(f.n.23 continued)

> of mind should, according to the law as it has been long understood and held, be such as to render him incapable of knowing right from wrong. The facts of each particular case must of necessity present themselves with endless variety, and with every shade of difference in each case".

24. See Jamshid v. State, A.I.R.1960 M.P.102 per Shivdayal Shrivastava, J. at 104-105. The accused threw his own child aged 2 years over the well as a result of which it died. When his wife raised alarm and people collected he tried to run away with the body of the child. He suppressed the identity of his wife and legitimacy of the child. He had fits of insanity a couple of months back and he used to abuse villagers. He was held guilty.

legion on this point.[25]

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.[26] This has been made clear in an eclipse manner in Queen Empress v. Kader Nawaz Shah.[27]

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25. State of M.P. v. Ahmadullah, A.I.R.1961 S.C.998; D.G.Vaidya v. State of Gujarat, A.I.R.1964 S.C.1563; Bhagwan v. State of U.P., A.I.R.1965 S.C.1; Gulab v. State of Maharashtra, 1969 S.C.15; Shamlal Mali Mohammad v. State of Maharashtra, A.I.R.1972 S.C.2443; Queen Empress v. Lachman Singh, (1894) I.L.R.10 Bom. 511; Queen Empress v. Kader Nawaz Shah, (1896) 23 I.L.R Cal.604; Emperor v. Bhagwan, A.I.R.1932 All.233; Lakshmi v. State, A.I.R.1959 All.334; Hussain Ali v. State, A.I.R.1960 All.233; Sankar Bakhsh v. Emperor, A.I.R. 1929 Cal.1; Kamal Khalifa Khan v. State, A.I.R.1960 Guj.1; Emperor v. Lal Singh, A.I.R.1937 M.B.104; State v. Chhaganlal, A.I.R.1959 M.P.203; Munilal v. State, A.I.R.1960 M.P.108; In re Palaniandi Goundan, A.I.R.1953 Mad.178; In re Govindammal, A.I.R.1955 Mad.283; Chandrakanna v. State of Mysore, A.I.R.1957 Mys.68; Kalicharan v. Emperor, A.I.R.1938 Nag.30; Emperor v. Sarju Sonia, A.I.R.1937 Pat.263; In re Kunhi Kuttiyil v. State, A.I.R.1956 Mad.113; Karim Gandhi v. State, A.I.R.1969 Cri.102; Ramananda Yadava v. State, A.I.R.1969 Cri.222.

26. Chaily v. Emperor, (1910) 11 Cri.L.J.105 (Punjab); Also see Mahendraya. Insanity and Criminal Law (2nd ed. 1944), p.27.

27. (1896) 23 I.L.R. Cal.604 per O'Kinealy and Banerjee, JJ The Court, having regard to the circumstances of the case, was constrained to hold him guilty but recommended the case to the Government for very indulgent consideration as the accused was suffering from some mental derangement.

The case presents unusual and unfortunate facts. Fire destroyed the house and property of the accused. This changed him a lot. He neglected his house, field and family. He made frequent complaints of head ache. One day he killed the boy whom he was very much fond of without any sensible motive though he observed some secrecy after the act. While setting aside the acquittal the court said,

> "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; because it is thought that these are the cases to which the exemption rightly applies, and the cases, in which insanity affects only the emotions and the will, subjecting the offender to impulses, whilst it leaves the cognitive faculties unimpaired, have been left outside the exemption ... . 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 the will as to those in which it affects the cognitive faculties, is a question which is not for us here to consider ... our duty is to administer the law as we find it ... Where the will and emotions are affected by the offender being subjected to insane impulses, it is difficult to say that his cognitive faculties are not affected. In extreme cases that may be true; but we are not prepared to accept the view as generally correct that a person is entitled to exemption from criminal liability under our law in cases in which it is only shown that he is subject to insane impulses, notwithstanding that it may appear clear that his cognitive faculties, so far as we can judge from his acts and words, are left unimpaired." [30]

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30. Id. at 608, 609.

The High Court of Orissa made a similar observation in Sarda Gauduan v. State.[39] The accused came out of his house brandishing an axe and gave a blow to a 3 year old boy playing outside, on his neck. The boy died instantaneously and the accused ran to the jungle close by and returned only the next day. Convicting the accused, Justice G.K.Misra said,

> "Any and every type of insanity recognised in medical science is not legal insanity. Every minor mental aberration is not insanity. There can be no legal insanity unless the cognitive faculty of mind is destroyed as a result of unsoundness of mind to such an extent as to render the accused incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law." 40

The cognitive faculties of the mind involve two aspects, (1) the capacity to know the nature of the act and (2) the capacity to distinguish between right and wrong. If any or both of the qualities are lacking in a person 'by reason of unsoundness of mind' at the time of his act then he is exempt from criminal responsibility for his act. In fact this is the essence of Section 84 of the Code. It is in the interpretation and application of the formula that practical difficulties emerge.

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39. A.I.R. 1969 Ori. 102.

40. Id. at p.103.

The capacity to know the nature of the act refers to the offender's consciousness of the bearing of his act on those who are affected by it[41] and the nature of the act means the physical character of the act.[42] Suppose one cuts the throat of another believing, or with the impression, that he is cutting a cabbage or kneading a pot. He is not knowing the nature of the act he is committing.[43] The incapacity to know, or realise, the nature of the act is recognised in law as a ground for exemption from liability.[44] When a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing he must always be presumed to intend the consequences of his action.[45]

The capacity to know the right and wrong is the same thing as the capacity to know the law.[46] If a person is capable of realising that his act is wrong then he cannot contend that he did not know that it is contrary to law. So also if he knows that his act is contrary to law then he cannot contend that he did not know that it is wrong morally.

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41. The State v. Chhotelal, A.I.R.1959 M.P.203 at 207. Also see supra, n.7.
42. See supra, n.3.
43. State of M.P. v. Ahmadhilla, A.I.R.1961 S.C.998 per Rajagopala Ayyangar, J. at 1000.
44. See supra, n.35.
45. Nand Ram v. Emperor, A.I.R.1927 Lah.32, at 53, per Harrison and Dalip Singh, JJ; See also Ghasi Mahton v. State, A.I.R.1961 Pat.19.
46. See supra, nn.2-4.

this aspect of the cognitive formation of mind refers to the offender's consciousness of his action in relation to himself.

Immunity : medical and legal

Every mentally diseased person is not [illegible] exempted from criminal liability. This is so, because, according to the courts, the legal definition of immunity differs considerably from medical definition.[47] 'Medical' immunity and 'legal' immunity differ in their degree and standards. 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. He is insane in the sense that he is not in a sound, healthy and normal condition and transformation, needs treatment. But so long as he is able to distinguish between right and wrong and to know that the act done by him is wrong or contrary to law, a man must be held to be sane from the legal point of view. The above distinction between medical and legal insanity is almost a

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47. [illegible] v. [illegible], A.I.R.1960 M.P.108, [illegible] Shivlingai, J at p.1104; [illegible] v. [illegible], A.I.R.1957 Leh.674, Venkatarah, J. at 677; [illegible] v. [illegible], A.I.R. 1963 Cal.33, [illegible] Sharma and Mitra, JJ. at 35, 37; [illegible] v. [illegible], A.I.R.1960 All.233 [illegible] Roy and Umrao, JJ. at 235, 236.
Also see R.R.Tiwari, "Exemption from Liability : The Law Governing Immunity", [illegible] (I.L.I. 1962), 72 at p.73; K.D.Gaur, Criminal Law : Cases and Materials, (1975), 81-82.

century old. During a long period from the year 1886 [48] till the present day, various High Courts in India — Allahabad,[49] Bombay,[50] Calcutta,[51] Gauhati,[52] Himachal Pradesh,[53] Kerala,[54] Lahore,[55] Madhya Pradesh,[56] Madras,[57]

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48. Queen Empress v. Lakshman Dagdi, I.L.R.10 Bom.512. (1886)

49. Ramjha v. Emperor, A.I.R.1933 All.213 per Sulaiman, J. at 215; Lakhina v. State, A.I.R.1959 All.534 per Hamidullah, Beg and Bhargava, JJ. at 536.

50. Queen Empress v. Lakshman Dagdi, I.L.R.10 Bom.512.(1886) per Farran and Jardine, JJ. at 518-519; Hanmantrao B. Bhosale v. State of Maharashtra, 1979 Cr.L.J.608 per Kantin, J. at 608.

51. Queen Empress v. Kadar Nawaz Khan, (1896) I.L.R.23 Cal.808 per O'Kinealy and Banerjee, JJ. at 807.

52. Siddheswari Bora v. State of Assam, 1981 Cri.L.J.1005 per B.L. Hansaria, J. at 1007.

53. Emperor v. The State, A.I.R.1955 H.P.60 per Gopinath,J at 71.

54. Abdi alias Subramania Iyer v. State of Kerala, 1960 K.L.T.1116 per P.Govinda Menon, J. at 1117; State of Kerala v. Appu, 1978 K.L.T. 177 per Kadar, J. at 181.

55. Balwant v. Emperor, A.I.R.1937 Lah.674 per Tekchand, J. at 677.

56. Ramkishan v. State, A.I.R.1959 M.P. 259 per Naik, J. at 260, 261; The State v. Chhotelal, A.I.R.1959 M.P.203 per Naik, J. at 205, 206; Ramlal v. State, A.I.R.1960 M.P.102 per Khan and Shivdayal Shrivastava, JJ. at 104, 105.

57. In re Govindaswami Padayachi, A.I.R. 1952 Mad.174 per Ramaswami, J. at 174-175. In re Pannathi Ammal, A.I.R. 1959 Mad.239 per Ramaswami, J. at 245.

Mysore,[58] Nagpur,[59] Orissa,[60] Patna,[61] Punjab,[62] Saurashtra[63] have maintained this distinction. There is an obvious trend in these decisions. The courts hold M'Naghten rules[64] as the basis in making the distinction between medical insanity and legal insanity.

Differences in degree

Speaking medically, 'unsoundness of mind' would admit of a variety of conditions of varying degrees of severity. It is said that these conditions manifest for

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58. Channa Basavva v. State, A.I.R.1957 Mys.68 per Venkatasubbaya, C.J. and Sreenivasa Rao, J. at 69-70.

59. Kalicharan v. Emperor, A.I.R.1948 Nag.30 per Hanson and Padhye, JJ. at 33; Bhanudas Rajaram v. Emperor, A.I.R 1949 Nag.66 per Bidhyabhushan, J. at 71-72.

60. Jiu Sharma v. Emperor, A.I.R.1943 Ori.33 per Henman, J. at 35-36; Bhola Chandra v. State, A.I.R.1959 Ori.102 per G.K.Misra, J. at 103; Bhimsingh Bagha v. State, A.I.R.1959 Ori.221 per G.K.Misra, J. at 222-223.

61. Emperor v. Sadhu Oraon, A.I.R.1937 Pat.263 per Rowland,J at 269; Mangla Rai v. Emperor, A.I.R.1947 Pat.223 per Meredith and Manohar, JJ. at 224-225.

62. Harnam Singh v. State, A.I.R.1958 Punj.104 per Tekchand,J at 108.

63. State v. Koli Jumma, A.I.R.1955 Sau.105 per Shah,C.J. at 107; Laxman Vachhani Khumaji v. State, A.I.R.1955 Sau. 13 per Shah, C.J. and Rami, J. at 16.

64. Daniel M'Naghten's case, 10 Clark & Finnelly, 200 (1843) 8 E.R.718 House, Ch.IX, n.6.

too many characteristics to justify any precise definition applicable to all cases.[65] For the sake of precision and certainty law exempts from criminal responsibility only that 'unsoundness of mind' which materially affects the cognitive faculties of mind. Persons whom medical science would pronounce as insane do not necessarily take leave of their emotions and feelings like fear, frustration, ambition and revenge. Fear and threat may have a deterrent influence on them. Though insane, in one sense such persons would refrain from committing any acts of violence or mischief if some powerful man are present at the scene. As has been pointed out early,[66] mad men may not have yielded to their insanity if a police man had been at their elbow. One is insane in the legal sense only if one would have still yielded to his insanity in such circumstances as one is not aware of one's act and its consequences. The degree of unsoundness of mind for legal insanity is therefore higher than that of medical insanity.

Time factor

In the case of legal insanity the mental condition referred to in the Code must be established to have existed

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65. The State v. Chitaliali, A.I.R.1959 M.P.203 per T.P. Naik, J. at 205-206.

66. See supra, n.21. Also see Empire v. Emperor, A.I.R.1932 All. 233 per Sulaiman, J. at 235; Bhola v. Lungeshwar Bagib, A.I.R.1963 Ori.33 per S.Rajman, J. at 35.

at the time when the act was committed. If a man is found to be insane before or after the commission of the offence it raises no presumption that he was of unsound mind at the time of the commission of the offence.[67] All the same the state of mind of the accused before or after the crucial time may become relevant[68] because whether the accused was in such a state of mind as to be entitled to exemption can only be established from circumstances which preceded, attended and followed the crime. It means that for the purposes of 'legal insanity', unsoundness of mind other than at the crucial time of commission of the crime is only relevant to prove the state of mind of the accused at the crucial time

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67. State of Madhya Pradesh v. Ahmadullah, A.I.R.1961 S.C.998 per Rajagopala Ayyangar, J. at 1001. Convicting the accused on a charge of murder of his mother-in-law, where there was evidence of the accused having suffered from epilepsy two years before and 3 months after the commission of the offence, the supreme court quoted with approval the following observation of Reading, C.J. in R. v. Kemp, 14 Cri.App. Rep.48.

> "The crux of the whole question is whether this man was suffering from epilepsy at the time he committed the crime. Otherwise it would be a most dangerous doctrine if a man could say, 'I once had an epileptic fit and every thing that happens hereafter must be put down to that'."

Also see D.C. Thakur v. State of Orissa, A.I.R.1964 S.C.1563 per Subba Rao, J. at 1568-70; Jalal v. Delhi Administration, A.I.R.1969 S.C.15 per Hidayatullah, J. at 16; Ratan Lal v. The State of M.P., A.I.R.1971 S.C.778 per Hegde, J. at 779; Shamsul Huda Mohammad v. State of Rajasthan, A.I.R.1975 S.C.1665 per K.K.Mathew, J. at 1665. In re Govindaswami Padayachi, A.I.R.1953 Mad.174 per Govinda Menon and Rajamannar, JJ. at 174; In re V.Kunhiraman v. State, A.I.R.1965 Ker.13 per Kerr, J. at 15.

68. Jalal v. Delhi Administration, A.I.R.1969 S.C.15 and Shamshul Huda Mohammad v. State of Maharashtra, A.I.R. 1975 S.C.1665.

whereas, for medical purposes, that may be determinative in the sense that a man may be medically insane at any time.

Proof of legal insanity

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

Medical man infer insanity from the absence of certain factors such as motive, attempt at concealment or escape, and accomplice. The fact that the person was conscious of the criminality of the act is immaterial for the medical insanity. The legal criteria for the existence of insanity are the act of the person and his consciousness of its criminality. To a lawyer insanity is 'conduct of a certain character' whereas to a physician it means 'a certain disease one of the effects of which is to produce such a conduct'.[69] To man of medicine

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69. Emperor v. Khwaja Nizam, (1924) 1 Cr.L.J.654 at p.656. (Criminal Provisions)

and psychiatry the motivation for an act is of primary importance whereas to men of law motive is not decisive in determining insanity.[70] The provision for exemption from liability under the Code places a heavy burden on the defence. The mind of the accused person may be partially deranged or he may be subject to some uncontrollable impulse. This shall not be sufficient under law for exemption. The evidence ought to be unequivocal that at the time of the commission of the offence the accused was of unsound mind to such an extent that he was incapable of knowing what he was doing at the time or that he was incapable of knowing that that he was doing was wrong or contrary to law. [71]

In the row between the medical evidence on insanity and the legal assessment of insanity the latter is decisive. Queen Empress v. Lakshman Dagdu[72] is an instance to show that this is so. The accused brutally killed two of his young children. The reason given for the crime was curious. The accused was laid up with fever. The crying of the children annoyed him. The fever had made him irritable and sensitive to sound. Still it did not appear that he was

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70. Also see Ch.XI.
71. Emperor v. Khoodee, A.I.R.1922 All. 233 at 235.
72. (1886) 10 I.L.R. Bom.512.

delirium at the relevant time. True there was no attempt at concealment. There was a full confession. The accused showed no signs of sorrow or remorse. He had no previous symptoms of insanity. Taking the circumstances into account the Court held him guilty of murder because the accused was conscious of the nature of his act, and so he must be presumed to have been conscious of his criminality. Viewed from the medical point of view, there was no premeditation. The idea 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 had 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 recognised, though it recommended the case for governmental indulgence.

That every form of insanity is not recognised by law as sufficient excuse is clear from later pronouncement. Absence of motive partial mental derangement or uncontrollable impulse will not by itself show insanity. Emperor v. Hussain,[73] is a case of murder on a day of lunar eclipse.

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73. A.I.R.1932 All.233. There was oral evidence to the effect that the accused was under the influence of madness for several days, and that for the last two years he was going about talking nonsense. In the Gangetics also he was said to have appeared like a mad man. The doctor who observed the accused after the offence certified that he appeared to be of weak intellect but otherwise showed no signs of insanity. No motive was specified...

The eclipse was at its maximum. There was darkness all around. With lathi the accused attacked the victim who was sleeping on a charpoy in front of his house. Several blows fell on the victim's head near and above the left eyebrow and fractured his skull completely resulting in his instantaneous death. The sessions judge convicted the accused. The judge pointed out that the accused selected an opportune time for attack, that all the blows were aimed at the head indicating deliberation and that he ran away as soon as alarm was raised. This showed that he was capable of understanding the nature and consequences of his act. The conviction was affirmed by the High Court. Distinguishing between 'legal' and 'medical' insanity the court said. [74]

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

(f.n.73 continued)

specifically alleged in the first information report though one witness spoke about a quarrel between the two on an alleged burglary two months before the incident.

74. Id. per Sulaiman, J. at 235. Niamatullah, J. concurred in a separate judgment after observing that the trial court would have enquired about the state of mind of the accused with more care and circumspection. at pp.237-238.

Can legal insanity be inferred from the atrocious nature of the act itself? It cannot be. In Kalicharan v. Emperor,[75] the appellant, who had some ill-feeling towards his wife on a flimsy motive, struck four persons to death including his wife, a boy and a two months old kid. He also injured two other persons in an atrocious manner. On one of his victims he inflicted not less than 13 injuries. He used three weapons altogether to commit these multiple murders. In the trial court he said he remembered striking only his first two victims, his wife and his brother-in-law's son. He did not take the plea of insanity in the trial court. No family history was disclosed there. Such a plea was taken in the High Court for the first time. The High Court observed that a crime is not excused by its own atrocity. The Court has to look outside the act itself for evidence as to how much the accused knew about it. Since these factors were found against the accused he was held guilty of the crime charged. Distinguishing between 'legal' and 'medical' insanity the Court pointed out that exemption is applicable only to the former cases where the cognitive faculties of the accused are completely impaired making the offender incapable of knowing the nature of the

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75. A.I.R. 1959 Pat. 20.

act or that he is doing what is wrong or contrary to law. It could not be extended to cases where the accused acts without any motive and under sudden and overpowering impulse. [76]

Another instance where the Court had occasion to distinguish between 'legal' and 'medical' insanity concepts was In re Ramaiah Ampal,[77] where a mother, a few weeks after child birth, while still confined and unwell with dizziness and fever after child birth, committed infanticide and attempted to commit suicide by jumping into a well with the child. She was depressed and fed-up with her life on account of poverty and inability to secure other's help during her confinement. She set up the plea that she was a somnabulist and that she committed the offence during such sleep-walking. Her claim was that she was entitled to exemption under the defence of insanity. The High Court held her guilty.[78] Distinguishing between 'medical' and

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76. Id. Per Hansen and Pendye, JJ. at 23-24. The circumstances that the accused, not drunk or quarrelsome by nature, committed four murders in quick succession, without any motive, under a sudden and strong impulse while being highly excited and sensational with no premeditation or enmity, were held to be only extenuating factors calling for lesser punishment and not sufficient grounds for total exemption.

77. A.I.R.1959 Mad.238.

78. Ibid. The trial court found that the accused could not prove that she was suffering from somnabulism. It also held that somnabulism would not amount to insanity. The High Court though agreed with trial court on finding of facts, held that somnabulism if proved would amount to insanity. Per Ramaswami, J. at 241.

'legal' insanity the Court pointed out that a man may be suffering from some form of insanity in the sense in which the term is understood by the medical man but may not be suffering from unsoundness of mind which makes him incapable of knowing the nature of his act or that he was doing what was wrong or contrary to law which alone is exempted under the Code. [79]

The High Court of Kerala had the occasion to illustrate the distinction between medical insanity and legal insanity in Ambi Alias Subramania Iyer v. State of Kerala.[80] The accused, an unemployed person was living with his wife, mother and sister. In the absence of his mother and sister who were away on a visit, the accused began to maltreat his wife. One day he came home after purchasing some medicine for his mother. His wife served him food. He asked her why she was looking at him and talking to him in an inimitating manner. He expressed his displeasure with his sister in interfering in the matter by beating her with his shoe. He then demanded his wife to give him all her ornaments. She

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79. Id., at 345. At the same time, the Court found on survey of forensic medicine and on examination of the facts of the case that it was possible that the accused was suffering from some sort of puerperal disorder which follows after child-birth due to the strain on the brain by the trauma of pregnancy. But, since, no specific defence of puerperal insanity was set up and expert medical evidence adduced, the conviction and sentence was confirmed though the court was recommended to the government for kind intelligence and immediate discharge on security bond for proper custody if necessary.

80. 1960 K.L.T.1116: (1962) 2 Cri.L.J.135.

did so. He threw the ornaments into a well. He then went to the kitchen and returned with a chopper. He cut the wife on her head with it. She died. When the mother intervened, her thump was chopped off. He also told witnesses that his wife was killed and police could be informed of. His confession to the magistrate amounted to a denial of guilt and he set up contradictory stories about the incident.

Evidence of the Superintendent of Mental Hospital, Kadawa was adduced for having treated him for schizophrenia nine months prior to the incident. Evidence of an Ayurvedic Physician who treated him for 'Vadamnatham', six months prior to the incident was also adduced. The doctor deposed of the symptoms which he had noticed in him namely, 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. According to him there was something fundamentally wrong with the accused. Commenting on this evidence the Court said, "... the evidence of the doctor would at the most show that the accused was not mentally a normal person" but held that this could not amount to "legal insanity". [81]

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81. Id. per Govinda Menon, J. at 1132-1133. Held that the circumstances and evidence in the case would only show that he knew the nature of his act and knew that he had done something wrong and was prepared to suffer the consequences and if he knew the nature of his act he must be presumed to have been conscious of its criminality. The conduct of the accused was consistent with that of a sane man/

contd...

State of Kerala v. Rani [82] tells the story of a teen-age romance which ended up in an impulsive homicide. The accused was madly in love with the deceased girl, aged 15 years. She belonged to a different community. The girl's family objected. The dream of the accused for the marriage could not materialise. Out of despair the accused stabbed the girl several times and killed her. He pleaded that it was in a fit of impulsive insanity that he killed her. It was such an irresistible impulse, according to him, that he was so out of his power of self-control as not to know the nature of his act or that he was doing what is wrong or contrary to law. The plea was allowed by the trial court. On appeal the High Court held him guilty because there can be no legal insanity unless the cognitive faculties of the mind are, as a result of unsoundness of mind, so completely impaired as to render the offender incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The character or enormity of the offence, manner of attack, absence of concealment subsequent or the mere lack of motive will not in itself be conclusive of legal insanity. [83]

(f.n.82 continued)
his conduct of throwing all the jewels to the well might indicate the conduct of a highly jealous husband or of the mere fury his disgust and uncontrollable temper which was not a ground for exemption from legal consequences.

82. 1978 K.L.T.177.

83. Id. per Kader, J. at pp.189, 190.

The offenders might have shown strange and eccentric behaviour before or after the commission of offence. But this does not necessarily shelter the accused person under the exemption clause as it may not show legal insanity. Emperor v. State of Maharashtra,[94] is a case where the appellant, attempted to murder his daughter-in-law by inflicting not less than 16 injuries. He did it with a spear blade while nobody else was there in the house where he was living separately from the family of his son. Distinguishing between medical and legal tests of insanity the Court held the appellant guilty. The Court said that eccentricity or strange behaviour or mental disorder not amounting to insanity as known to the law, would not absolve a person from the consequences of his act. The mere fact that on earlier occasions, a person had been subject to insane delusions or had suffered from derangement of the mind or had subsequently at times behaved like a mentally deficient person, is ~~not~~ is not sufficient to bring his case within the exemption. The antecedent conduct and subsequent conduct of such a person are relevant to show the state of his mind at the time of

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94. 1979 Cri.L.J.403. (Bombay High Court, Nagpur Bench) The motive alleged was that the son was not permitting the mother to stay with the accused so as to avoid causing difficulties to him. The accused is said to have told his son that he would also have the same causing difficulties one day.

the act, but not conclusive.[85]

To conclude the discussion, there can be no legal insanity unless the cognitive faculties of the offender are, as a result of unsoundness of mind, completely impaired in either of the two senses, namely (1) so as to render him incapable of knowing the nature of the act and (2) so as to render him incapable of knowing that what he is doing is either wrong or contrary to law. This is the general rule to apply. For practical purposes the only proper course is to decide each case on its facts.[86] Many cases of erratic behaviour have been held by courts to be not coming within the exemption contemplated under the Code.[87]

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85. Id. per Lentin, J. at p.406. Appreciating the evidence the court said:

> "He came to Kausalya's premises when she was alone. He took darshan of the deities. He returned after some time with a spear-blade and with it assaulted Kausalya. His subsequent conduct reveals shame or at the highest remorse ... . It is only the legal and not the medical aspect of the question that the court is concerned with ... . An eccentric or 'queer' person or one accustomed to assaulting others, is not necessarily a person of unsound mind. He may be a cranky person or just a plain bully". Ibid.

86. State v. Kali Charan, A.I.R.1955 Sau.105 per Shah, C.J. at pp.107, 108.

87. Supra, nn.74-87. See infra, Ch.V. and VI. Also see K.M.Sharma, op.cit., pp.347-348.

CHAPTER V

INSANE DELUSIONS

Psychiatrists have classified mental disorders and abnormalities into different categories. Courts have not recognised all these forms as grounds for exemption from criminal liability. They have laid down certain tests. They recognise only those forms that satisfy these tests. This does not mean that the developments in psychiatry are ignored. Such developments make it possible to classify scientifically various forms of insanity. They provide guidelines for the courts in deciding the responsibility of offenders alleged to be suffering from mental illness or disturbance.[1] This chapter deals with the judicial view of the delusional insanity. Other forms of mental disorders are discussed in the next two chapters.

Delusions and hallucinatory experiences are commonly identified with insanity. Delusions may be called incorrigible false beliefs. Some abnormal men hold them so firmly that they are unshaken by any amount of rational arguments. Such beliefs are associated with their personality. Or, they stem from a false or misguided belief.

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1. Ramphiama v. State, A.I.R.1959 M.P.259 and T.P.Naik, J. at 261.

most often they result from the peculiar relationship of their personality to the physical, social, cultural and economic conditions and from their inability to adapt themselves to these conditions. Delusions are of different types, those of jealousy, infidelity, depression or despair, persecution, grandeur etc. Delusion may also be due to political or religious beliefs. They may come from beliefs in evil spirits.

In case of delusions, there is a mistake of facts. This mistake of facts may be similar to a situation where 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.[2] In such cases an essential element to constitute an offence, namely, mens rea, is absent. So he is not to be responsible for his acts. The whole experience is attended by marked emotional tension adding to the conviction of the reality of the belief. But in order to get exemption from punishment the delusion should be such as to relieve the person from responsibility if the facts with regard to which the delusion exists were true.[3]

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2. Queen Empress v. Kalka Prasad Singh, (1884) 23 I.L.R. Cal. 603 per O'Kinealy and Beverley, JJ. at 607. For a detailed discussion of this case, see Ch.IV. n.37.

3. In Daniel M'Naghten's case, 10 C & F. 200 (1843):8 E.R.718 per Tindal,C.J. at pp.722-723, the following propositions were laid down among others:

contd...

Delusion of despair or depression

Out of despair or extreme depression one may commit

(f.n.3 continued)

(a) Notwithstanding the accused did the act complained of, with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is, never the less, punishable, according to the nature of the crime committed, if he knew at the time of committing such crime, that he was acting contrary to law. (at p.722)

(b) A person under an insane delusion as to existing facts must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. (at p.723)

Chinna Ithan v. Emperor, A.I.R.1918 Pat.179 DNK Denman Miller. C.J., Chapman and Atkinson, JJ. at 181:

"(W)here a person otherwise sane but labouring under the influence of an insane delusion commits an act of revenge for some supposed grievance or injury, he is nevertheless punishable according to the nature of the crime committed if at the time he understood that he was committing a wrong and unlawful act. In otherwords, he must be considered in the same situation as to responsibility as a sane person would be if the facts with regard to which the delusion exists were true".

See also In re Ramaiah Ammal, A.I.R.1959 Mad.239 DNK Ramaswami, J. at 245, 246; Dagdusahi v. Bhi Shaik, A.I.R.1965 M.P.68 per Gangulanath, J.C. at 71.

offences like homicide,[4] or suicide.[5] Law imposes responsibility in such cases. Philosophers differ on the question whether or not attempt to commit suicide can be made punishable. The debate is based on the lack of any malicious intent on the part of the attempter to harm anybody. It is pointed out that in such cases there is no mens rea

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4. In Rex v. Cunningham, (as cited in Queen Empress v. Lalubhai Hamla, (1886) I.L.R.10 Bom.512) the accused was charged with the murder of four of his children. He was an affectionate father; but "having fallen into distressed circumstances, he destroyed his children by strangling them in order, as he said, that they might not be turned into the streets". The idea only came to him on the night of his perpetrating the crime. He made a full confession the next day, and he made no defence at the trial. He was convicted and sentenced to death but, on the active intervention of Mr.Hinks and others was subsequently reprieved, on the ground of insanity. Commenting of Cunningham's case, the judge in Lalubhai Hamla said at p.516.

   ". . . there was not the slightest proof of the existence of derangement of mind, except in so far as it was inferred from the crime committed. It may be a dangerous doctrine . . . to adduce the crime or the mode of perpetrating it, as evidence of insanity; but such cases as these inconteatably prove that there are some instances in which this is almost the only procurable evidence".

5. As is well known some religions allowed or still allow the practice of suicide in one or the other form as a means to obtain salvation from life. But it is part of suicide is no more an offence. See also N.L.A. Hart, The Morality of The Criminal Law, (1965), p.44.

Despair and poverty may drive many a woman to be the victim of circumstances and to do such acts as murdering her children and killing herself. The peculiar psychological maladjustment after child-birth may also be a cause by which a woman may commit such acts. In re Ramathi Ammal[6] is a case where the mother attempted to commit suicide by throwing herself into a well with the child few weeks after her delivery. The accused was unwell for some time from diarrhoea and fever after delivery. Poverty and inability to secure others' help led her do her house-hold chores. She was depressed and fed up with her life. Since the pleas of somnambulism, puerperal insanity and irresistible impulse were not proved,[7] the court held her guilty. The desperate situation into which the unfortunate mother had fallen would have been sufficient excuse for her to be exempted from responsibility under law had the defence of puerperal insanity, which follows child-birth and which is referable to the action on the brain by the toxemia of pregnancy, and its bad effects, been properly set up and

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6. A.I.R. 1959 Mad. 239.

7. Ibid. This is a case where the accused suggested all sorts of incompetent pleas like possession of evil spirits, somnambulism, irresistible impulse and puerperal insanity. It seems that the courts were not properly addressed to decide the criminal responsibility in puerperal insanity cases. See also infra, Ch.VI, nn.59, 61, 77.

evidence adduced by the defendant.[8] Disappointed at the death of his wife and one son, the appellant severed the heads of his other two children in Manik v. Emperor.[9] On his way to the Police Station for admitting the crime he was arrested. It came in evidence that after the death of his wife and child some six months before the incident he had been running about hither and thither like an abnormal man. He was considered insane by his father and others in the village. An attempt was made to disprove his insanity. There was no evidence of his cruelty or indifference towards his family till he became abnormal. Apparently there was no motive. Pointing out the difficulty in proving the state of mind of the insane or mentally abnormal offender at the time of committing the offence, the court held that the conduct of the appellant in such circumstances was explainable only upon the hypothesis that

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8. Id., at 245. Ramaswami, J. observed, "Bearing these principles in mind if we examine the facts of this case, we find that it is possible that the accused was suffering from some sort of puerperal disorder and concerning which the following information can be called from standard books on Sexuals medicine ...

Now unfortunately in this case there has been no expert examination or collection of evidence in the light of medical knowledge of puerperal disorders and the specific defence imminent on the accused has not been set up. We cannot, therefore, guess that this is a case of puerperal insanity, constituting a valid defence under Section 84, Indian Penal Code".

It may be submitted, that perhaps, the case may be an example to show that the burden of proof is a woolen concept which is/see difficult a hurdle for a poor accused person to overcome.

9. A.I.R.1948 Cudh. 179.

he had gone completely mad and was not conscious of the terrible crime that he was committing and the frightful act was itself to a very great extent evidence of that conclusion. [10]

Delusions of Sexual Jealousy and Infidelity

Man and woman in wedlock expect sexual fidelity from each other. Those in love also expect fidelity. A breach invites revenge. In fact sexual jealousy and infidelity are major factors causing homicide.[11] Sometimes delusions of jealousy and of infidelity may arise and prompt the commission of offence. This is so especially in a society where sex taboos galore and are imposed only on women.

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10. Id. per Walsford and Vidmi, JJ. at 180-81. Reversing the sentence of murder the High Court said.
"Proof as to the state of mind with reference to cognitive faculties of a person said to be of unsound mind at the time of committing of a crime is always an extremely difficult problem particularly in cases where a person has not exhibited any signs of violent insanity before the crime though he has shown some abnormality of the mind ... . To our mind, it is absolutely impossible to give positive evidence as to the state of mind of any person about whom there is some history of abnormality of his mental condition. Of necessity the Court must arrive at conclusion from surrounding circumstances such as the personal history of the accused, absence of motive particularly in multiple murders, want of preparedness or pre-arrangement and finally the connection or relationship of the murderer with the victim. Complete idiots, imbeciles and persons who are deprived of all understanding and memory can easily be shown as not responsible for the criminal offences and their cases do not present any difficulty in law Courts. The difficulty, however, arises in those cases where a person laboring under a partial delusion or becomes a victim of sudden fits of insanity".
11. Cases are legion/ for e.g., see K.M.Nanavati v. State of Bombay...

Pleas of delusion of this nature have been raised in a number of cases. In most of them the husband, acting under the influence of the alleged delusion killed the wife or the children. In Ghasiu Ramsanik v. Emperor[12] the accused alleged that he actually saw his wife talking with her paramour, inviting him to her room at the dead of night and letting him off after considerable interval. The delusion was so disturbing that he could not sleep. Devoid of any sense the accused killed his wife. According to the court the accused was not entitled to get exemption under s.84 of the Code as he had not acted under the immediate influence of a delusion.[13] In Mohammad Hussain v. Emperor,[14] the delusion was that the wife had illicit relationship with the father of the accused. The Court accepted the plea of delusion but held the accused guilty as the said delusion did not prevent him from knowing the nature of his act. But in Ramah Ghi v. Emperor,[15] on similar facts, the Peshawar High Court held that there was sufficient

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(f.n.11 continued)

Mahavashram, A.I.R.1958 S.C.605; Bilas Ahmad v. State of A.P., A.I.R.1974 S.C.799.

12. (1901) 29 I.L.R. Cal.613.

13. Id. per Ghose and Taylor, JJ. at 619-620.

14. (1913) 14 Cr.L.J.81 (Oudh) per Kanhayya Lal and Stuart, A.J.C. at pp.84, 90.

15. A.I.R.1937 Peshawar 28.

evidence to indicate mental derangement caused by the delusion that prevented the accused from knowing the nature of the act. The Court acquitted him. In a case of alleged unfaithfulness of the wife who was suspected to have illicit relationship with her brother-in-law, the Punjab High Court in Hazara Singh v. The State[16] relied on the medical evidence to assess whether the husband's delusion was so acute that he to know what he was doing was doing was wrong or to have the ordinary concept of right or wrong. The Court found the accused guilty although the plea led the court to reduce the sentence.

Even signs of insanity and delusion for a considerable period would not help the accused to raise the plea successfully. In Ramlal v. State[17] the husband suspecting the legitimacy of the child threw it against a wall and killed it. In evidence it was proved that he had shown for a couple of months, signs of insanity and had even abused the villagers. According to Madhya Pradesh High Court this evidence was insufficient. Perhaps Haryana and Punjab High Court's decision in Ramanbhai v. The State[18] is also a

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16. A.I.R.1968 Punj. 104, per Tek Chand, J. at p.111.
17. A.I.R.1960 M.P.102 per A.N.Khan and Shivdayal Shrivastava, JJ.
18. A.I.R.1965 M.P.68 per Gopalkrishn, J.C.

typical instances. The accused, suspecting the loyalty of his wife who was believed to have attempted to poison him so that she could live thereafter with his younger brother, took her to the jungle and killed her. He made a confession to his children soon and helped discovery of the weapon. There was no medical evidence of delusion. His relatives did not notice any abnormal behaviour. These circumstances might be so telling. The Court said that even assuming that the accused was in a delusion, he knew he was doing wrong. [19]

The yardstick the courts used to assess the relevance or irrelevance of delusion is whether or not it is so acute as to render the accused unable to have a concept of right and wrong. The test adopted by the court is too technical. The delusion that springs up in the mind of the accused may be due to multiple factors of which the social surroundings in which the accused is grown up, is an important one. A society rooted in orthodox ideas, ignorances, and odd practices and customs, which modern world can never admit as civilised, may often throw its members into strange delusions making them incapable of distinguishing between right and wrong. A wooden scale of the 'likelihood of knowledge' is not always a proper objective criterion.

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19. Id. per Gopalakash, J.C. at 71. See also supra, n.3.

Delusions of persecution

The Indian Courts have not come across such cases of delusions of persecution like the famous English case of M'Naghten[20] where the offender was held justified in attacking, under the delusion, the supposed enemy, in self-help. Yet, there have been some cases in which persecutory delusion was pleaded in defence. Ghirma Uraon v. Emperor,[21] is an instance. The appellant murdered his uncle under an insane delusion that his uncle had refused assistance when villagers were taking him away for sacrificing him for the good of the villagers. Immediately after murder he went to the police station and confessed. Finding the accused guilty the court held that even assuming the facts to be true, they did not afford any justification for the crime since there was no sufficient evidence to show that the appellant could not realise that he was committing a wrongful act.[22]

In another instance,[23] a loving husband suddenly killed his wife in a closed room, which was heated from

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20. Supra, n.3.
21. A.I.R.1938 Pat. 179.
22. Id. per Dawson-Miller, C.J. and Chapman, J. at 181.
23. In re Sankunny Shetty A.I.R.1941 Mad. 326.

inside, by battering her head and body brutally, inflicting as many as twenty wounds and bruises. There was a complete lack of motive. He had never beaten or ill-treated his wife on any previous occasion. The accused behaved in a strange and eccentric manner during about three days prior to the incident. When the room was broken open the accused made no attempt to escape but appeared dazed. He was labouring under a delusion that some relation of his from the wife's side had given him drugs and witchcraft had been practised upon him to destroy him. The circumstances of the case were held not sufficient to establish insanity.

Delusion resulting from the required degree[24] of insanity is a sufficient excuse for commutation. Kashiram v. The State[25] is an instance. The appellant had been kept twice in mental hospital. Back home he was usually kept chained in a room. One day he managed to free himself. He picked up an axe and killed his wife by inflicting fatal wounds on her neck, head and shoulders. His plea was that he killed his wife because she was friendly with some people and she had sent him to mental hospital even though he was not insane. The Court held that he was labouring under the

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24. See Ch.IV, n.29.

25. A.I.R.1957 H.P. 104.

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 appellant and the persistent delusion established conclusively that the appellant was completely and utterly insane and had only a 'glimmering knowledge' of the nature and consequences of his act and was absolutely incapable of realising that it was wrong or contrary to law. [26]

Conduct of the accused - conduct previous to the commission of the offence, one shown at the time of the commission and that subsequent to the crime - and the motive would prove whether or not he had such delusion as to exonerate him from liability for the offence. The Supreme Court decision in D.G.Thakkar v. State of Gujarat [27] is an example. It was a case of murdering one's wife under an alleged delusion. The accused was held responsible [28] since the delusion was found not to be of the required degree judged on the basis of the above circumstances.

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26. Id. per Dixit, J. at 107. Allowing the appeal the court said,

"It must be remembered that the appellant's case is not that of a person suffering from partial delusion but sane in other respects. His case is not one to which the answer to the first question in M'Naghten's case, (1843) 10 Cl. and F 200 can be applied.

That answer was expressly limited in its application 'to those persons who labour under such partial delusions only and are not in other respects insane'".

27. A.I.R.1964 S.C.1563. For facts, see Ch.VIII, n.57.

28. Id. per Subba Rao, J. at 1569-70.

Delusions of religious and superstitious beliefs

Cases of self immolation, human sacrifice and homicide of supposed witches are quite common even today in Indian society owing to religious and superstitious beliefs. The fact that the offence was committed at the bidding of a spirit or to propitiate a goddess will not bring the case within the section.[29] Yet some conflict of views is discernible from holdings of different High Courts and at times from the holdings of the same High Court itself.

Ghasee v. Bishumdhuree Kahar[30] is an old and curious case of murder. The father sacrificed his son to God Mahadeo. He had made a vow that if a son was born he would 'sacrifice Ganges water, and do pooja'. He did murder the son as a protest against the deity's injustice since wealth had not accompanied the birth of the son. 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. After murder the accused was

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29. In re Pamulthi Ammal, A.I.R.1959 Mad.239, per Ramaswami,J. at 245. This is a case where it was suggested by the accused, though withdrawn by her in cross-examination, that the accused had been possessed by bad devils some time back. She was stated to have been treated by a magician and she used to get beatched at intervals.

30. (1867) 7 W.R.64. (Criminal Rulings).

found contemplating in a lonely jungle with the weapon in his hand. He was reluctant to handover the weapon to the village chowkidar. The weapon had to be seized forcefully. He also tried to prevent the Chowkidar from searching the tavern where the sacrifice was conducted because he believed that if it is shown to others all the benefits of his sacrifice will be lost. In these circumstances the court held him guilty because his mindwas not incapacitated from knowing right and wrong, though his act may be said to have been prompted to some extent by his religious enthusiasm or even by hallucination. [31]

Another old and strange case is EMPEROR v. HAKIM,[32] where a sadhu, suddenly seized the legs of a boy who was playing about, dashed his head three times against a stone and thereby caused his death. According to his version Goddess Shakti told him that if he killed some one she would appear to him in person, and this was what impelled him to kill the boy. He admitted that he knew that it was wrong to kill a person but he acted blindly under the influence of the Goddess. The civil surgeon who had kept him under observation opined that he was suffering from delusions brought about by indulgence in ganja and bhang. The Court

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31. Id. per Clover and Holthouse, JJ. at 66.
32. (1906) 4 Cr.L.J.88 at 89 (Allahabad).

held him guilty because though insanity caused by intoxication due to drug intake could be pleaded as a defence, the insanity had not reached such a degree as to attract section 84 of the Code.

Sonk Ali v. Emperor[33] presents another unfortunate circumstance where the accused deliberately murdered his wife who believed herself to be possessed of evil spirit 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 openly confessed his guilt. The Court held the delusion and superstitious belief not sufficient. [34]

Ramananda Patra v. State[35] is a case of homicide before a Kali temple in broad day light because of the accused's alleged obsession with Kali worship. He cut and severed the head of the deceased, an absolute stranger, and placed it at the door of the temple for absolutely no sane motive. He was shouting 'Victory to Kali' and challenged and threatened those who tried to hold him. He was held guilty.[36]

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33. A.I.R.1917 Pat.503.
34. Ibid. per Atkinson and Jwalaprasad, JJ.
35. A.I.R.1969 Ori.222.
36. Id. per Misra, J. at 224. Also see Ch.VII, n.113.

Some High Courts have taken the view that such delusions are sufficient to exempt persons from criminal responsibility. Kalua Uraon v. Emperor [37] is an instance. It was a case of patricide. According to the accused 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. The other features of his dream were that his black tongued father was a descendant of Goddess Kali and that he was to take his father's head to the court at Silchar. The civil surgeon, who observed him, opined that the accused had a definite delusion which passed off after a couple of months and that he could not distinghish right from wrong. The Court acquitted the accused. [38]

In another Calcutta case, Gaman Ali v. Emperor, [39] the appellant 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, the accused cut off the heads of two persons which included that of his own daughter and offered the same to the pir and said, "Father, you asked me for one human head; I present you with two". The Court

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37. A.I.R.1928 Cal. 238.

38. Id. per Rankin, C.J., at 240.

39. A.I.R.1941 Cal. 129 per Sen and Roxburg, JJ. Also see Ch.IV, n.18.

acquitted him holding that he did not know what he was doing was wrong or contrary to law.

In yet another case decided by the Calcutta High Court, Ashiruddin Ahmed v. The King,[40] the Court came to the protection of the accused who sacrificed his own 5 year old son under the delusion that he was commanded by someone in paradise. Though he knew it was against law the Court held him not guilty since he believed that his dream was a reality, and "the accused was clearly of unsound mind and acting under the delusion of his dream he made the sacrifice believing it to be right".[41]

Kambi Kurii Dibia v. State[42] was also a case where the accused was suffering from a delusion or hallucination based on some religious and superstitious belief. He killed his wife and eldest son under that delusion for no apparent sane motive.

The Court acquitted the accused finding that he was suffering at the time of his acts from unsoundness of mind as a result of delusions and hallucinations saying that though

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40. A.I.R.1949 Cal. 182.

41. Id. per Sansbrugh and Blank, JJ. at 182. A different interpretation of the provision in Section 84, Penal Code was adopted. See also Ch.VII, nn.

42. A.I.R.1960 Cuj. 1.

consciousness of the nature of acts committed, he was not in a position to appreciate and realise that the acts committed by him were either wrong or contrary to law. [43]

Mere mental obsession due to some superstitious belief is not sufficient for exemption. In Gonalan Nair v. State of Kerala,[44] the accused had to stay in mental hospital for some time for some mental trouble 3 years prior to the incident. After his return he laboured under the impression that his mental disease was due to evil influence of the deceased woman with whom he stayed for some time. He murdered her. The trial court and the High Court held him guilty. The Supreme Court also held that he was not suffering from mental obsession which would affect a person's mind in every quite different from that of normal person so as to attract the exemption. [45]

The Supreme Court of India had an occasion to decide a case of human sacrifice on account of the religious

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43. Id. per Shelat, J. at pp.4-5.

44. (1973) 1. S.C.C. 469.

45. Id. per Grover, J. at 470. The Court also held that he was in all likelihood not in a position to weigh and analyse in a rational manner and so the lesser sentence of life imprisonment would serve the purpose.

enthusiasm of the offenders in Parma Ram and Others v. State of Punjab.[46] Facts are not discussed in detail in the judgment and no delusion and hallucination was disclosed The Court held that the ceremonial be heading by the father and his relatives of a four year old boy at the crescendo of morning bhajan did not provide proof of insanity under section 84 of the Code. [47]

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46. (1981) 2 S.C.C. 508.

47. Id. per K.B.Krishna Iyer, J. at 509. Also see Ch.IV, p.27.

CHAPTER VI

OTHER FORMS OF ABNORMALITY

As long as his mind is sound within the legal limits of law a person cannot escape criminal liability for his acts.[1] But there are several factors which act upon one's body and mind and tilt the mental balance. Analysis of the judicial approach to these diverse categories is an interesting exercise. Insane delusions have already been examined in the previous chapter. Judicial views on other forms of mental disorders are discussed in this chapter.

Deafness and dumbness.

Want of speech and hearing does not necessarily imply want of mental capacity but merely indicates a difficulty in the means of communicating the knowledge. However the procedural protection[2] places the deaf and the mute in a better position than an ordinary insane

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1. See supra, Ch.IV, pp.47-64.
2. Section 318 of the Code of Criminal Procedure 1973. (corresponding to Section 341 of the 1898 Code). The section reads: If the accused, though not insane, cannot be made to understand the proceedings, the court may proceed with the inquiry or trial, and in the case of a court other than a High Court, if such inquiry results in a commitment or if such a trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

person who claims the benefit of section 84 Penal Code. In the case of the deaf-mute it is for the court to make sure that such a person can be made to understand the proceedings. A presumption of absence of mind is permissible in the case of a deaf and mute. But this presumption is not irrebutable. It depends upon the evidence in each case. King v. Ambikh[3] is a case where a congenitally deaf and dumb accused who was incapable of understanding anything other than a few elementary things through gestures committed patricide. His conduct immediately after the murder indicated that he was incapable to understand the nature of his act and its criminality. The Court held that the case fall within the general exception contained in section 84 and so not guilty of the offence.

Epilepsy and Automatism

Epileptic fits always do not lead to insanity but when a person becomes subject to frequent attacks it may.[4] Inorder to get exemption it is necessary that the accused

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3. A.I.R.1953 Cal.20 per Panigrahi, J. at 21. cf. Bhagwan v. Vikash Singh, A.I.R.1967 All.301. The Court directed the appointment of a special counsel to the defence to ensure fair trial.

4. See Waldron, Mental Disorder as a Criminal Defence, (1964), p.36. "A criminal act committed during such and automatic state of confusion should certainly be held to come with in the legal test of insanity".

must have been suffering from an epileptic seizure at the time of commission of the act which incapacitated him from knowing the nature of the act or that he was doing something either wrong or contrary to law. This has been decided by the Supreme Court in State of M.P. v. Abamchilla[5] The accused himself stated the manner in which he managed to scale over the wall of the house of the accused, how he gained entrance into the room, how he found the victim asleep on a cot and how he severed the head from the trunk and carried the former away and hid it. He produced two medical witnesses. One had treated him for epilepsy two years before and the other two months after the incident. The trial court and the High Court found the accused not guilty in the light of the facts and medical evidence. But the Supreme Court reversed the acquittal and held him guilty because he was conscious of the nature and criminality of the act.[6]

Tulsaram v. Emperor[7] is a case of patricide. It appeared that the appellant was a melancholiac, subject to occasional fits of epilepsy and was, at the time of commission of the act, suffering from vertigo. Both the trial court and the High Court held him guilty. It was

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5. For full facts see infra, Ch.VIII, n.21
6. Ibid.
7. A.I.R.1927 Lah.674.

held that the mere fact that on former occasions the accused had been occasionally subject to insane delusion, or had suffered from derangement of the mind, or that subsequently he had at times behaved like a mentally deficient person, is per se insufficient to bring his case within the exception. [8]

A person who suffers from epilepsy may, during lapse from consciousness, act without volition and may have no recollection of those 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 epileptic fits. In Ramesh Kar v. Emperor,[9] Justice M.Hidayatullah of the Nagpur High Court (as he then was) made an elaborate discussion of the legal responsibility of persons suffering from epilepsy.[10] The appellant, apparently a respectable and influential man was charged for murder of his two wives. It appears that the two wives failed to bear a son to the accused. Evidence was there to the effect that the appellant had been previously beaten by two others and he failed in the prosecution filed against them which made him unhappy; that he had

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8. Id. per Tekchand, J. at 677.
9. A.I.R.1949 Nag.66.
10. Id. at pp.77-99.

beaten a person and destroyed a door plank; that he did not get sleep and did not take food for three days; and that he was seen abusing people, walking aimlessly sometimes without clothes, looking distraught, refraining from answering question or talking with people.

According to the medical evidence given in Ramsbotham, the case was one of automatism in a state of clouding of consciousness.[11] The Court said that 'automatism' is usually connected with epilepsy and is the sequel to a milder attack of epilepsy which goes under the name of petitmal.[12] But there

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11. Id. at p.78.

12. Id. at p.77. The Court added that the following quotation from Sydney Smith, Forensic Medicine (1946) p.401, puts the matter beyond doubt:

> "The special interest of epilepsy, lies in the fact that all epileptics are liable to have lapses of consciousness in which things are done without volition of the patient and about which he has no recollection whatsoever when consciousness returns. This is known as post-epileptic automatism, and as the acts performed may be criminal it is essential to have some idea as to what actions may be assumed to be automatic and what cannot be so considered. Automatism is an sequle, more frequently after an attack of epilepsy than after a typical fit, but this may not always be the case.
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> If automatic action takes place, it tends to occur after every fit in the same person, and to be of the same type in each attack. The action is either an habitual action. To illustrate such habitual acts or caricatures of them we may quote the case of a man who walks into a shop, picks up something and walks out again, afterwards being arrested for theft; or one who exposes himself or misconducts in a public place and is arrested for indecent conduct; or perhaps a person cutting something may inflict wounds or kill a child; a person accustomed to fire arms may shoot somebody.

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was no evidence to show that the accused was in the habit of using the knife weapon which he used the killing and in a fit or under an automatic action used it on the victims instead of putting it to its legitimate use. The Court concluded that there was no indication of epileptic genis or automatism apart from amnesia.[13] The Court further opined that in cases of excised epilepsy and some other mental disorders the same features as epileptic automatism are present but such cases are characterised, among other things, by

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(f.n.12 continued)

All these acts are habitual or allied to habitual acts. It should be noted there is a faint blurred memory of the epileptic automatic phase.

But if a person lies in wait for a personal enemy and murders him by violence, or purchases a weapon for the purpose of committing an assault, and then pleads epilepsy as the excuse, there will be no difficulty in coming to a decision that such acts are not automatic".

13. Ibid. The Court took further notice that epileptic automatism is described in almost any book on medicine. Even in an elementary book like the Universal Home Doctor (Times Publications at pp.305 and 306) there is a significant passage:

"The importance of the minor attacks is mainly because their true character goes unrecognised till a major attack occurs, but also because it is after these minor attacks that mental disturbance may take place which bring the victim within reach of the law. While still in epileptic state, that state known as 'automatism' the patient may commit some crime during a mental outburst, of which, when he comes to himself, he has no recollection. Many times has this post-epileptic state been pleaded as defence in a court of law, but it is a plea which a considerable amount of medical evidence is needed to support".

evidence of great violence. Such acts are committed in confused state of mind and amnesia is generally pleaded. [14] In these cases it is always difficult to exclude simulation. The Court took support from Sydney Smith and quoted the following rules suggested by him.

> "(1) In any case of alleged amnesia for purposeful acts some history of a possible cause is essential, and also a history that such cause has produced some previous signs of mental unstability such causes may be alcoholism, malaria, head injury, war neurosis.
>
> (2) Total amnesia for the period of the alleged act and for a short time after it is very suspicious of malingering.
>
> (3) If there is memory for anything which happened in a true dream phase, then it is for things of great emotional importance. The remembrance of some unimportant details but amnesia for chief happenings suggests malingering.
>
> (4) In dream phase, statements may be made which are wholly or partially forgotten later.
>
> (5) An epileptic may have dream states after or in place of fits, when associated with alcohol, but only during drinking bouts". [15]

In Jhanmiya, after having ruled out mens-rea plea [illegible] the court considered other forms of automatism. First it considered the question of sane-dissociative reaction [16] which the accused suffered according to the medical

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14. Id. at p.78.
15. Id. at p.78, quoting Sydney Smith, supra. at 401.
16. Ibid. observing that this diagnosis of the medical expert witness himself was open to question, the Court quoted from Dr. Pierre Janet, Principles of Psychiatry, p.168; "The psychosis called sane-dissociative insanity is today much over-emphasised and applied wrongly or capriciously . . . "

evidence. The medical evidence was to the effect that the accused was suffering from manic-depressive-psychosis. In this mental derangement, the person afflicted has alternate periods of elation and depression. In its earlier stages it goes under the name of cyclothymia and in its extreme form it is known as manic-depressive-psychosis. In this type of insanity the crime generally results from impulse.[17] Crimes, the Court noted, are committed both in a state of mania or depression. In the depressive stage which, according to the expert witness, was the case there, the patient suffers from delusions and hallucinations and his health generally suffers. Though delusion and hallucinations are the most important signs of insanity the court found that none is present in the case.[18] The next possibility considered by the Court was that of an impulse through with complete consciousness.[19]

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17. Id. see Nidayatullah, J. at 77.

18. Ibid. On this the Court again quoted Sydney Smith. Mr. Sib., p.399.

"Homicidal crimes are by no means infrequent, and often take place early in the illness and before any delusions have been formed. The crime may be committed in a confusional state, but frequently with complete consciousness, and then it may take the forms of irresistible impulse".

19. Ibid. The Court took guidelines from Dpp.-Genuine, Vinne and Palgrave in legal medicine and Terminology at p.428 where they say:

"The maniacal stage may be severe, characterized by struggling and raving, or it may be mild in which

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This and the other possibilities suggested by the expert witness,[20] namely, circular insanity or alternating mania and melancholia, and the single impulse theory[21] were rejected by the Court as unfounded.

Finally rejecting the plea of insanity in any form the Court concluded that a crime was not committed under the law whether done under an insane impulse or not unless it satisfied the grounds which are epitomised in section 84 of the Code. Most cases of insanity admit of some confusion. But it must reach such a degree as to impair the cognitive faculties completely. There was no case in Ramaswamy that the accused did not know the nature of the act. It could not be said that he did not know he was doing something wrong or contrary to law merely from the absence of secrecy, concealment or other adaptation to the manifest

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(f.n.19 continued)
the patient merely has a rapid and uncontrolled flow of ideas, due to excessive mental activity. The reasoning power is not lost, but unpowered. The patient is stirred with wild impulses, even homicidal in type, and he may act upon them. In the depressive stage the subject is depressed or even stuporous. He is attacked by delusions and may commit suicide under their influence".

20. Ibid. Dr.Say's conclusions were three, "a) both the offences were automatic and were committed under one single automatic impulse; (b) there was confusion in the intellectual faculties; (c) the clouding of consciousness was partial, i.e., the accused knew the nature and quality of the act but he did not know that it was wrong or contrary to law".

21. It was well settled according to the court, irresistible impulse, which the expert distinguished from simple driving impulse, was no defence at all even if pleaded. Id. at 79.

results of the crime. The contrary was amply proved from his query to the police of the superior's arrival. [22]

To claim exemption in the case of epileptic insanity it is not sufficient that one or two fits had occurred on earlier occasions and the person was unbalanced, excited, feeble minded and suffering from partial delusions. In re Manickam,[23] is an illustrative case on the point. The deceased woman had lost a cock. She was searching for it. When she had reached in front of the accused's house she cursed the unknown thief. The accused got infuriated at this. He came out, caught hold of the tuft of the deceased, cut her neck with an aruval and killed her. Two medical witnesses, who kept him under observation, were of the opinion that during the time they observed him his mental conditions were normal. But they felt it difficult to find out the nature of the mental insanity subsequent to certain epileptic fits. The homeopathic doctor who had examined him some time before for epileptic fits and mental

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22. Id. at 79, 80

23. A.I.R. 1960 Mad. 376. Also see In re Rajalingam (A.I.R.1960 Mys.48) where the evidence showed that the accused was subject to epileptic fits only 5 years prior to the occurrence, but there was nothing abnormal in his behaviour. He tried to run away after crime and offered resistance when caught. The plea was not allowed.

excitability stated that though he was upset, unbalanced and excited he was not insane. The Court held him guilty.[24]

Longstanding attacks of epileptic fits leading to uncontrollable mania, impairment of mental faculties, hallucinations of sight and hearing, delusions of a persecuting nature, feebleindedness and progressive dementia of a most degrading nature, maniacal excitement or depression etc., may be sufficient degree of intensity entitled to exemption, provided its effects existed at the time of commission of the crime. In Umairi Kannan v. State[25] the accused, a bachelor who used to quarrel with his aged mother on the quality of the food she served him, killed her one day on the same silly reason. He was subject to periodic epileptic fits from his childhood. He would begin to exhibit signs of mental instability some 24 hours before such attacks. Symptoms of an impending epileptic seizure were seen on the day of occurrence. Three weapons, namely, a bill-hook, a wooden pestle and a stick of fire-wood were used in the attack. The attack continued for a long time. The accused's reply to old mother's plea not to kill her was that she deserved something more than mere killing. He warned away a woman during the attack saying that he would finish anyone coming near. He made no attempt

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24. Id. REF Govinda Menon and Krishnanunni Naidu, JJ. at 577.
25. A.I.R. 1960 Ker. 24: 1959 K.L.T. 964.

to conceal his crime or escape from the scene. The Court acquitted him holding that he committed his mother during a period of epileptic insanity not knowing at the moment the nature of his act.[26] The prosecution suggested that the accused's occasional quarrels with his mother over the quality of the food which she served to him formed the motive for the crime. The Court felt it puzzle to hold that such an occasional quarrel would motivate a mature man to hack to death his old and defenseless mother. Based on

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26. Id. at p.867. The Court took guidance from Modi, Medical Jurisprudence XI ed. pp.372, 373.

"The disease is generally characterised by short transitory fits of uncontrollable mania followed by complete recovery. The attacks however become more and more frequent. Lastly there is general impairment of the mental faculties with loss of memory and self-control. At the same time hallucinations of sight and hearing occur and are followed by delusions of a persecutory nature.

Epileptic insane persons are deprived of all moral sensibility, are given to the lowest forms of vice and sensual excesses, and are sometimes dangerous to themselves as well as to others. In many long-standing cases there is usually feebleindedness leading to progressive dementia of the most degraded character.

True epileptic insanity is that which is associated with epileptic fits. This may occur before or after the fits, or may replace them, and is known as pre-epileptic insanity, post epileptic insanity and masked or psychic insanity.

Pre-epileptic insanity is very common and may replace the epileptic aura, lasting in some cases for hours or days even. It is characterised by violent fits of maniacal excitement or by depression, fearfulness, suspiciousness and general malaise. Hallucinations of various kinds are experienced and, owing to delusions, the patient may commit violent assaults, or may bring false charges against innocent persons. Sometimes the patient may refuse to take food."

the absence of motive or provocation, the nature and duration of attack, and his subsequent conduct he was held to be acting under some insane impulse and so not responsible. [27]

Circular insanity

In this type of insanity alternating mania and melancholia or elation and depression take place accompanied by illusions, delusions and hallucinations.[28] Lachman v. Emperor[29] involves a case where the appellant killed an exorcist. The facts show unusual features. The family believed that the accused was insane. They sought the help of an exorcist to relieve him off evil spirits. Irritated by this, the accused attacked the exorcist, inflicted him severe injuries and crushed his head. The victim died. Though he was tied down, he broke away and tried to escape. The accused had shown previously peculiarities in behaviour like talking incoherently and wildly, tearing up clothes, stripping himself naked in public, and occasionally smearing himself with faecal matter.

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27. 1929 K.L.J.864 per K.Sankaran, C.J. and Anna Chandi, J. at 867.

28. This form of insanity was supported by the defence in Ramasubbiah v. Emperor, A.I.R.1949 Mad. 66, but was rejected by the Court.

29. A.I.R. 1926 All 413, per Mears, C.J. and Stuart, J.

Evidence was adduced to the effect that the accused was suffering folie circulaire, a type of insanity which commences with abnormality of conduct on the part of the sufferer. This type of abnormality of conduct increases by degrees until a stage is reached when the man is manifestly insane. Gradually the man gets better, the abnormality ceases and for a period he becomes perfectly normal. Abnormality begins again after sometime and so the circle continues with alternating period of normalcy, abnormality and insanity. The Court held that although the accused was of abnormal mind at the time when he committed the crime, he knew perfectly well what he was doing was a wrong and that therefore he was not protected under Section 84 of the Code. The sentence was, however, reduced to transportation for life. The Court also recommended executive clemency.

Hebephrenia

Sahar Nath Misra v. Emperor[30] is a case where the court applied expert opinion based on an authoritative text book on the subject of the insanity called hebephrenia. The accused, a young man, with absolutely no motive fired five rounds at other passengers in the train. There was no

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30. A.I.R. 1935 Oudh. 143.

attempt at concealment of the crime. There were no accomplices. There was no premeditation. When asked why he attempted to murder the strangers, his answer was that he 'wanted to kill big men'. He had a history of no mental troubles. He used to complain frequently of acute pain in the brain. Diagnosis of the accused by the expert, Col.Cruickshank-Wright, corroborated with the account of hebephrenia in Dr.Sajous's Analytic Cyclopaedia on Practical Medicine[31] which runs,

> "The onset of this form of dementia praecox is usually gradual and the patient may not come under medical observation for several years. The disease occurs at an earlier age than in the other forms, and frequently develops at or soon after puberty...
>
> One of the earliest and most characteristic of the definite symptoms of hebephrenia is the change in temperament and in the emotional life of the individual. Periods of restlessness or excitement recurring at intervals or alternating with states of depression, irritability, chemi-nancy or total indifference to everything making up their environment replace normal and rational reactions ... ...
>
> It is characteristic of the hebephrenic form of dementia praecox, in contradistinction to the catatonic and paranoid forms, that the emotional and intellectual deterioration are the main features, and are but little complicated by the occurrence of the more active symptoms common in the other forms, such as negativism, catalepsy, stereotypies, persistent and systematized delusions, etc."

Basing on this account, as also the facts and circumstances of the case, the Court held that the accused was

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31. (Edn.9, 1924) Vol.3, at p.766 as cited id. at p.146.

suffering from hebephrenia and that he was suffering from that mental disease to such an extent as not to know the nature of the act or the wrongfulness of the act.[32]

Homicidal Mania and Irresistible Impulse.

The existence of destructive impulses is the main feature of this type of mental disorder. This dominating impulse leads a person to destroy his loving ones or anyone who may be involved in his delusion. In this destructive impulse the patient comes to feel immense surges of energy, well-being and elation. There may or may not be evidence of intellectual aberration. There may be no distinct proof of the existence, past or present, of any mental disorder. The main evidence is the criminal act itself with its atrocious and inhuman nature and ferocity. Exemption from punishment is given in such cases only cautiously. [33]

Irresistible impulse and the resulting homicidal mania is no defence at all in Indian Law,[34] whereas other

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32. Gulam Din Nizam v. Emperor, A.I.R. 1935 Cudh. 143; see Hemchandra, J. at p.147.

33. See N.S. Gour, The Penal Law of India, (9 ed. 1973), p.630.

34. See supra, Ch.XXI, n.8 and infra, nn.42-43.

the passing of the Homicide Act, 1957[35] it is a ground for the partial defence of diminished responsibility under English Law. A person cannot be immune from criminal liability merely on the ground that he had the prompting of an involuntary impulse which he could not resist. Yet there may be cases of homicidal maniacs whose intellect is so impaired as to bring their case within the exception satisfying the test enumerated in section 84 of the Code.[36] Such insane maniac may be evidenced in the following classes namely, where the propensity to kill has come absurd irrational motive, where it has no discernable motive, where it is committed without interest, and often on a person loved by the perpetrator.[37]

Shiba Kumri v. Emperor,[38] is an old case where the accused, a young man of weak intellect was charged for murder of his uncle, the motive being trivial and quite inadequate for a mature sane person to commit such an offence. Soon after the killing he started about, brandishing his weapon and shouting 'Victory to Kali'. He attempted to strike

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35. See Ch. XXI, pp.12, 13.

36. See Infra, pp.38-41. See for more cases on the point V.R. Rao, Commentaries on the Indian Penal Code, (II ed. 1960), p.257.

37. See Nyal Singh Gour, The Penal Law of India, pp.630-631.

38. (1905) 2 Cr.L.J. 469 (Calcutta).

other persons, including his own father. When the paroxysm had passed off, during the enquiry by the police, he appeared to be rational. But immediately afterwards, he developed aphasia (impairment or the loss of the faculty of using or understanding spoken or written language), attempted to commit suicide and was undoubtedly insane from that time for a period of five years showing signs and indicia of insanity. It was held that he was suffering from a fit of melancholic homicidal mania at the time he bashed the deceased. He 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 held not guilty.

In [redacted] v. [redacted][39] the appellant asked the deceased and his wife to give him some water. After it was given he behaved in an extraordinary manner muttering that some people had spoiled him. In the same afternoon he murdered the victim and inflicted grievous hurt on his wife when they were returning home. There was absolutely no motive. There was no provocation except perhaps that he did not attack them immediately but only in the afternoon. The Court held in the circumstances that he was suffering from homicidal mania at the time when he did the act. The total absence of motive is one of the indicia of the act

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39. A.I.R. 1925 Mad.1230.

being done by some insane impulse. He was incapable of knowing the nature of the act or that he was doing a thing which is wrong or contrary to law. He was therefore held not responsible. [40]

Ummid Kannan v. State,[41] was a case where the accused, who was subject to frequent epileptic attacks from childhood, killed his aged helpless mother for a silly reason that the food she served to him was not of good quality. The Court held that 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 indication that the accused was acting under some insane impulse and, therefore the act was saved by Section 84 of the Code.

Sometimes the homicidal frenzy or mania may be manifested in some abnormal offenders with an irresistible impulse to kill others. The impulse is sudden, instantaneous unpremeditated and uncontrollable. The impulse is quite often to kill persons who are most fondly loved by the perpetrator. This category of impulsive insanity or 'irresistible impulse' is not accepted in India as a defence. The Supreme Court decision, Shrimali Mali Mohamad v. State of Maharashtra,[42] is

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40. Id. per Krishnan and Wallace, JJ. at 1238.
41. A.I.R. 1960 Ker. 24. For facts also see supra, nn.25-27.
42. A.I.R. 1972 S.C.2443 per K.K. Mathew at 2446.

an example. The accused killed his wife and child at night. After murder he shouted "save my wife, save my children, call the police". The accused did not try to escape. It was brought in evidence that he had temporary insanity in the past and had been treated. But the Supreme Court did not accept the plea of insanity as the doctor who examined him on the day of occurrence found the accused normal. The Court refused to infer insanity merely from the character of the crime and absence of motive. Two years later, when a life convict murdered another prisoner on a flimsy motive and in an atrocious manner inflicting eighteen stab injuries, the Court refused to uphold the defence of insanity. [43]

In Chhagan v. Lakshman Dagdu,[44] the accused killed his two young children with a hatchet. The reason given was that while he was laid up with fever, the crying of the children annoyed him. Though the opinion of the doctor was distinctly in favour of the accused, the Bombay High Court held him guilty. In the view of the Court he was conscious of the nature of the act and therefore he must be presumed to have been conscious of its criminality. However, Recommending the case for sympathetic consideration by the Government, the Court said:

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43. Gopal Ayyan v. State of Andhra Pradesh, A.I.R. 1974 S.C.218 per Khanna, J. at 219, 218.

44. (1906) 10 I.L.R. Bom. 512.

> ". . . there is good ground for classing the case with these . . . as to which so high an authority as Dr.Taylor has observed that they fairly establish 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. We can, at all events, say that we have applied the law, as it stands, to the facts." 45

The accused in Queen v. Venkatasawmi,[46] stabbed his brother's wife, a very young girl mother a child, with a sword and killed her. He had been in the habit of treating the child kindly and affectionately. No motive could be proved for the attack which he made in the presence of others. He was suffering from fever and want of food at that time. Medical evidence showed that it was possible that the act was committed under a sudden attack of homicidal mania. He had abused some of his relations a short time before the attack, probably due to irritability of mind caused by fever. He confessed guilt to the Magistrate. He answered questions rationally. He was convicted because of the absence of actual intellectual aberration.[47]

Courts refused to accept the plea of impulsive insanity and homicidal mania in Queen Empress v. Khem Chand Sikh,[48] where a father, ready after eating his house

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45. Id. per Birchmed, J. at pp.518-519.

46. (1889) 12 I.L.R. Mad. 458.

47. Id. per Muttusawmi Ayyar and Parker, JJ. at 462.

48. (1895) 23 I.L.R. Cal.604 per O'Kinealy and Banerjia, JJ at 609; also see RATAN, Ch.IV, nn.37, 38.

destroyed by fire killed his own child with whom he was very fond of; In re Muthuswami Asari[49] where the accused was charged for the murder of his wife by stabbing her; Ramalur Rahman v. Emperor[50] where the accused killed the District Magistrate and the Collector of Chittagong; Emperor v. Gadha Gain[51] where the accused murdered his wife, two daughters and one son and caused grievous hurt to his other son and mother and Kalicharan v. Emperor[52] where the accused, who was not cruel or quarrelsome by nature, committed multiple murders in quick succession without sufficient motive under a sudden and strong impulse, with no accomplice and no secrecy; one deceased victim was a two months old kid; on another boy victim he inflicted as many as 13 injuries with a sharp edged weapon.

Courts continued to reject the plea of 'irresistible impulse' or impulsive insanity. In an earlier Allahabad decision, Ramjha v. Emperor[53] it was held that a person

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49. (1919) 53 I.C. 838 per Sadasiva Aiyar and Odgers, JJ.

50. A.I.R.1929 Cal. 1 per Chunn and Jack, JJ.

51. A.I.R.1937 Pat. 363 per Mohammad Noor and Rowland, JJ Rowland, J. said at p.366.
"A crime is not excused by its own atrocity. One must look outside the act itself for the evidence as to how much the accused knew about it".

52. A.I.R. 1948 Nag.20 per Hemmen and Padhy, JJ.

53. A.I.R. 1922 All 232 per Sulaiman, J. at 235.

who was of weak intellect and subject to uncontrollable impulses and had a partially deranged mind was not exempted from liability of killing his neighbour. In re Rajamma Ammanna,[54] where the accused, aged 30, most tragically and without any motive, clubbed his four children to death and his wife to a stage where she lost memory for ever. In The State v. Dharmalingam Naidu,[55] where the accused, a barber, for an apparently silly reason of some conversation regarding the theft by one of his friends cut the throat of his customer with a razor while shaving and in a most atrocious manner pulled out some cysts from the open cut, the plea did not find favour with the Court. Lalmand Khan v. State of Kerala,[56] involved the murder of a boy. The accused stabbed him in the most cunning and sudden manner. The reason for murder was jealousy against the boy for having passed degree examination. Rejecting the plea the Court held the accused guilty. State of Kerala v. Rasi[57] reveals the story of one madly in love with a girl. Their marriage did not materialise due to objection from her family. Out of despair he murdered her, dotting

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54. A.I.R. 1953 Mad. 289 per Rack and Somasundaram, JJ.
55. A.I.R. 1963 Ori.33 per S.Rannan and G.K.Misra
56. A.I.R. 1967 Ker.99 per Anna Chandy and Madhavan Nair,JJ.
57. 1978 K.L.T. 177 per Kader and Narayana Pillai, JJ.

her several times. The plea of irresistible impulse failed. In Krishnappa B. Hanmale v. State of Maharashtra,[58] the accused attempted to kill his daughter-in-law by inflicting not less than 16 injuries on her for the apparent reason that his son did not persuade the mother to stay with him. The accused person used to get fits of insanity during the spell of which he felt as if somebody was beating him. His case was that it was during such spell that he had injured the victim. It was brought out that he was eccentric and mentally upset. The Court rejects the plea of irresistible impulse.

It is worthwhile to note that the Madras High Court in In re Ramaswami Ammal,[59] a case which came after the passing of the Homicide Act, 1957[60] in England allowing 'irresistible impulse' as a ground for diminished responsibility, surveyed all the old English cases where the defence was rejected and followed suit observing,

> "Most lawyers have consistently maintained that the concept of an 'irresistible' or 'uncontrollable' impulse is a dangerous one since it is impermissible to distinguish between those impulses which are the product of mental disease and those which are the product of ordinary passion, or where mental disease exists, between impulses that may be genuinely irresistible and those which are merely not resisted.

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58. 1979 Cri.L.J. 403 (Nagpur) per Lentin and Joshi, JJ.

59. A.I.R. 1959 Mad. 239 per Ramaswami and Somasundaram, JJ.

60. See Ch.III, n.13.

> They have held that such cases are not covered by the existing law and that it would be undesirable to enlarge the M'Naghten formula so as to exempt them from responsibility.
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> Yet although case-law and the general trend of legal discussions have firmly rejected Stephen's interpretations the courts have developed in practice an elasticity of the sort he was seeking ... whatever modifications of practice there may have been, the law has remained in substance unchanged since 1843." [61]

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 thing because they are driven by some uncontrollable, or irresistible impulse to do the wrong. Deep-seated emotional currents may move men to act more often than their realistic reason. However, courts in India have consistently adhered to the "right and wrong" test requiring the absorption of intellectual faculties.[62] Exemption from punishment will be given in cases of impulsive insanity only if the facts and circumstances of the case satisfactorie test of Section 84 of the Code.

Impulsive insanity comes close to enemy killing. Sidhneswari Devi v. The State of Assam[63] is a recent case

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61. A.I.R.1939 Mad. 329 at 342; also see Stephen's interpretation, Ch.II, p.37.

62. Sinha v. Chhotelal, A.I.R.1959 M.P.203 per Naik, J. at 205.

63. 1961 Cri.L.J. 1005 (Gauhati).

where the accused mother killed her three year old ailing daughter by hacking her neck. There was oral evidence of the accused having suffered from some mental derangement at times. The confession of the accused discloses that she killed her daughter because she was suffering from illness badly and the accused could not bear the trouble. The Court held that even if such type of killing can be described as mercy killing the accused would not be entitled to protection of section 84, of the Code. [64]

> "Thus mercy killing due to impairment of mental faculty is no exception under Indian law. None the less, it is well-known that insanities are of many type and the one which could come near mercy killing is what has been described in text book as impulsive insanity." [65]

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64. Id. [illegible] B.L. Hansaria, J. at 1006-1007. The Court referred to the concept of diminished responsibility in English Law S.2(1) of the Homicide Act, 1957 and said: "Though in English Law mercy killings are treated as manslaughter and this enables the judges to reduce or extinguish the sentence, there is no such provision in India parallel to S.2(1) of the Homicide Act 1957." See also G.Williams, Criminal Law : General Part (2 ed. 196) pp.557, [illegible] Roger Lang, "Mercy Killing and the C.L.R.C." (1982) N.L.J.76 at p.78. Criticising the view of the Criminal Law Reforms Committee that mercy killing posed problems of sentencing which could could not be resolved with in the conceptual and practical frame work of murder, the author suggests to divide mercy killers into those who are impulsively lead to the ending of the lives of their children to end their suffering and those who weigh rationally all the factors and decide it their duty to end the suffering of their children. The former clearly falls within S.2 of the Homicide Act. For the latter discretion is now given to judges and psychiatrists. But legislature should recognise mercy killing if genuine, as a ground for mitigation in general.

65. Id. at 1007. Without interfering with the life term the Court said:

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The Courts in India have taken note of the rigour of the law. They have expressed their helplessness since they have to apply the law as it stands, though legislative interference was called for right from the decision in [redacted] v. Lakshman Naidu[66] onwards. Consequently, the Courts have awarded in large majority of cases where the plea of impulsive insanity was taken only the lesser punishment for murder. In most cases courts have recommended executive clemency. But there are some extremely tragic exceptions to this practice. The first notable exception is In re Balasamala Ajayamma,[67] where the court awarded death sentence.[68]

(f.n. 65 continued)
"But since the conviction was prior to the insertion of S.433-A, Criminal Procedure Code, [redacted] will not stand in the way. The Government can allow remission since she had already undergone 7 years imprisonment . . . . The result is that we uphold the conviction though with a heavy heart." Id. at 1008.

66. (1886) 10 I.L.R. Mad. 213; also see, Kalicharan v. [redacted], A.I.R. 1948 Nag.20.

67. A.I.R. 1952 Mad. 289 per Somasundaram, J.; also see [redacted] v. [redacted], supra, n.35 per Rajamani, J. at 37.

68. A.I.R. 1952 Mad. 289. In cases of multiple murder of this kind where an accused is clearly not insane in the sense that he did not know what he was doing, but in the present case where he clearly knew what he was about, the mere absence of motive, the apparent senselessness of the murders and the fact that he murdered persons in his own family in cold blood can furnish no extenuating circumstances which we can take into consideration in mitigation of the sentence. In such circumstances, the Courts cannot take upon themselves

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Insanity due to hunger

In re Kulandai Thevar,[69] the accused was hungry as he did not take food for the while day. When he was in that fatigued condition, he was accosted by a Muslim. He cut that man with an aruval and ran; when people chased him he ran amuck and cut and killed four children found on the way and injured others. The reason ascribed to the senseless and terrible act of his was that he was hungry, and none of the relatives supported him and that therefore, he did all these on account of anger caused by hunger. He was held guilty.

Insanity due to Physical weakness, Pain or Fear

Can physical weakness or moody and silent state of mind be treated as sufficient to attract the exemption from liability? The High Court of Kerala answered in the negative in State v. Madhavan Pillai.[70] The accused murdered

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(f.n.68 continued)

the responsibility of recommending a comparatively short period of imprisonment for a man who has once been a victim to homicidal frenzy of this description and exposes other innocent persons to similar attack after his release from prison. In cases of this kind the law must take its course, and the only sentence a criminal court can pass is the extreme penalty.

69. A.I.R. 1950 Mad. 59.

70. A.I.R. 1958 Ker. 80 per Kumara Pillai and Madhavan Nair, JJ. per Ei.

his wife, hurt his daughter and attempted to commit suicide. The motive alleged was flimsy. The accused was not invited to the marriage of his wife's sister. He forbid his wife from attending the marriage. But the wife stealthily arranged a golden ring to be given to her sister. This infuriated the accused. His physical weakness which made him more often than not moody and silent was not accepted by the Court as sufficient to exempt him from liability.

In Sarita Chandra v. State,[71] while a three year old child was playing in the village street, the accused came out of his house brandishing an axe and gave a sudden blow with its sharp side on the neck of the child killing it instantaneously. It came in evidence that the accused was having severe pain on account of his left pain and fore-arm being swollen, he was not having proper sleep and at times he did not take food. The mother's evidence showed that he was not insane but showed certain mental aberration, about four to five days prior to the occurrence, like talking incoherently and talking to himself. The Court held him liable.

Insomnia

Insomnia or sleeplessness may be a cause and sometimes the result of mental disease or insanity. Mere sleeplessness

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71. A.I.R. 1969 Ori. 102, see G.K. Misra at 103.

even for prolonged period cannot constitute legal insanity. In some cases the prolonged sleeplessness was considered an additional ground for inferring insanity[72] and in some others it was neglected.[73] In In re Kunhambu v. State,[74] the appellant who was a displaced unemployed person living with his wife and three daughters in a one-room house, murdered his wife at night while she was sleeping. Witness said that he was not getting sleep for several days. According to the accused he had no sleep for the last eight months. The Court held that, where all that was established was that the accused was suffering from insomnia or prolonged inability to sleep which might have brought about nervousness of the mind and where after the murder he ran away when a hue and cry raised, discarded the blood stained clothes and attempted to remove blood stains from his body, he is not entitled to the plea of insanity. [75]

Puerperal insanity

This is a form of mental derangement occurring in women soon after delivery. It is said that is due to the

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72. Ramma v. Emperor, A.I.R. 1946 Nag. 221.

73. Ramasubbiah v. Emperor, A.I.R. 1949 Nag. 66; The State v. Ramachandra Reddi, A.I.R. 1953 Ori. 33; Sardar v. State, A.I.R. 1957 Cal. 108; In re Kunhambu v. State, A.I.R. 1955 Mad. 13.

74. A.I.R. 1955 Mad. 13.

75. Id. per Shah. C.J. and Bani, J. at p.16.

effect of lactation.[76] In re Kunnathi Ammal[77] is an instance where the Madras High Court discussed the position of puerperal disorder. The Court quoted from an authority.[78]

> "Puerperal insanity is the condition of insanity which follows child-birth and is doubtless referable to the action on the brain by toxaemi of pregnancy. A woman with puerperal insanity may manifest the condition after child-birth and it may take a great variety of forms the most common of which is mania, sometimes of the homicidal type."

The Court said[79] though it was possible that the accused was suffering from some sort of puerperal disorder, there was

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76. See infra, nn.78, 79.

77. A.I.R. 1959 Mad. 239.

78. Id. at p.245. Gonsalves, Varma, Helpern and Umberger, Legal Medicine Pathology and Toxicology, 2nd ed. (U.S.A.) p.935.

79. Ibid. The Court also quoted from Taylor's Principles and Practice of Medical Jurisprudence, VII ed. Vol.I, p.385.

> "The puerperium, pregnancy, lactation, and other affections of the female generative organs are known occasionally to produce a mental condition in which a mother may not be responsible for her acts; puerperal mania is frequently associated with homicidal violence inflicted on a child. The killing of the child is usually either the result of a sudden fit of delirium or a sudden impulse with a full knowledge of the wickedness and illegality of the act. The legal test of responsibility can be applied to such cases only on the assumption that insanity already exists. Women have been known to ask that the child may be removed, but afterwards gained and opportunity for killing it. Such cases are distinguished from deliberate child-murder by the fact that there is no motive, no attempt at concealment, and no denial of the crime. In this connection the merciful provisions of the Infanticide Act should be borne in mind."

no expert examination or collection of evidence in the light of medical knowledge on the same. No specific defence had been set up. So it could not guess that it was a case of puerperal insanity constituting a valid defence under Section 84 of the Code. [80]

In Shanti Devi v. State, [81] a mother killed her one year old daughter by cutting her throat with a razor in broad daylight inside a room. There was evidence of insanity of the accused before and after the murder. According to one doctor she was suffering from maniac depressive psychosis. According to another doctor she was suffering from schizophrenic psychosis, an acute mental illness. She was talking incoherently, had auditory and visual hallucinations, was abusive, assaultive, throwing stones and trying to run away. In that state she was not able to understand what she was doing as also the consequences of her acts. The High Court acquitted her. The Court said that the absence of motive assumed not only unusual importance, but was also almost conclusive and of crucial importance in a case where a mother murdered her child, and that too, a child of such a tender age. In such cases, the act speaks for itself as the act of a mad woman; the act itself is intrinsically the

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80. Ibid.
81. A.I.R. 1968 Delhi. 177.

the chief evidence of insanity. Her mental stage at the time of the murder is all the more evident and further conclusive of insanity,[82] in the absence of preparation, or of attempt at concealment and escape or of any feeling after murder.

Pyromania

There is another type of impulsive insanity where the perpetrator will be affected by a strong tendency to set fire to things without having any motive or preparation. This is known as pyromania. In Ratanlal v. The State of M.P.[83] the appellant set fire to the Khaliyan belonging to another person. On being questioned he said, "I burnt it and do whatever you want". The psychiatrist to whom he was referred reported that the accused appeared to be a person of unsound mind in terms of the Indian Lunacy Act 1912, because he remained depressed, he did not talk, he was a case of manico depressive, he suffered psychoses and needed treatment. The accused was not well for two or three days before the incident. He used to sit moodily. He used to do whatever he thought, he used to lock his house, his children remaining hungry outside the house; he used to set fire to his clothes and house, he did not talk on that day, but he was not taken to the hospital.

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82. Id. per Das and Ismail, JJ. at 160. The disease of puerperal insanity was alleged in the case.

83. A.I.R.1971 S.C.778.

The trial court accepting the medical report and taking into account the absence of motive and the behaviour of the accused on the day of the incident found him insane. But on appeal the Madhya Pradesh High Court convicted him. The trial court took note of the fact of the accused remaining in the Khalyan that he set fire for a long time till he was removed by the chowkidar. His own Khalyan being very near, he would not have taken the risk of it getting burned had he been sane. On further appeal the Supreme Court, agreeing with the trial court, found the accused insane holding that homicidal tendency is not necessary or only sign of insanity, more so when one is charged for the offence of arson and not murder. Tendency to set fire to one's own clothes and house is more than mere irrationality; it is prima facie proof of insanity. [84]

Schizophrenia

This type of mental aberration induces a kind of split personality. A schizophrenic patient loses contact with his environment. The concept embraces diverse clinical entities. They have in common the bizarre thought content, odd behaviour, detachment with word reality and

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84. Id. per Sikri, J. at 780; V.Bhargava and I.D. Dua were also on the bench.

presence of illusions, delusions and hallucinations. They will be unaware of their illness and disorganised in their social relationship. [85]

In Ankí v. State of Kerala, [86] the appellant, an unemployed person who used to illtreat his wife committed her murder andp pleaded insanity due to schizophrenia in defence. In the trial court he stated not to have remembered anything. He gave the evidence of a doctor who treated him for schizophrenia 9 months prior to the incident and also of an Ayurvedic physician who treated him for 'vadanmattam' 6 months prior to that. The symptoms which the doctor noticed were the following. He had no inclination to secure any employment. He was loosing all initiative. He was just drifting. His touch with reality was very low. He was living in fantasy and his ideas were poor. His sleep was not satisfactory. He took life easy and was easily led or misled The doctor said that there was 'something fundamentally wrong with the accused'. The Court held him guilty because the circumstances of the case showed that the accused knew the nature of his act and knew that he had done something wrong and was prepared to suffer the consequences. The evidence of the doctor according to the court would at the most show that the accused was not mentally a normal person. This cannot amount to legal insanity. [87]

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85. Waltheim, Mental Disease as a Criminal Defence, (1954), p.16.
86. 1960 K.L.T. 1116.
87. Id. per Govinda Menon, J. at 1118.

Zailal v. Delhi Administration,[88] is a case decided by the Supreme Court against the accused inspite of strong evidence of his previous and subsequent insanity. Facts need detailed discussion. The appellant entered the neighbour's house and inflicted five stab injuries on his daughter aged one and a half year. The child died in the hospital. The appellant, an employee of the railway was having a history of abnormal behaviour and eccentricity. Almost a year before the occurrence he was examined by a psychiatrist who found that he exhibited symptoms of acute schizophrenia and showed disorder of thought, emotion and perception of external realities. He was labouring under some delusions. He was put on a drug named largactil and was given convulsive electrotherapy treatment. Then he was cured, joined duty and was normal till the day of occurrence. On the day of occurrence, the accused complained of illness and took medicine and went to the office but gave leave application and left the place at 11.20 a.m. and did all the mischief near about 1.45 p.m. At 2.45 p.m. he gave intelligent answers to the enquiring officer.

After medical observation for a week the doctor noted that the appellant was indifferent to his surroundings and personal cleanliness. He was pre-occupied in his thoughts, muttering to himself, making meaningless gestures, losing track of conversations, giving delayed and repetitive answers and unable to give a detailed account of incidents leading to his arrest. Perhaps desiring a lunatic the psychiatrists noted that he had a relapse of schizophrenia and

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88. A.I.R.1969 S.C.15.

and was suffering from disorder of thought, emotions and loss of contact with realities. The trial started only after 1 year and 3 months of the incident.

In spite of all these evidence and long history of mental disorder caused by schizophrenic attack the Court held him guilty. The Court observed that 'the defence witnesses do not say that even during these two periods the appellant was incapable of discriminating between right and wrong or of knowing the physical nature of the acts done by him". The question according to the Court was whether the appellant was suffering from such incapacity at the time of commission of the acts[89] as to be unable to distinguish between right and wrong or to know the nature of the acts done by him.

The State v. Ramniwas Jeenu,[90] is a case where insanity caused by schizophrenia was raised as a defence. The accused killed the wife of his neighbour. The neighbour had involved in a law suit with the wife of the accused and

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89. Id. ~~xxx~~ Bachawat, J. at 16. The Court referred to James D. Page's Abnormal Psychiatry, Ch.XI, pp.236-261 and Modi's Medical Jurisprudence and Toxicology, 14 Ed. p.349-401 and said that schizophrenia is a general term referring to a group of severe mental disorder marked by a splitting or disintegration of the personality. The most striking clinical features include general psychological disharmony, emotional impoverishment, dilapidation of thought process, absence of sociological regard, delusions, hallucinations and peculiarities of conduct.

90. A.I.R. 1970 Goa 1.

obtained a prohibitory order. This acted as the motivating factor for the murder. On the day of occurrence, the accused started pelting stones at his neighbour's house and attacked him when he came out. The accused attacked with a dick the wife of the neighbour causing severe injuries. She died in the hospital. He also threw stones at the police constable who came from the vicinity hearing the noise. He gave even a knife blow to the police who tried to catch him from behind. Finally he was overpowered, arrested and tied with ropes and taken to hospital. He was later taken to mental hospital and was discharged only after 7 months. He pleaded ignorance of the events and adduced no evidence on his behalf. According to the medical witness[91] he suffered from schizophrenia for about six months prior to his admission to the hospital. The trial court acquitted the accused on the ground of insanity caused by schizophrenia. The High Court confirmed the acquittal and said,

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91. Ibid. According to him, the duration of schizophrenia was normally for weeks or even years together. On some occasions during this period the patient might become violent. He also said that there are lucid periods. When one has the attack of schizophrenia he is guided by hallucinations and delusions. He is not then in a position to distinguish right from wrong or capable of knowing the nature of his acts. The witness also added that after the attack ceases the patient can recollect what he had done. Id. at p.3.

". . . when a patient is having an attack of schizophrenia not infrequently he attacks those against whom he had grievances, real or imaginary. He considers that he is persecuted, when in fact he is not. It is a case of impulsive insanity. He was at that time a man at his/worst, little above animals." 92

Somnambulism

Somnambulism is the unconscious state known as sleep-walking and it is an automatic movement by the perpetrator without the necessary will. In re Parvathi Ammal[93] is a case where the Madras High Court agreed with the finding of the trial court in holding that somnambulism had not been established as a matter of fact. However, the Court considered the question whether this will amount to insanity contemplated under Section 84 of the Code.

A question was raised in that case as to the responsibility of the somnambulist for acts committed during the fit, on the ground that what is done in the fit being often only the accomplishment of a project formed while awake, he ought to be held responsible. According to the Court,

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92. Id. per V.S.Jatkar, J.C. at p.4. Finding this a case of sudden impulsive insanity caused by schizophrenia delusions and hallucinations the court observed, "In Modi's Medical Jurisprudence and Toxicology different kinds of schizophrenias have been described. As will appear therefrom, a patient suffering from schizophrenia has delusions which are bizarre in nature. There is often impulsive and senseless conduct on his part as a result of hallucinations and delusions. The patient of whom is in a state of wild excitement, is destructive, violent and abusive. He may impulsively assault anyone without the slightest provocation. The delusions are of a persecuting nature ... " Ibid.

93. A.I.R. 1959 Mad. 239 per Ramaswami, J. at 241.

this is a gratuitous assumption that could not be seriously entertained till facts are advanced in its support. If such a question would arise, it ought to be shown that the somnambulism was not feigned and that the accused was subject to it. After surveying a number of medical authorities, [94] the court came to the conclusion that though there is no decided case law on the point, somnambulism, if proved, will constitute unsoundness of mind contemplated in the section.[95]

From the foregoing discussion of the decided cases it can be seen that various psychiatric forms of mental disorders have not been fully recognised by courts as sufficient for exemption from liability. A gap remains between psychiatrically existing forms of medical insanity and legally recognised forms.

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94. Ibid. The Court quoted Modi's Medical Jurisprudence and Toxicology, Ed.12, p.299.

> "This is an abnormal mental condition and means walking during sleep. In this condition the mental faculties are partially active and are so concentrated on one particular train of ideas that a somnambulist is capable of performing most remarkable and impossible piece of work, which would have baffled his intelligence during his waking hours. A somnambulist may thus solve a very difficult problem or may commit theft or murder. A person who is the victim of a somnambulistic habit has generally no recollection of the events occurring during the fit after he wakes. In some cases he remembers the events of one fit in subsequent fit and follows them with exact precision, though he forgets them in the normal state.
>
> Somnambulism forms a very good plea of defence for exemption from criminal responsibility, if it can be proved that the accused committed the offence during the fit ... "

95. Ibid.

CHAPTER VII

INTOXICATION AND INSANITY

It is common knowledge that alcohol and intoxicating drugs will affect the working of the brain and the mind. Acute intoxication may lead to insanity. Such insanity will be recognised in law as a defence to a criminal charge provided the insanity reaches such a stage that the offender becomes incapable of knowing the nature of his act or that he is doing what is either wrong or contrary to law.[1] Courts in India have come across, two types of situations involving insanity due to intoxication, namely, (1) alcoholic intoxication and (2) intoxication due to ganja smoking or use of other drugs. Apart from the general provision on insanity, the Code has special provisions[2] on these types.

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1. Bagdev v. State of Bengal, A.I.R.1956 S.C.488 per Chandrasekhara Aiyar, J. at 491; Bhikhu v. Delhi, (1956) 4 Cri. L.J.88 at 89 (Allahabad) per Mukerjee's and Aikman, JJ. at 88-89; Bachhuwath v. State, A.I.R.1957 All 667 per Roy, J. at 670-71.

2. Ss.85 and 86, Indian Penal Code 1860.

   Section 85: "Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will".

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Intoxication amounting to insanity

A question may arise whether the general exemption of insanity will include drunkenness and drug addiction. Among many decisions on this point, an eastern Calcutta decision, Emperor v. Khaleka Ahun,[3] is notable. It was a case in which the accused made a fatal blow on the deceased boy, with absolutely no motive whatsoever. The blow was unprovoked and unpremeditated, there being no quarrel or dispute of any kind between them. There was evidence to the effect that the accused was addicted to excessive use of opium resulting in intemperate habits. For some days before and after the incident he was behaving in an irresponsible manner. The trial court and the High Court acquitted the accused finding his state of mind to be falling under the general exemption of insanity in Section 84 of the Code. The High Court did not bother to look into the fact whether his drug intake was voluntary

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(f.n.2 continued)

Section 86: "In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will".

3. (1902) 29 I.L.R. Cal. 493.

or involuntary and whether the case fall under section 85 of the Code. The observation of the court is notable:

> "The only doubt in our minds is whether the case falls under section 84 or section 85 of the Indian Penal Code. Under section 84 unsoundness of mind producing incapacity to know the nature of the act committed or that such it is wrong or contrary to law is a defence to a criminal charge, but by section 85 such incapacity is no defence, if produced by voluntary drunkenness. If however, voluntary drunkenness causes a disease which produces such incapacity, then section 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 section 85". [4]

A later case, EMPEROR v. Hanta,[5] was also decided on the same lines. The accused, a sadhu, was suffering from delusions brought about by charas and bhang. He suddenly killed a boy who was playing on the ground. He killed the boy with a view to getting the blessings of goddess Kalki. The High Court upheld his conviction finding that though insanity caused by intoxication due to drug could be pleaded as a defence it had not reached in the present case a degree sufficient to fall within section 84 of the Code.

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4. Id. per Prinsep and Stephen, JJ. at 495, 496.
5. (1906) 4 Cr.L.J.88 at p.96 (Allahabad) per Banerji and Aikman, JJ. at 98-99.

Mere drunkenness cannot be pleaded as excuse for crime. But a state of mental unsoundness produced by alcohol can be pleaded as a defence, provided it can be established by proof that it satisfied the legal test of non-responsibility so as to fall within Section 84 of the Code.

The general principles propounded in the above two decisions were held to be unduly strained in favour of the accused and, was therefore rejected in Vithoo v. Emperor.[6] The appellant was charged for murdering his wife. He took the plea of insanity owing to excessive ganja smoking. The court relied on a sort of Brandies brief[7] and said,

> "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 many which the effect of alcohol usually do not ... there may be hallucinations ... some times accompanied by strong emotional excitement and even violent delirium ... . This extremely temporary form of insanity must be clearly distinguished from the 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, 86". [8]

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6. (1912) 13 Cr.L.J. 164 (Nagpur); also see King Emperor v. Zinnuri Khan, A.I.R.1933 Cal.460; Public Prosecutor v. Ramalingam, A.I.R.1948 Mad. 196.

7. Ibid. It relied on not only the report of Inquiry Commission on Ganja but also on an expert work on Medical Jurisprudence, namely, Taylor's Principles and Practice of Medical Jurisprudence.

8. Vithoo v. Emperor, (1912) 13 Cr.L.J.164 (Nagpur) at p.165.

According to the Court one hunk of ganja smoking leads only to temporary effects. The victim just passes off for a few hours. It is not even temporary unsoundness of mind. It is nothing more, or less, than intoxication. It affords no excuse to the accused unless the intoxication is involuntary.[9] Even addiction to ganja and wine will not absolve the accused from liability. A comparatively recent decision of the Allahabad High Court, Lakshmi v. State[10] is illustrative.

According to old conception drinking is immoral and bad.[11] If a crime is committed on intoxication the liability

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9. Ibid. The Court followed the case of Queen Empress v. Saikharam, (1890) 14 I.L.R.Bom.564. In that 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, the Court held, did not, however, indicate that the ganja smoking had so weakened the mind of the accused as would absolve him from liability, the circumstances under which a murderer may be absolved from criminal responsibility being the existence of delirium tremens induced by habit of taking intoxicating things.

10. A.I.R.1959 All. 534 per Beg, J. at 536; for facts of the case see supra, Ch.IV, n.31.

11. Aristotle said drinking itself is a moral wrong and so crime committed after intoxication should be doubly punished. The Hippocrus rule prevailed in common law till the early part of the nineteenth century though Coke and Blackstone argued, with no success, not to hold insanity as an aggravation. Hale, Hawkins and Stephen all argued that voluntary drunkenness should not be a

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was aggravated. Nanoom Singh v. Crown[12] illustrates this. A music performance was going on in the village at 10 o'clock at night. The appellant arrived and asked the performers to stop the music and to disperse. The performers refused. The deceased spoke belittling the appellant. In a hot temper the appellant left the scene. He reappeared, shortly afterwards, armed with a knife. He struck the deceased a blow, on the head, with it. The deceased fell to the ground. The appellant gave two more blows. Taking into consideration the dangerous nature of the weapon used, the vital part hit and the number and extent of injuries inflicted, the trial court held that the appellant struck the blow with deliberate intent to kill the deceased. The appellant was convicted but with the lesser of the punishments. The fact that the appellant was in a state of intoxication at the time he committed the offence was considered as a mitigating factor for imposing the lesser penalty. The High Court disagreed with this reasoning. Enhancing the punishment to death penalty the High Court said,

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(f.n.11 continued)

> defence from the practical point of view because of the likely misuse of allowing the defence. See Jerome Hall, "Intoxication and Criminal Defence" 57 Har.L.Rev. 1045 at 1045-1046. Also see R.U. Singh, "History of the Defence of Drunkenness in English Criminal Law", (1933) 49 L.Q.R. 528 at pp.535-542.

12. A.I.R. 1926 Lah. 928.

> "It is a maxim of English Law that voluntary drunkenness does not take away responsibility of any kind and, indeed, the older judicial authorities considered it rather an aggravation than otherwise. The rule is now qualified to this extent, that unless 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." 13

Influence of Beard's case

Harvan Singh was decided after the decision of Director of Public Prosecutions v. Beard[14] in England. The English decision laid down the general principle of alcoholic inebriety. In the Beard's case respondent ravished a girl of 13 years of age. For facilitating rape he placed his hand upon her mouth to stop her from screaming, at the same time pressing his thumb upon her throat with the result that she died of suffocation. On a defence of drunkenness, the trial court directed the jury that the defence could only prevail if the accused by reason of

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13. Id. per Viscount, J. at p.429. The Court added, "Any doubt which there may have been on this subject is removed by the judgment of the House of Lords in Director of Public Prosecutions v. Beard". [1920] A.C.479.

14. [1920] A.C.479 per Lord Birkenhead, C.J. Other Lords who heard the case were Viscount Haldane, Lord Dunedin, Atkinson, Sumner, Buckmaster and Phillimore.

drunkenness did not know what he was doing or did not know that he was doing wrong. On a verdict of murder by the jury he was sentenced to death. The Court of Criminal Appeal quashed the conviction and reduced it to manslaughter on the ground of misdirection. In appeal the House of Lords reversed the verdict of manslaughter to murder and laid down three propositions. [15]

(i) Insanity whether produced by drunkenness or otherwise, is a defence to the crime charged,

(ii) evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent, and

(iii) evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mindwas affected by drink so 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.

The present law in India on alcoholic intoxicty was

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15. Id. at pp.500-508.

formulated in Bamaiah v. Emperor.[16] The point that arose for consideration was the extent to which drunkenness could be pleaded in mitigation of the offence. The Court adopted the three propositions in Director of Public Prosecutions v. Beard[17] and laid down the law in India.[18] On the facts the accused was held to be aware of what he did and so responsible for his acts.

The three propositions in Beard[19] were accepted by Supreme Court in Basdeo v. State of Pepsu.[20] Infuriated at the refusal of the boy to give him a seat for a lunch after a marriage ceremony, the accused very much drunk and intoxicated, shot the boy dead. Although the accused was under the influence of drink, his mind was not so obscured by the drink to be unable to form the required intention. The

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16. A.I.R.1937 Mad. 306. A drunken brawl took place in the house of the deceased person. The accused, the deceased woman and her husband were involved. The accused snatched a lathi from the son of the deceased and dealt a fatal blow to the deceased woman on her head. The death was instantaneous. There was evidence of more blows than one. There was motive. The accused ran away after giving the blows. The defence was that the accused was in such a state of intoxication that he was entirely unaware of what he had done and what happened in the house of the deceased.
17. Supra, n.15.
18. Bamaiah v. Emperor, A.I.R.1937 Mad.306 per Curiam and Pollock, JJ. at 307.
19. Supra, n.15.
20. A.I.R.1956 S.C.488 at 490.

Court held that the offence was not reduced from murder to culpable homicide not amounting to murder by reason of Section 86[21] of the Code.

On the question of 'knowledge' and 'intention' for purposes of Section 86 of the Code, the Supreme Court opined that so far as 'knowledge' is concerned, the same knowledge must be attributed to the intoxicated man as if he was quite sober. But so far as the 'intent' or intention is concerned, it has to be gathered from the attending general circumstances of the case, with due regard to the degree of intoxication. Was the man beside his mind altogether for the time being? If the answer is 'yes', then, it is not possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his acts. This position has been expounded by Mussal in the following words:

> "There is a distinction however between the defence of insanity in the true sense caused by excessive drunkenness and the defence of drunkenness which produces a condition such that the drunken man's mind becomes incapable of forming a specific intention. If actual insanity in fact supervenes as the result of alcoholic excess it furnishes as complete an answer to a criminal charge as insanity induced by anybother cause.

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21. [illegible], n.2.

> But in cases falling short of insanity evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent, but evidence of drunkenness which falls short of proving such incapacity and merely establishes 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 act." 22

This statement has found approved in Beasley v. State of Assam.[23]

Is there a distinction between the defence of insanity in the true sense caused by excessive drunkenness and the defence of drunkenness which produces a condition that the drunken man's mind becomes incapable of forming specific intention? Insanity, whether supervening as a result of alcoholic excess or induced by any other cause, furnishes a complete answer to a criminal charge. But in cases falling short of insanity where evidence of drunkenness merely establishes that the mind of the accused was so affected by drink that he more readily gave way to some violent passion, the presumption that man intends the natural consequences of his acts is not rebutted. In Pakhanath v. State [24] the appellant, a police constable on patrol duty

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22. Russel on Crime, 10th ed. p.63.
23. A.I.R.1956 S.C.488 per Chandrasekhara Aiyar, J. at 491.
24. A.I.R.1957 All. 667.

was charged and convicted of the offences of murder and attempt to murder by shooting. The accused was under the influence of drink at the time of the commission of the offence. But the drink was not administered to him by his fellow companions without his knowledge or against his will. It was disclosed in evidence that though he was incoherent in talk and at times staggered, he was capable of moving himself independently and talking coherently as well. The trial court held him guilty of murder. The conviction was upheld by the High Court. Making a distinction between alcoholic insanity and voluntary drunkenness, the court said,

> "Drunkenness makes no difference to the knowledge with which a man is credited and if a man knew what the natural consequences of his acts were he must be presumed to have intended to cause them. Section 86 of the Indian Penal Code deals with the question of the knowledge presumed by an accused person at the time he commits the offence and leaves quite open the question of intention. On the question as to how far drunkenness is an excuse for a crime, the proper test is that laid down in the case of Director of Public Prosecutions v. Beard. ... In the present case the evidence discloses that insanity did not supervene as the result of alcoholic excess ... voluntary drunkenness can therefore offer no excuse for the commission of the crime." [25]

A person to be saved under the plea of intoxication should prove that he was deep in drinking and lost all his capacity to reason. Following Beard[26] the Kerala High

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25. Id. ~~xxx~~ Roy. J. at 670, 671.

26. Supra, n.20.

Court said in Mammukoya v. State of Kerala,[27]

> "It is only in cases where it is proved that the prisoner was in such a condition of drunkenness that his reason was 'dethroned' and was incapable of forming any intention, that the defence of drunkenness would be available ... . The degree of intoxication is the criterion. Was the man besides his mind altogether for the time being? If so it would not be possible to fix him with the requisite intention. In the present case, the accused though drunk has not gone so 'deep in drinking' as not to know what he was about." [28]

In another Kerala decision, Pathumma v. State,[29] the accused who was drunk was leading his cattle through the path way. He asked the victim, a boy, to make way for him. The boy refused. The accused gave a blow. It was fatal. After the blow the accused summoned for his aid which showed his awareness of the wrongfulness. The Court said that the accused was not so much drunk as to be incapable of forming the intention to kill. He was held responsible. [30]

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27. 1969 K.L.J. 623. The appellant who was drunk caused the death of the deceased by stabbing him with a knife. The stabbing took place after a quarrel between the two for the reason of the deceased not paying for the toddy drunk by the accused. The accused stabbed the deceased from behind in an opportune time when he was preparing toddies for sale and he stabbed him again twice on the chest and the hand.

28. Id. per Anna Chandy, J. at 625.

29. A.I.R. 1960 Ker. 120.

30. Id. per Anna Chandy, J. at 122.

Involuntary intoxication - a myth?

There are cases where the accused is given drinks by somebody. In some such cases may not get the benefit of the plea of intoxication. In order to raise successfully a plea of intoxication the act of drinking must not be out of his own conscious volition. It must be on compulsion by some outside agency by overpowering or paralysing the will of the accused by overt physical acts. Mere persuasion acting upon incentive has never been considered as an adequate excuse. Imposition of drinks on young, inexperienced or weak minds by calculating adults of superior strength of mind or will is also not an excuse. On this view, if friends or relatives persuade a person to drink a little more than he can reasonably do, he cannot complain that he was made to drink against his will. In Jaimaran v. State of M.P.[31] the accused drank liquor at the persuasion of his father to alleviate pain. The court held that it cannot be said that the administration of liquor to him was against his will. The court observed on the question of 'will' appearing in sections 85 and 86 Penal Code.

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31. A.I.R. 1960 M.P. 242. The appellant was charged for murder and sentenced to life imprisonment. He used an axe for inflicting six injuries and a stick for the other two. Four of the axe injuries and the two lathi injuries were on the head.

"In the context in which the word 'will' has been used in the section, the mental movement constituting the act must be compelled by the immediate force of the unfettered will, i.e., by free will as opposed to a threat of force acting on the mind. In the latter case, it cannot be said that the act was dictated by the free will. So if some one seizes my hand and by superior force compels me to strike another, there is no act on my part ... . Similarly if by threat he compels me to strike another, the act done may be mine but having been performed in duress it cannot be said to have been performed of my free will as my mind did not go with the act and consequently it is an act performed 'against my will'." 32

The distinction between voluntary intoxication and involuntary intoxication and the limiting of the defence of insanity only to cases of involuntary intoxication is subject to the same criticism which the English law is subjected to.

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32. Id. ~~ibid~~ T.P.Naik, J. at 243-244. The court quoted with approval the following observation of Baron Alderson in ~~Rex~~ v. Meakin, (1836) 173 E.R. 131 at p.132.

"If a man chooses to get drunk, it is his own voluntary act: It is very different from a madness which is not caused by any act of the person. That voluntary species of madness which it is in a party's power to abstain from, he must answer for. However, with regard to the intention drunkenness may perhaps be adverted to according to the nature of the instrument used. If a man uses a stick, you would not infer a malicious intent so strongly against him if drunk, when he made an intemperate use of it, as you would if he had used a different kind of weapon; but where a dangerous instrument is used, which, if used must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party."

The position in English law is that where specific intent of an offence is necessary for liability involuntary drunkenness becomes important and it will serve as a mitigating factor. Jerome Hall, after examining a number of decided cases establishes that the category of involuntary intoxication is a myth or nonexistent thing.[33] Many instances where the defendants were compelled to drink alcohol against their will have been held as cases of voluntary intoxication. Probably only administration of alcohol by sheer physical force and threat is considered as involuntary intoxication.[34] Not only there is confusion about the interpretation of the concept of 'voluntary intoxication' ... but the category of offences which requires specific intent for liability also is not clear. According to Hall, it must be recognised that all inebriates are not abnormal; some are simply criminals who drink excessively, not victims of drink driven to crime and they should be penalised. So a sound criticism does not require wholesale repudiation of the existing law especially of the basic principles of culpability.[35]

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33. "Intoxication and Criminal Responsibility", (1944) 57 Harv.L.Rev.1045 at p.1054.

34. Ibid. See also Parker, "Criminal Law, Mens Rea, General Principles: Intoxication as a Defence" (1977) 55 Can.Bar.Rev. 691 at p.702.

35. Id. at p.1076.

The learned author suggests[36] certain reforms in the law of penal responsibility of intoxicates. The general rule concerning voluntary drunkenness should be limited to normal experienced intoxicates. Formulation of the exculpatory doctrine in terms of negating 'specific intent' should be entirely eliminated. The rule should be expressed not in terms of 'lack of intent' but in terms of 'lack of understanding of the ethical quality of the act and of ability to control'. The general principle of penal responsibility requires that normal persons who intentionally or recklessly commit harm should be punished. Drinking is not usually followed by intoxication. Intoxication does not necessarily lead to commission of crime, consequently normal persons who commit crime while grossly intoxicated should not be punished unless they had the knowledge that their drinking habits would lead them to commit crimes. In such cases it can be said without doubt that they are reckless if they drink liquor and kill a human being. They should be held liable for manslaughter and hospitalisation may be tried in necessary cases.

The above view is a parallel to the attempts at creation of a special offence of dangerous intoxication. The suggestion has received the attention of the Committee

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36. Id. at pp.1083-1084.

on Mentally Abnormal Offenders in England.[37]

It is a settled principle of criminal law that a person who forms an intention to commit a crime and then takes alcohol or drugs in order to give him courage to commit the crime cannot plead intoxication as a defence even though his alleged crime may require proof of specific intent.[38] This may be considered as an exception to the general rule of criminal law that mens rea should coincide in point of time with actus reus.[39] This position can be justified on the grounds of social policy though there is some illogicity and inconsistency in deciding the types of cases which require specific intent for conviction.[40] That is what the House of Lords did in R v. Majewski.[41] In Majewski the accused who was drunk assaulted a police constable on duty. To assault a police constable or public servant on duty was a statutory offence under English law. The offence required no specific intent. The Court held

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37. Report of the Committee on Mentally Abnormal Offenders (1975), Cmnd. 6244, paras 18.51, 18.59.

38. Attorney General for N.I. v. Gallagher, [1961] 3 All E.R.299.

39. Smith and Hogan, Criminal Law, (4th ed. 1978), p.61.

40. See Ashworth, "Reason, Logic and Criminal Liability", (1975), 91 L.Q.R.102 at pp.112-119 and 129-130; Dashwood, "Logic and the Lords in Majewski" [1977] Crim.L.R.532 and 591.

41. [1977] A.C. 443.

that self induced or voluntary intoxication did not negative mens rea. Defence of intoxication is available only if the offence required the existence of a specific intent. Lord Salmon said in his majority judgment.

> "I accept that there is a degree of illogicity in the rule that intoxication may excuse or extenuate one type of intention and not another. This illogicality, however acceptable to be because the benevolent part of the rule removes undue harshness without imperilling safety and the stricter part of the rule works without imperilling justice. It would be just as ridiculous to remove the benevolent part of the rule (which no one suggests) as it would be to adopt the alternative of removing the stricter part of the rule for the sake of preserving absolute logic. Absolute logic in human affairs is an uncertain guide and a very dangerous master." 42

Another Law Lord said during the course of his majority judgment in Majewski.

> "If a man on his own volition takes a substance which causes him to cast off the restraints of reason and conscience, no wrong is done to him by holding him answerable criminally for any injury he may do while in that condition. His course of conduct in reducing himself by drugs and drink to that condition in my view supplies the evidence of mens rea, of guilty mind certainly sufficient for crimes of basic intent. It is a reckless course of conduct. The drunkenness is itself an intrinsic, an integral part of the crime . . . " 43

The effect of the decision of the House of Lords in Majewski is to restrict the availability of the defence of self-induced intoxication to crimes of specific intent.

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42. Id. at pp.483-484.

43. Id. per Lord Elwyn James, L.C. at p.451.

Even in those extreme cases where the intoxication is so severe that it constitutes a state of automatism the defence is not available if specific intent is not an ingredient of the offence.

Majewski has been a guiding light to a recent decision of the House of Lords. In Metropolitan Police Commissioner v. Caldwell[45] Lord Diplock interpreted the words of Lord Elwyn Jones in Majewski as authority for the proposition that self-induced intoxication is no defence to a crime in which recklessness is enough to constitute the necessary mens rea.[46]

Developments in retrospect

The foregoing discussion[47] is a survey of the judicial view of some of the forms of mental disorders pleaded in different fact situations. It is evident that, whatever be the form of mental disorder, the perpetrator will not be

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44. For a criticism of Majewski and other decisions on the point see Eric Colvin, op.cit.; B.J.Mitchell, "Is Majewski's Loss Gallagher's Gain", (1981) N.L.J.595; A.C.E.Lynch, "The Scope of Intoxication", [1982] Crim. L.R.139; R.D.Mackay, "Intoxication as a Factor in Automatism", [1982] Crim.L.R.146.

45. [1981] 1 All E.R. 961.

46. Id. at p.967.

47. Contained in Chapters V, VI and VII.

entitled to exemption from punishment unless the test of Section 84 of the Code showing impairment of cognitive faculties is satisfied. This shows the clear distinction between 'legal' and 'medical' insanities.

The reason for the difference in medical and legal criteria of responsibility, appears to be that while the former concerns itself with the welfare of the individual, the latter concerns itself with the safety of society. The difference, however, goes even deeper. The legal concept is of function actuated by emotion and determined by intrinsic factors. In the legal mind every thing is consciously known; in the medical mind much is unconscious and unknown.[48] Nevertheless it has to be noted that since 1843, when the M'Naghten Rules evolved, medical views as to insanity have changed. Psychiatrists now agree that mind is a whole, a unity. A person cannot be mentally and emotionally diseased without his total personality being affected. The courts, however, have continued to use the old standards.[49]

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48. State v. Chhotelal, A.I.R.1959 M.P.303 per T.P.Naik, J at 305; also Ramchharan v. State, supra, n.47.

49. T.P.Naik, J. in Ramchharan v. State, A.I.R.1959 M.P.259 at p.260, quoting a psychiatric authority. On facts the Court held the accused guilty. Also see the text of infra, n.9 in Ch.XI.

Consequently, in the practical application of the principle enunciated in Section 84 of the Code, a more progressive attitude, in the light of recent advances in the medical science especially in the branch of psychiatry will have to be adopted for determining criminal responsibility of a person suffering from mental disorders. A difficulty is created sometimes. The accused may set up a false plea of 'unsoundness of mind' as a convenient excuse for the crime. [50]

The law presumes every one to be of 'sound mind' until the contrary is proved. The burden of proving that he is not criminally responsible for the crime by reason of his unsoundness of mind is on the accused. In cases where a person is subject to attack of insanity, but has lucid intervals, the law presumes unless otherwise proved, that the offence was committed in a lucid interval. [51]

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50. Ramkuleam v. State, A.I.R.1959 M.P. 259 at p.260. The court also said,

> "It may be observed that the plea is not usually put forward in cases involving minor offences, possibly because the criminal prefers to serve a short term of imprisonment rather than be certified to mental hospital for indefinite period of time".

51. Id. at 261; also see Chhotelal v. State, A.I.R.1959 M.P.203 at 205. The burden of proof of insanity is discussed in Part IV of the thesis.

The Court therefore pointed out in Randulana v. State[52] the importance of specifying the type of insanity, as classified in medical science, when raising the defence. The court said, [53]

> "The accused would, therefore, be better advised when setting up the plea of unsoundness of mind to specify the type of disorder because mental disorders have now been fairly well classified and their essential characteristics described in some detail in medical text books, which makes it easier to appreciate the evidence bearing on the point in record".

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52. Supra, n.50.

53. Id. at 261.

PART IV

INSANITY AND BURDEN OF PROOF

CHAPTER VIII

STANDARD OF PROOF

The burden of proof in insanity cases is an important factor. Discrepancies in the evidentiary rule and procedural matters may end up in grave denial of justice. Questions of proof, its degree or quantum are not dealt with in the Indian Penal Code. They form part of the Law of Evidence in India. On whom is the burden and what is the standard of proof required in India when the defence of insanity is raised in a criminal action?

As seen earlier, M'Naghten Rules provide the bases of the law of insanity in India.[1] In M'Naghten there is a presumption of sanity until evidence to the contrary is offered. The Rules not only introduced the much criticised right-and-wrong test but also placed on the defendant the burden of proving the requisite degree of the disease of the mind.[2] This stands in contra-distinction with the

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1. Ch.IV, pp.5, 6.
2. For discussion of the test see Ch.II. Both substantive and procedural aspects of the rule reflect a penal philosophy of the strict liability period when exemption from liability was generally discouraged and was allowed only in extreme cases. Thus in procedure the prosecution was strictly prohibited from raising the issue of insanity

contd...

common law doctrine of presumption of innocence of the accused. So far as the extent of burden of proof was concerned, the common law always maintained a distinction between the prosecution and the defence. The prosecution must prove the issue beyond any shadow of doubt. The defence need only prove a prima facie case on the preponderance of probabilities when the burden of proof is on the defence. On proving this prima facie defence case, the burden is shifted back to the prosecution. It has to discharge its onus of proving guilt beyond any reasonable doubt. [3]

The Indian law on the procedural and evidentiary requirements to establish the defence of insanity is modelled[4] on the English law as is the case of the substantive law governing exemption from liability on the ground

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(f.n.2 continued)
in the first instance. Unless and until the defence has put forward the issue of either by cross-examining the witness of the Crown or by independent evidence the prosecution was not permitted to present evidence about the mental unsoundness of the defendant. The judge also is prohibited likewise from raising the issue on his own motion. See R.Pannerselvam, "The Burden on the Insane", (1968) 1 Kerala University Law Journal, p.63 at pp.64-68; see also Glanville Williams, Criminal Law - General Part, (2nd ed. 1961), pp.468-483.

3. Woolmington v. D.P.P., [1935] A.C.462 per Viscount Sankey, L.C; Bratty v. A.G.N.I., [1963] A.C.1 per Viscount Caldecote, C.J., Humphreys, J. and Lewis, J.; Kamleshwar v. State of Bihar, A.I.R.1962 S.C.605 per Subba Rao,J.; See also Pollock & Mulla, Law of Evidence, (10th ed.), (1972), pp.4438-4440.

4. See Woodroffe and Amir Ali, Law of Evidence, (11th ed.), Vol.II, p.1703; see also Emperor v. Bhimsen, A.I.R.1941 All 408 per Iqbal Ahmad, C.J. at 407.

of insanity. Naturally, various interpretations of the M'Naghten rules cast a shadow over the Indian decisions, leading to considerable conflict on the scope and extent of the burden of proof on the accused. The evidential part of the defence of insanity is contained in the Indian Evidence Act, 1872. It reads: [5]

> "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exemptions in the Indian Penal Code, or within any special exemption 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.
>
> Illustrations
>
> (1) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.
>
> The burden of proof is on A. . . "

The general principle is that the prosecution should prove the guilt of the accused. Till the guilt is proved the accused is presumed to be innocent. The law has created another presumption, a rebuttable presumption, of sanity until the contrary is proved.[6] Indispensably, it

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5. The Indian Evidence Act 1872, s.105.

6. State of M.P. v. Ahammadullah, A.I.R.1961 S.C.998 at 1001; D.G.Thakur v. State of Gujarat, A.I.R.1964 S.C. 1563; Kalicharan v. Emperor, A.I.R.1948 Nag.20 at 23; State v. Hanlal Chandra, A.I.R.1951 Ass.79 at 82; Ramniwas v. State of M.P. A.I.R.1956 Nag.187 at 190; State v. Chhaganlal, A.I.R.1959 M.P.259 at 265; Ramlal v. State, A.I.R.1960 M.P.102 at 104.

is for the defence to prove the insanity of the accused. Even where the defence of insanity is interposed between the prosecution and the defence the burden of proof rests on the accused.[7] In other words the statutory provision relating to defence of insanity is treated as an exception to the general rule.

There was a controversy over the burden of proof, which prevailed for a long time among the High Courts. This controversy was about these conflicting points of view.

Heavy burden on the accused

One view, which was taken by the Allahabad High Court, is that the onus must be fully discharged by the accused by clear and cogent evidence.[8] Creation of a doubt in the mind of the court that insanity of such a degree as would exculpate the accused from criminal responsibility, existed would not be enough. The evidence ought to be sufficient for a categorical finding that at the time of the act the accused was of unsound mind to such an extent that he was incapable of knowing the nature or the criminality

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7. State of Madhya Pradesh v. Ahmadullah, A.I.R.1961 S.C.998, per Rajagopala Aiyangar, J. at 1001.

8. Panchu v. Emperor, A.I.R.1932 All. 233. For facts see Ch.IV, n.73.

of the act.[9] Where the evidence as to the state of mind 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. [10]

This view is based on the literal interpretation of Section 105[11] of the Evidence Act 1872, read with the definition of the term 'proved'[12] as found in Section 3

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9. Id. per Sulaiman, J. at 235. Justice Niamatullah wrote a separate judgment and said "On the record as it stands I agree with my learned brother in the order he proposes to pass, but note my feeling that the case merited closer examination that it received in the trial court and that the result might have been different if all avenues of information had been explored. A man, who pleads insanity owes to the, according to the prosecution witnesses, had shown abnormality of mind on previous occasions and the medical evidence tends in the same direction, cannot be expected to look after his defence as an accused in an ordinary case. It is the duty of the court to watch his interests with unusual degree of care and circumspection". Id. at pp.237, 238.

10. The same view was taken in an earlier decision of the Allahabad High Court, in Ghamda Lal v. The Crown, A.I.R.1954 All. 186 per Dwivedi, J. at 188.

11. For the text see supra, n.5.

12. It reads:
"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".

of this Act. In effect the burden placed on the accused does not substantially differ from the burden placed on the prosecution to establish its case. This is inconsistent with the cardinal principle of criminal law that the prosecution should prove its case beyond all reasonable doubt, whereas an accused has only to fulfil the definitional requirements of the word 'proved' as found in the Evidence Act.

A more rational view

The view taken by Nagpur High Court in Ramkishan v. State[13] seems to be more rational than the one mentioned above. The appellant, a police constable, was convicted and sentenced to death by the trial court for having committed three murders. He was on sentry duty at night. Two constables were fast asleep by his side. Without any provocation, the appellant allegedly shot them dead. He fled away from the scene of occurrence. He carried his rifle with him. Early in the next morning he met two women in a neighbouring village. He asked one of them to go away from him. He wanted to cohabit with the other. On her refusal to obey, he shot her dead. Perhaps this showed his full control over his cognitive faculties as he knew

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13. A.I.R.1956 Nag.187.

that privacy was needed for the purpose. He escaped from the villagers who chased him for some distance. Next day he was arrested from a nearby railway station after a struggle. Though a heavy burden was imposed the appellant was acquitted since the evidence was sufficient.

In the court's view, the burden placed on an accused who takes the plea of insanity is in the nature of the burden placed on a party in a civil litigation.[14] This is in line with the requirements of Section 105 of the Evidence Act and the definition of the word 'proved' thereunder. The benefit of doubt or the presumption of innocence is available only where the prosecution has not been able to connect the accused with the occurrence. It has nothing to do with the mental state of the accused, because along with the presumption of innocence the law has created another presumption, though rebuttable, that every person shall be presumed to be sane. The burden of establishing insanity which is on the accused cannot be discharged by creating a fleeting doubt about his sanity. At the same time the burden is not made unduly heavy by requiring the accused to establish his

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14. Id. [illegible] Nidhyasthulish, C.J. and R.Ramalakshmi Rao, J. at 189-190. This view was followed in Kochiyan v. The State, A.I.R.1957 M.B.104; State v. Chithalal, A.I.R. 1959 M.P.203; In re Rathinavelu, A.I.R.1960 Mys.48; Khan Ghani v. State, A.I.R.1961 Pat.325; Ambi Alias Ellammakutty Amma v. State of Kerala, 1960 K.L.T.1178.

defence beyond all reasonable doubt and to that extent it makes a minimal distinction between the burden of proof of the prosecution and that of the defence.

According to this view, the burden on the defence could be discharged by establishing facts and circumstances required for an affirmative finding. Proof is not to be as meticulous as that required of the prosecution in disproving the guilt or the complicity of the accused. The accused must establish his innocence. But he does not required to do it by evidence more cogent than a plaintiff or defendant is required to give in civil litigation. While the degree of proof required may not go higher than that, the burden is not discharged by merely creating a doubt about the guilty of the accused. The accused has to establish facts and circumstances from which the court may reasonably infer that he was, at the time of the act, by reason of insanity of mind, incapable of knowing the nature and consequences of the act. [15]

A liberal view

A more liberal view was taken by the Patna High Court in Kunla Singh v. The State.[16] The appellant contended

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15. Bhubhi Jha Vs State, A.I.R.1954 Nag.167 per Hidayatullah, C.J. and K.Narasimhan Rao, J. at 169, 170.
16. A.I.R.1955 Pat. 220.

one of his brothers and fatally injured another. It came in evidence that the appellant had developed insanity while he was at school and had been sent to mental hospital. After a brief spell of normalcy, this disturbance again aggravated and a few days prior to the occurrence he became uncontrollable. On the day of the occurrence his brothers had to chain him on his foot. He admitted to the committing magistrate that the assault on his brothers was motivated by their cruel treatment towards him on that fateful day. The conviction of the appellant was set aside.

The evidence adduced may fail to satisfy the Court affirmatively of circumstances bringing the case within the general exception pleaded. Still, according to the Court, the accused person is entitled to be acquitted. If upon a consideration of the evidence as a whole, a reasonable doubt about the sanity of the accused existed in the mind of the Court. He is then entitled to the benefit of the said exception.[17]

In this view, the burden on the insane accused is not heavy. The defence need not prove affirmatively beyond reasonable doubt that the accused was of unsound mind. Nor

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17. Ib., per Ahmad and Imam, J.J. at 213, 214. See Anon. P.44. The same view was taken by the Indian High Court in Bihari Lodh v. State, A.I.R.1957 Cal.168. This view was considered and apparently rejected by the Nagpur High Court in Ramkishan v. State of M.P., supra, n.13.

should it prove that by reason of unsoundness of mind he was incapable of knowing the nature and criminality of the act. The defence need only lay in evidence sufficient to raise the presumption of sanity of the defendant doubtful. The presumption is then thrown back to the original position. It has to discharge the onus beyond reasonable doubt. For this it has to prove that the offender was of sound mind and that he was capable of knowing the nature and criminality of the act alleged against him.

This view of the Patna High Court takes a pragmatic approach. It lightens the burden on the insane accused. The view also falls in line with the fundamental canon of criminal law that the prosecution should prove the guilt of the accused beyond any reasonable doubt whilst the benefit of any reasonable doubt in the matter should go to the accused. An Indian jurist[18] disapproves this view. According to him this view is unreasonable since it renders section 105 of the Evidence Act superfluous. It is submitted that there is nothing superfluous and unreasonable about the view taken by the Patna High Court. The words 'the burden is on the accused' under section 105 should not be taken to mean that he should himself prove it by

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18. K.N.Chopra, "Defence of Insanity in Indian Criminal Law," (1958) 7 J.I.L.I. 325 at p.360.

producing conclusive evidence. He can rely on any evidence on record. A man who is disabled in his cognitive capacities is in a disadvantageous position. Justice demands that we undue emphasis, by a presumptive construction, be given to the evidentiary rule. What the defence has to prove, in this view, is only that the presumption under section 105 of the Evidence Act against the prisoner that he was then not of unsound mind and that he knew the nature and criminality of the act alleged against him - is not sustainable on the evidence on record. In other words, the accused has only to demolish the aforesaid presumption laid down against him under section 105. He need not prove beyond reasonable doubt the opposite of that presumption. [19]

The ratiocination view:

The evidentiary burden in the defence of insanity came in for discussion in a number of cases before the Supreme Court.[20] The Court seized of the matter first in

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19. Kamala Singh v. Kim Singh, A.I.R.1955 Pat.309 at 314.

20. State of M.P. v. Ahmadulla, A.I.R.1961 S.C.998; [illegible] v. State of Gujarat, A.I.R.1964 S.C.1563; [illegible] v. The State of M.P., A.I.R.1966 S.C.43; [illegible] v. State of Maharashtra, A.I.R.1969 S.C.15; [illegible] v. The State of M.P., A.I.R.1971 S.C.778; [illegible] v. State of Maharashtra, A.I.R. 1974 S.C.2443.

State of U.P. v. Ahmadullah[21] The facts were as follows. The accused had ill-will towards his mother-in-law. He killed her. He went to her house at night. He had talk with him. This showed that he had planned the act. Climbing over a wall the accused stealthily entered the house. He cut the victim's throat, severed the head from the trunk and carried away and hid it. He admitted the facts before the police and the magistrate. He had stated with clear memory the manner in which the murder was committed and hid the head and the weapon.

Taking the plea of insanity at the trial the accused produced two medical witnesses. One was a private doctor who treated him for epilepsy two years before the incident. The other was superintendent of the mental hospital who examined him two months after the incident and found the accused to have suffered from epileptic insanity. This witness testified that 'at the first stage of the attack of a fit the patient becomes epileptic. that in the second stage the patient would have convulsions of hands and feet and in the tertiary stage becomes unconscious, and in the last stage the patient might do acts like sleep walking'. The third witness, father of the accused, also stated that the accused was in a disturbed state of mind in the evening

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21. A.I.R. 1961 S.C. 998.

of the day of occurrence and 'he had not taken food for two days' prior to the incident. In the subsequent recording of the incident he 'found that the accused was unconscious and that his hands and feet were shackled' and ' 22
'just then the police came there and took away the accused'.

The sessions Judge acquitted the accused. In quashing the acquittal the High Court said that the sessions Judge was satisfied that the defence has discharged the onus of proving that at the time of commission of the offence the accused was mentally so unsound not to know that the act was wrong or contrary to law. According to the High Court it was for the state to establish in appeal that the finding of the lower court was perverse and that there were compelling reasons why that decision should be reversed. The Supreme Court disagreed with the above view taken by the High Court, and said.

"The learned judges failed to appreciate that the onus in the judgment of the sessions Judge, by use of words in the explicit acceptance of the testimony of the doctor of the accused was, in accordance with well established principles and [illegible] on the prosecution to establish beyond reasonable doubt that the accused was not insane at the time of the commission of the offence. The prosecution failed to discharge this onus. Subject to limitations which are applicable in such circumstances could hardly be justified under any rule as to 'compelling reasons' for interference even according the existence of such a

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22. Id. at p.1000.

> rule. The error in the judgment of the High Court consisted in ignoring the fact that there was nothing on the record on the basis of which it could be said that at the moment of the act, the accused was incapable of knowing that what he was doing was wrong or contrary to law." [23]

The Supreme Court finally came to the conclusion that there was no basis in the evidence before the court for a finding that at the crucial moment when the accused cut the throat of the deceased, he was from unsoundness of mind incapable of knowing that what he was doing was wrong.[24] The expert evidence, according to the Court, was about the nature of the disease which the doctor stated the accused was suffering from, and did not relate to the mental condition of the accused at the time of the act. The proved facts of ill-will towards the deceased, the time of commission of the act i.e., a time when he could not be seen committing it, the extraordinary cunningness and attention employed in the act by taking a watch and stealthily getting over the wall, the sealed mood of the accused after the killing, were all held by the Supreme Court to be factors against the accused.[25] The principle to be evolved from the decision is that the presumption of sanity should

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23. Ibid. Per Rajagopala Ayyangar, J. (Emphasis added).
24. Ibid.
25. Ibid.

be rebutted by the accused by adducing evidence to the contrary and the burden of proof, where the defence of insanity is interposed, will rest on him. [26]

Ahmadkhan could not clear the confused state of law on the burden of proof of insanity. A shift in the burden was needed. This was found in D.C.Thakkar v. State of Gujarat[27] In this case the Court discussed the two views[28] held by the High Courts. Finally the Court seems to have preferred the liberal view[29] Accordingly, Section 84 of

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26. See supra, nn.13-25.

27. A.I.R.1964 S.C.1563. The appellant, after about one year of marriage, murdered his wife with multiple (not less than 44) injuries at night in the bedroom. There was evidence to the effect that he disliked his wife. His father deposed that the accused was getting fits of insanity regularly for some years and was insane for 2-3 days prior to the incident. After the murder, he did not open the door for a while. Then he came out of the room talking incoherently saying, "Why you killed my mother? Why you burned my father's house?" It was contended that he was under a hallucination that the deceased had murdered his mother and burnt his father's house and therefore he killed her in that state of mind although knowing that he was doing. He confessed to the police and the magistrate and exhibited them at their sight. The trial court convicted the accused and the High Court confirmed the conviction.

28. See supra, nn.14 and 16.

29. Supra, n.16. The view that proof of insanity can be elicited from the prosecution evidence itself was taken earlier in Bhagwan v. State, supra, n.9 and Kishori Singh v. State, A.I.R.1963 Rajas. p.165.

the Indian Penal Code[30] being an exception to the general rule, the burden under section 105 Evidence Act[31] of proving the existence of circumstances bringing the case within the said exception was held to lie on the accused. The Court is to presume the absence of such circumstances. That means, the accused will have to rebut the presumption that such circumstances did not exist. He has to place sufficient material before the court to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of the 'prudent man'. If the material placed before the court, such as oral and documentary evidence, presumptions, admissions, or even prosecution evidence satisfies the test of 'prudent man' the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of the judge as regards one or other of the necessary ingredients of the offence itself.[32] Restating the Indian law on the burden of proof in insanity cases, Justice Subba Rao, enunciated the doctrine in the following propositions:[33]

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30. For text see Ch.IV, n.1
31. For text see supra, n.5
32. R.M.Malkani v. State of Maharashtra, A.I.R.1964 S.C.1563 per Subba Rao, J. at p.1566.
33. Ibid.

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

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

(3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence adduced 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, 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 decision[24] of the Supreme Court in McNaghten may appear to settle the law on the point. Courts are

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24. The decision was criticised by a commentator, who said that the Supreme Court simply followed the Patna view which...

no sense does to interpret section 105 of the Evidence Act differently. Thus the burden of proving the guilt in the sense of having committed the offence with the required mens rea is always on the prosecution in criminal cases. This original burden of the prosecution is not affected in insanity cases by the rebuttable presumption of sanity. The accused can rebut the presumption of sanity. It is sufficient if he can prove his defence on the preponderance of probabilities or on evidence satisfying what is called a prudent man's test as in civil litigation.[35] Even creating a reasonable doubt in the mind of the court regarding the ingredient of mens rea will amount to that proof. [36]

Lack of standard

By reversing the Patna view[37] the Supreme Court may be said to have lessened the burden of proof on the accused

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(f.n.34 continued)
and points out that none of the three decisions referred thereunder (Maqbul Hussain v. R.P.P., [1946] A.C.468; Bhuboni v. U. Pegu, A.I.R.1947 Rang.83 and Rattigan v. Emperor, A.I.R.1941 All.402) dealt with the plea of insanity; all these decisions dealt with other exceptions. K.M.Sharma, Mens Rea, pp.370, 371.

35. Proof on preponderance of probabilities or evidence satisfying a prudent man's test will be sufficient to prove propositions in civil cases.

36. D.G. Vaidya v. State of Bihar, A.I.R. 1964 S.C.1563 per Subba Rao, J. at 1568.

37. Supra, n.16.

the raises the defence of insanity. But still the law is unsatisfactory. This is so because there is uncertainty about the standards by which court considers one as insane. When will a reasonable doubt be raised in the mind of the court about the unsoundness of mind of the defendant? The answer depends on the standard applied by the court to decide one as insane. If the standards vary, the results would also vary. Uncertainty about the standards to be applied becomes a grave defect in the law in this context. The terms 'reasonable doubt' are capable of varied applications. An examination of the application of this principle, evolved in R.C. Thakkar[28] to the facts of the very same case, is interesting.

The appellant murdered his wife in the bedroom, early in the morning by inflicting not less than forty-four injuries. It was sought to be proved that the appellant was getting fits of insanity regularly for some years and became insane two or three days prior to the incident. On the basis of the report of the medical officer to whom he was referred for observation, the trial judge postponed the trial for one year until he was declared fit for trial and capable of making the defence. The defence sought to prove 'intermittent

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28. supra, n.27. But in Hemla Singh, supra, n.16, on which the decision was based, the appellant was acquitted.

insanity' from the 'ghastly manner' in which the 'unarmed, unintended woman was murdered'. The trial judge and the High Court rejected the plea of insanity. In the Supreme Court, it was contended for the appellant that the High Court should have held that the accused had discharged the burden placed on him and that even if he had failed to establish the facts conclusively, the evidence adduced was such as to raise a reasonable doubt in the mind of the judge as regards one of the ingredients of the offence, namely, criminal intention, and therefore the court should have acquitted him for the reason that the prosecution had not proved the case beyond reasonable doubt. The Supreme Court[39] held that reliance could not be placed on the evidence tendered by the prosecution witness and that the plea of insanity and the evidence in support of it were the result of an after thought. The Court concluded that it has not been established that he was insane nor the evidence sufficient even to throw a reasonable doubt in their mind that the act might have been committed when the accused was in a fit of insanity.[40]

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39. Id., at p.1570. The time of the murder, the presence of the weapon in the bedroom, his initial reluctance to come out till the police came, the closing of the door from inside, his dislike to his wife and the motive of getting rid of her all were held by the court to be factors against the appellant.

40. Ibid.

It is also interesting that in [redacted] v. [redacted][41] a case alleging of triple murder, where the Patna High Court insisted on a heavier burden on the defence, the accused was acquitted on the ground that insanity was sufficiently proved. In [redacted], the defence sought to prove that the defendant was suffering from insanity at the time of commission of the offences. As evidence of insanity the defence pointed out the manner of commission of the multiple murders, i.e., the suddenness of the acts, the attendant violence and cruelty and the absence of motive. The main emphasis, however, was on the prior insanity of the appellant. It was traced to a head injury received by the defendant years before the occurrence. Many witnesses including his father testified that the appellant had lost his faculties of reasoning due to shock and injury to the brain. As a result he used to wander about in the neighbourhood indulging in filthy habits and abusing people. It was also said that he had to be chained during day time and locked up at night for some days. The doctor who observed him, however, reported that he was 'not found fit to be certified as a lunatic', but was only 'an inadequate psychopath'. The trial judge came to the conclusion, on this evidence, that the 'cognitive faculties of the accused were intact and that he knew the nature and

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41. A.I.R.1954 Nag.167; for facts see [redacted], n.13.

quality of his act' and convicted him.[42] The High Court, on appeal, re-examined the evidence and entered a finding that 'he was affected by insanity sufficient to make his act not punishable'.[43]

On the other hand, evidence relating to the previous insanity was relied on by the defence in Jamila Singh v. State.[44] In this case, unlike in Ambikkan, the act of the appellant itself was not indicative of the mental unsoundness of the appellant. No medical report was produced to prove the appellant's pre-existing mental unsoundness. The medical officer who examined him after arrest testified that he did not show any sign of violence during his stay in jail, but had a 'dull and vacant look'. At the committal and trial court proceedings he was found to be perfectly sane and to be in a position to understand the proceedings of the court. The trial judge found, on these facts, that the appellant was of unsound mind but held that when he killed his brothers 'his cognitive faculties were not completely paralysed so as to bring the case within the exception laid down in the

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42. Id. at pp.189-190. The doctor could not be examined as he was not available though his handwriting was proved by his assistant. The High Court held the report as not proved against the appellant as he had no chance to cross-examine the doctor who made the report.

43. Id. at 192.

44. A.I.R.1955 Pat. 220. For facts see supra, n.16.

section.[45] The latter part of the finding of the trial court was held erroneous and the conviction and sentence were set aside by the Patna High Court. According to the court, "a prisoner is entitled to be acquitted if upon a consideration of the evidence as a whole a reasonable doubt is created in the mind of the court whether the accused person is or is not entitled to the benefit of the exception". [46]

Conclusive evidence of prior insanity of the accused was not produced by the defence in any of these cases. In both Hamida Bibi and Ramkishan oral evidence was produced to prove prior insanity and was accepted. In R.C.Thakkar, the testimonial evidence to the same effect was not accepted. It can be seen that 'substantial insanity' gathered from antecedent and subsequent events relying on the oral testimony of prosecution and defence witnesses was accepted in Hamida Bibi and Ramkishan but not in R.C.Thakkar. So also, in R.C.Thakkar, the Gujarat High Court favoured the admission of evidence tendered by the prosecution witnesses whereas, the Supreme Court found it untrustworthy and unreliable. Obviously the standard applicable is still in a third state.

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45. Id. at pp.211-212.

46. Id. see Ahmad and Imam, JJ. at p.214.

Burden of Proof - A Criticism

The M'Naghten rules failed to evolve a rational basis for exempting mentally deficient persons from criminal responsibility. The need for therapeutic treatment which the mentally deficient really deserve cannot be ignored. The Indian law following the M'Naghten rules recognises only complete impairment of the defendant's cognitive faculties as ground for exemption.[47] There is no enquiry into the degree to which the defendant's self-control is impaired. Nor is there any allowance for the partial impairment of the cognitive faculties. Law turns its back on the advancement of the science of psychiatry. This deficiency in the substantive law finds its reflection in the evidentiary rules. Even high degree of moral or mental deficiency is held insufficient to exempt some abnormal offenders from punishment, though some enlightened judicial opinion found such deficiency as a ground for mitigation of punishment. [48]

In the light of the Supreme Court decisions also the nature and extent of the burden of proof remain uncertain

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47. See Ch.IV.

48. It may be noted that the Madras High Court convicted the accused applying the penal sanctions invariably in all insanity cases, the only exception probably being that of In re Punnaiki Ammal, A.I.R. 1959 Mad.239, where a recommendation to Government for clemency was made.

and ambiguous. It is true that in D.C.Thakur,[49] the Supreme Court reduced the burden of proof. But the Court did not forsake the defence in the application of this principles. According to the Court, though proof of insanity can be elicited from the prosecution evidence itself, there was no sufficient evidence in the case, including the testimony of the prosecution witnesses, to create a reasonable doubt on the insanity of the accused at the time of the commission of offence.[50] In Jalali,[51] the motive for the killing of the one and a half year old infant victim, namely, the accused suspecting a male member of the victim's family making illicit approaches to the accused's sister, weighed very much in upholding the conviction of the accused. In this case the Supreme Court accepted the evidence of schizophrenic attack suffered by the accused ten months before and three weeks after the commission of the offence.[52] But the fact that immediately after his arrest the accused was not subjected to medical examination for ascertaining the state of mind

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49. A.I.R.1964 S.C.1563 per Subba Rao, Dasgupta and Raghubar Dayal, JJ.

50. See the text of [illegible], s.33.

51. A.I.R.1969 S.C.15, per Hidayatullah and Grover, JJ. He was declared insane and trial started only after one year and three months.

52. See id. at 16. In Gopal Ayyar v. The State of M.P. (A.I.R.1974 S.C.216) also the accused, a Sikh convict was not subjected to medical examination at all. No weight was attached to that factor.

of the accused on the day of occurrence did not weigh in the mind of the court. Interestingly the failure of the police and the magistrate in not examining the accused during the time of custody in jail was the main reason for exonerating the accused in Indian jail.[53]

A close look at the fundamentals unearths legal tangle. The presumption of sanity of the accused at the time of the commission of the offence, on the basis on which the prosecution proceeds, is a procedural rule. Its aim is to lessen the evidentiary burden on the prosecution on account of the fundamental presumption of innocence of the accused in a criminal trial. If the presumption of innocence is allowed to have its full logical extension the prosecution will have the initial duty to prove the sanity of the accused defendant in every case. Consequently, if the prosecution is always to adduce affirmative evidence of the sanity of the accused, law enforcement may be unduly delayed and may become ineffective. So, on account of public policy, law has created a presumption that every one charged with an offence is sane. The prosecution is

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53. A.I.R.1971 S.C.778. "The police made it impossible for the appellant to prove his mental condition at the time of his arrest by keeping him in custody for such time not having him examined medically by jail doctor". Ibid ~~per~~ Sikri, Bhargava and Dua, JJ.

relieved from the duty to introduce evidence, in the first instance, about the sanity of the defendant.[54]

Viewed from this angle, is the burden of proof in insanity cases an exception to the general rule that the prosecution has to prove the guilt of the defendant? The

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54. This presumption forms part of public policy from an erroneous consideration that it is possible to feign insanity and that merely doubtful evidence of insanity would fill the country with wrongly acquitted criminals. It is belied by the present day state of psychiatric knowledge and medical practice. A learned author says:

"Normally it would in most cases be extremely difficult for an impostor to mislead a competent psychiatrist. If court room experiences seem to throw doubt on the statement, it is not so much because the science of psychiatry is insufficiently advanced to provide reliable diagnosis, as it is that legal procedure, using partisan experts stating their opinions through answers to carefully worded questions of counsel, frequently fails to present a true picture of the diagnosis.

The ordinary mildmyer does not realise that the various forms of mental disorder has their characteristic symptoms, and that displaying a hodge-podge of symptoms will not only fail to convince, but will rather clearly reveal his malingering. Like the centipede who tried to find their hilly endeavour by carefully giving together the body of one leg, the wings of another, etc., the malingerer may in his ignorance give together the head of a chimpanzee, the wings of a schizophrenic and the legs of a manic, but the pseudo may be easily demolishable by the psychiatrist as a humbug".
Wolfgang, Appeal Dilemma in a Criminal Defence, (1964), p.56.

wording of the provision[55] in the Evidence Act may indicate that it is so. The basis of this assumption which has got statutory expression in the Indian law of evidence is the ascent of the M'Naghten rules. This rule should not be treated as an exception to the general rule. Instead, the rule itself is subject to the fundamental principle of English criminal jurisprudence, which is also the foundation of our law, that the prosecution has the burden of proving conclusively the guilt of the defendant. Viscount Sankey, L.C., said in Woolmington v. Director of Public Prosecutions[56]:

> "No matter what the charge or where the trial the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained".

It is true that Lord Chancellor Viscount Sankey has excepted from his proposition the defence of insanity and any statutory exception.[57] But that exception stems in

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55. Section 105. For the text of the section see ante, p.5.

56. [1935] A.C. 462 at 478.

57. Viscount Sankey, L.C. said in Woolmington, id. at pp.479-476:

> "M'Naghten's case stands by itself. It is the locus classicus on the law bearing on the question of insanity ... . It is quite exceptional and has nothing to do with the present circumstances. In M'Naghten's case the onus is definitely and exceptionally placed upon the accused to establish such defence ... the only general rule that can be laid down as to the evidence ... is that throughout the web...

his statement is an *obiter dictum*. The defence of insanity was not the main consideration in *Woolmington*.[58] So there is nothing which prevents the courts from progressively interpreting the burden of proof on the insane offender by clearing the cloud used in this sense which has been created by the *Woolmington* decision.

The prudent man's proof under section 105 of the Evidence Act has to be seen in this light. There is a qualitative difference between the evidentiary requirement under section 105 and the provisions[59] in sections 101 to 104. The former deals with the burden on the accused defendant of proving exemption from criminal liability, the latter sections deal with burden of proof in general. Pointing out this difference a distinguished writer says.

> "It may be noted that the evidentiary rules contained in sections 101-105 do not directly deal with the content of the burden of proof (standard of proof as it is sometimes called) but only with

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(f.n.57 continued)
> called upon as a defence, must be established by the defendant ... . It is not necessary to refer to M'Naghten's case again in this judgment, for it has nothing to do with it".

He further said at p.481.

> "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 also to any statutory exception".

58. Ibid. It is clear from his own statement preceding that 'it is unnecessary to refer to M'Naghten's case again in this judgment for it has nothing to do with it'.
59. Ss.101 to 104 of Indian Evidence Act, 1872.

> the person of whom the burden lies. As to the latter aspect the general rule is that the proof of any particular fact lies in the party who alleges it, not on him who denies it. As to the former, there is an impressive line of authority to show that in civil cases the burden on the plaintiff or on the defendant will be discharged if he establishes his case by a preponderance of evidence; but in criminal cases the burden on the prosecution will be discharged only if he proves conclusively the charge against the defendant. The burden to prove the guilt of the defendant beyond doubt from beginning to end being on the prosecution any burden to be cast on the defendant must be different in nature and extent." 60

This writer is right when he further says that "the burden on the defendant, when he claims exemption from liability on any ground, should be limited to the introduction of evidence to raise the issue" and "the burden of proof in the proper sense (i.e. the burden of establishing the guilt) should lie with the prosecution from first to last".[61] There are more compelling reasons to put still lighter burden on the defence in insanity cases because an insane defendant is prima facie incompetent to plead insanity. Indeed the very plea, if taken, would establish his sanity.[62] So the High Court of Gauhati rightly said in a recent decision, Abdul Lahid v. The State of Assam[63] "It appears to us an anomaly as to how the burden of insanity rests entirely on the insane".

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60. R. Pattenden, Insanity, at pp.76, 77.
61. Ibid; cf. Sharma, Mn. Sib, at pp.269-273 (see supra, n.18)
62. Sharma v. State of Rajasthan, 1960 K.L.T.157 per Subbarao and Asoka Chandy, JJ. at 164; Bhagwan v. Emperor, A.I.R.1925 Sau.108 per Shah, C.J. at 109.
63. (1965) Cri.L.J.1208 (Gauhati) per Lahiri, J. at 1207.

A NEW APPROACH

The approach taken by the Cuttack High Court in Abdul Latif[64] is a new and welcome one. There it emerged from the prosecution evidence itself that the accused was portrayed as a lunatic in the first information report. There was absolutely no motive. He was mad at the time of the occurrence. When his 'head became old' he did not know anything and he was bereft of reason or incapable of knowing the nature of his acts. After killing the young five year old child and throwing it to a pond 'he took meals and slept well'. This is an erratic conduct of a human being. He said to the witness that he had sent the child to God. Holding that the accused had discharged the burden and had established that he was oblivious of the upshot of his act which resulted in the death of a young saleem, the High Court raised some pertinent questions before acquitting the accused:

> "How is it possible for an insane person to prove insanity? If a person suffers from mental derangements at a particular point of time how can we expect him to 'play back' or 'reproduce' his mental functions of his brain only that by reason of unsoundness of his mind he was incapable of knowing that he was doing something that was wrong or contrary to law? How an insane person, a poor or ignorant person, can prove his mental incapacities just alludes". [65]

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64. Ibid.
65. Ibid.

The answer supplied by the court itself is thought provoking. It said, though justice should be dispensed 'according to law' and not by evolving new 'theory of justice' diverse from laws, it was not justice to demand proof of insanity from a person just recovered from mental derangements and to demand of him to establish his mental capacities at the crucial time. It may not be impossible to prove the requirements of section 84 of the Code by having the accused examined by a psychiatrist. It may be established only by preponderance of probabilities on the basis of some features gleaning from the conduct of the accused. Under the circumstances, the court held that the accused was entitled to the benefit of doubt.[66] The court tentatively noted the law concerning 'the burden of proof on a mal-disposed person' and continued to ask,

> "Is the burden exclusively on an insane and/or his relatives? Is the law so unreasonable, harsh and unjust?" [67]

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66. Ibid.

67. The court also said:

> "But section 105 of the Evidence Act appears to be somewhat harsh. In so far as proof of insanity is concerned, more so when the accused is an indigent and/or socially and economically handicapped person. However, we are to dispense justice according to law. Only the evidence can speak about the darkness or void of his mental faculties at the relevant time and surely nobody can enter inside his brain cells, examine the functioning, come out of it and support his case. A psychologist may be of some help. However in our poor India, to ask a poor Indian to get an opinion of a

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It is highly commendable that the court in Abdul Lahid turned to the soothing or humanitarian provision of law in section 6 of the Indian Penal Code[68] to ensure the humaneness, injunction and the illegic nature of the subsidiary rule. It held that this provision carves out or stands in the nature of a proviso to section 106 of the Evidence Act. It imposes an obligation on the court to consider the cause of exemption on the one in so far it relates to the burden of proving legal immunity on the essential element of 'special knowledge' envisaged in section 106 lawfully imposed due to mental derangement. All 'offences' under the Penal Code are subject to or governed by section 6 of the Code.[69] Chapter XII of the Code of Criminal Procedure commands the police officers to submit all the papers before a magistrate forthwith

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(f.n.67 continued)

> psychiatrist is perhaps asking for the moon ... . When the mental condition collapse so much so that they incapacitate the proof of 'knowing the nature of the act' or that in did something which was either wrong or contrary to law it is well-nigh impossible to prove the elements by direct evidence'. Ibid.

68. The section provides, "Definitions in the Code to be understood subject to exceptions. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision or illustration".

69. Ibid.

during the course of investigation. If the magistrate or the court finds the accused to be insane or having symptoms of insanity after having a look at him or a perusal of the records, he is obliged to remit him to a medical expert. He having pleaded him an insane in the first information report itself, the Court held that the assumption was that the prosecution had admitted his insanity at the time of commission of the offence or else the burden was on the prosecution to establish that the accused had feigned madness. [70]

The decision in Abdul Lahid is an excellent illustration of how a court can have a progressive outlook and can impart justice to the mentally handicapped persons within the limitations of the provisions of the law concerning insanity. But one is constrained to ask a relevant question. Can the mentally abnormal offenders safely be left to the mercy of the court? [71] It is in this context that the suggestions [72] in juristic circles become notable. One of the

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70. Supra, n.64.

71. Some decisions even of the Supreme Court would indicate that it is not. See Gopal Ariman V. The State of Bihar, A.I.R.1974 S.C.216. A fair criticism in jail is a handicapped person and the state failed in its duty to medically examine the accused and no weight was attached to this fact. Abdul V. Abdul Ahmadabadwalla, (A.I.R.1965 S.C.13). There was history of several attacks of schizophrenic psychosis and treatment at various intervals. He was declared insane after the crime and the trial was started only one year after, still he was convicted.

72. S.Parthasarathy, Supra, at p.77. He suggests a modification of the law on the evidentiary burden of the prosecution...

learned writer says.

> "Since a sound mind is essential to criminal responsibility, the prosecution must prove conclusively and beyond doubt that the defendant was mentally capable of criminal intent required to constitute the offence charged, as it must prove any other material fact. The presumption will be relieved from proving the guilty of the defendant in the first instance but when any evidence is introduced to show that at the time of the act, the defendant was not in such a mental condition as to be legally responsible, then the burden is on the defendant to prove beyond reasonable doubt all the elements necessary for guilt including the required mental condition". 73

It is true that by defining the extent of the burden on the defence and the prosecution on the lines suggested above, we are taking a definite step forward in 'the evolution of a surer basis for accounting the mentally diseased from criminal responsibility'. It is also true that the premises relevant in lessening the burden on the defence, to the utmost possible extent, namely, lack of adequate and competent representation in criminal trials, the inherent handicap of a mentally diseased person to raise plea of insanity apart from the inconceivable difficulties in

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(f.n.73 continued)

> and the defence in insanity cases by adding a sub-section to section 105 Evidence Act, dividing the burden of proof of the prosecution and of the defence.

73. Id. at pp.77-78. No direct support from the American Bills or the one accepted in the Model Penal Code of the American Law Institute - Tent.draft No.4, 1955 section 4.03.

establishing the same and the imbalance between the state and the accused from the beginning to the end of trial, are present in India.[74] But there is one more cogent factor applicable to Indian situations. That factor is the lack of adequate facilities for medical treatment in mental asylums. To whom the persons acquitted on the ground of mental abnormality go? They should get psychiatric and psychological treatment which they deserve after acquittal; they should also have the opportunity for correction and rehabilitation. Simply acquitting persons on 'some evidence' of abnormality will go against the social interest and the interests of these individuals themselves.

The real issue will be one of fixing the appropriate responsibility in each case depending upon the mental state of the offender at the time of commission of the offence and the circumstances under which he committed the offence. Recognition of insanity only in 'black or white' terms will not solve the problem. There are many situations in which the responsibility of the offender falls in between total lack of responsibility in clear insanity situation, under the M'Naghten Rules, and that of total responsibility. Psychiatric and psychological advancement in the field has

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74. Ibid.

to be called in aid. A reformulation of the evidentiary requirement in insanity cases has to be coupled with a reformulation of the procedural requirements after conviction or acquittal on the ground of mental abnormality. The law fixing responsibility and the treatment which he gets after either conviction or acquittal are inter-related. Suffice it to say, that the innovation in evidentiary burden suggested by Jurists can be buttressed with sufficient safeguards. This will prevent the land from being filled with acquitted criminals who successfully feign insanity. A minimum period of confinement and mental treatment should be made imperative after fixing their responsibility appropriately. This is especially so in cases where the disturbance is curable. This necessarily calls for a change, a welcome change, in law - substantive, evidentiary and procedural.

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CHAPTER IX

SUBJECTIVE CRITERIA OF PROOF

The state of mind of the offender at the time of commission of the offence is the most crucial point in the defence of insanity.[1] Does the determination of the state of mind of the accused depend on the subjective views of courts? Or, are there any objective standards for this? It depends on the facts and circumstances of each case whether the accused was in such a state of mind to be entitled for exemption from responsibility. The only guides are circumstances which preceded, attended and followed the crime.[2] Previous and subsequent conduct of the accused showing deliberation and preparation for the crime, desire for concealment or avoidance of detection, attempt for escape, motive, consciousness of guilt after the crime, offering false excuses or making false statements, previous and subsequent insanity of the accused are all factors to be taken into account in this

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1. State of U.P. v. Ahsanullah, A.I.R.1961 S.C.998 and Rajagopala Ayyangar, J. at 1002.

2. D.G.Thakore v. State of Gujarat, A.I.R.1964 S.C.1563 and Bhima Rao, J. at 1565, 1570; Ghantiram v. State, A.I.R.1960 Delhi 177 and Dua and Ismail, JJ. at 180; Tim Singh v. Chhatrali, A.I.R.1959 M.P.203 and Mehr, J at 25 P.205; M.M.Ismail Mohamed Pakrudin, A.I.R.1966 Mad.174 and Govinda Menon and Ramaswami, JJ. at 175.

determination.[3] The nature of the offence and the relationship of the accused with the victims may also become relevant in some circumstances. In this chapter an attempt is made to classify the criteria on which immunity can be proved.

Alternative nature of the crime

Whether or not legal immunity be inferred from the alternative nature of the crime has been examined in a previous chapter.[4] Looked from the point of view of evidence one has to ask the question whether a crime can be excused by its own atrocity or uncommon depravity. A positive answer would obviously be dangerous contemporarily. Defence of immunity upon arguments derived merely from the character of the crime is to be viewed with grave care and caution.[5] For the evidence on the knowledge or right

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3. Bangladesh v. Sheikh, A.I.R.1959 N.P.250 per Malik J. at p.251.
4. Supra, Ch.4 pp.77, 78.
5. Nagpur, Criminal Law of India, (4th ed. 1914), p.164.
"In cases of this sort no suspicion of immunity would rest upon the prisoner, apart from the crime, but from the character of the crime itself, its enormousness, violence, cruelty and atrocity, its apparent absence of motive or purpose, a suspicion is raised that the offender must have been insane at the time of the committal. A defence of this sort is generally set up, when the facts admit of no other, and it is usually met out with evidence of previous existence of eccentricity or violence

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of mind of the accused the Court has to look outside the act itself. [6]

In the absence of affirmative proof of insanity, the courts have not exempted alleged abnormal offenders from responsibility. Such offenders who did not escape belong to different categories - a father, being irritated at the noise produced by his own children, ending their threats;[7] a desperate and moody farmer attempting to destroy his boy whom he was very fond of;[8] a person killing his kith and kin for absolutely no reasons;[9] a tired and hungry man running amuck and killing four innocent children found on the way;[10] a young man stabbing his better half lovably and killing four of his sleeping children at midnight;[11] a mason, unemployed and annoyed

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(f.n.5 continued)
and suggestions of hereditary insanity or of former disease which might possibly have affected the brain. It is impossible to pretend how utterly unsafe it would be to admit a defence of insanity upon suggestions merely derived from the character of the crime".

6. [illegible] v. State of [illegible], A.I.R. 1972 S.C. [illegible]; [illegible] v. [illegible], (1886) 10 I.L.R.(Bom.) 213; [illegible] v. [illegible], A.I.R. 1960 Nag.66; Shaik v. [illegible], A.I.R.1961 Assam 79.
7. [illegible] v. [illegible], (1886) 10 I.L.R. (Bom) 213.
8. [illegible] v. Kadar Buksh Shah, (1886) 13 I.L.R. (Cal.) 686.
9. [illegible] v. Sadhu Singh, A.I.R.1937 Pat.263 at 266.
10. [illegible] v. [illegible], A.I.R.1960 Mad.388.
11. [illegible] v. [illegible], A.I.R.1958 Mad.268. In this shockingly motiveless case, though multiple murder with death sentence was confirmed, the sentence was not even reduced to one of imprisonment for life. This is an instance in which the justifiability of the legal presumption of sanity fails to be seriously questioned.

by his wife's disobedience, exciting and killing people, in a fury, including his wife and a kid;[12] another person annoyed by the misbehaviour of his wife brutally killing her and causing hurt to his daughters and attempting to commit suicide;[13] a hunter curiously and for no apparent sensible motive cutting the throat of his customer with a razor while shaving;[14] a father-in-law brutally attempting to murder his son's wife by inflicting on her not less than sixteen injuries;[15] a mill worker, just at the time of going to work, running amuck and giving blows to two persons sitting in their house, killing one and seriously wounding the other;[16] a person ripping open the chest of a one year old child killing her instantaneously[17] and a man ripping open the abdomen of the victim, his maternal aunt, and hanging the entrails in one hand and the sword in the other, saying 'Jay Kali, Jay Kali', the motive being her immorality and resultant ill repute to the family.[18]

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12. Kalidasaram v. Emperor, A.I.R. 1948 Mag. 20.
13. State of Kerala v. Kuttappan, A.I.R. 1958 Ker. 80.
14. The State v. Ramachandra Reddi, A.I.R.1963 Cri.33.
15. Kuttappan & another v. State of Pulimathikkara, 1979 Cri.L.J. 988.
16. Rahman Ali v. State, A.I.R. 1960 All. 233.
17. Bhimaji v. The State of U.P., A.I.R.1966 S.C. 3.
18. The State v. Kattaik Chandra, A.I.R.1954 Ass. 79.

In the absence of affirmative proof of insanity, the mere probability of the accused being insane at the time of the perpetration of the offence, as inferred from the nature of the offence, would not be enough to absolve him of criminal responsibility.[19] Insanity cannot be inferred from the manner of attack or number of injuries alone. The ferocity of the attack and the number of blows may perhaps reflect one's revengeful mood or the depth of the hatred and anger against the victim. Here will count his strokes when he commits a murder.[20]

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19. The Queen v. Dublin Commr. (1892) 20 W.R.70, per Fitzgerald and Morris, JJ. at p.71; Hammond v. Commonwealth, supra, n.9 per Rowland, J. at 364-367; Rhim Ganga v. State, A.I.R.1961 Pat.355. In the last mentioned case the accused murdered his wife and another lady for no apparent motive. Justice S.K.Prasad held at pp.357-358, "It is not enough for the defence to rely upon a mere possibility that the accused may have been of unsound mind at the time he committed the offence; but what is required is that regard being had to the previous history of the accused, his behaviour before or at the time of his act and his subsequent conduct, coupled with other circumstances, the Court should be in a position to hold that there was a reasonable probability that at the time when the offence was committed the accused was suffering from unsoundness of mind of the nature or degree mentioned in section 84, Indian Penal Code".

20. R.G. Reddy v. State of Orissa, A.I.R.1954 S.C.1963 per Bose, Jo. at 1971. The accused inflicted not less than forty four injuries on his wife Rhim Ganga v. State, 1970 I.L.R.1 Cut.177, per S.K. Mishra, J. at 180. In Hammond v. State of Maharashtra, (supra, n.13) Justice Mishra observed at p.406, "The number of injuries would have been a compelling factor

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But there may be some exceptional cases where it may not be possible to present positive evidence about the state of mind of the accused at the time of perpetration of the offence. In such instances courts have accepted the manner of attack and nature of the offence as conclusive evidence of insanity.[21] Muthiliamma v. State of Kerala[22] and Sunil Kumar v. State[23] are the best illustrations. In the former case, the following facts were in evidence. From childhood the accused used to suffer from epilepsy. During these fits he used to rush out of his house like a mad man and to fall down unconscious for sometime. The deceased

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(f.n.20 continued)
had the accused first succeeded in bringing himself within the exception of s.84, which he has wholly failed to do. Such a contention if countenanced, would be tantamount to giving a licence to a mere person to commit the most brutal crime and thereafter plead in exculpation his very brutality as ground for exception under s.84, Indian Penal Code."

21. Sunil v. [illegible], A.I.R.1948 Cath 179. A person, since the death of his wife and eldest daughter was in an abnormal condition. His father and others in the village made an attempt to disarm away his insanity. But he killed his two sons by severing their heads. The accused was acquitted.

22. A.I.R.1960 Ker.24. The accused, an epileptic patient, committed murder of his old, helpless mother for a flimsy reason that the food she served to him was of inferior quality. The prosecution contended that he had motive to commit the murder and that he had not proved that he was under the fit of epilepsy at the time when he perpetrated the offence. The attack on the deceased mother lasted for a long time. A billhook, a wooden pestle and a splint of fire wood were used for that. In reply to the old mother's request not to kill him, he said that she 'deserved something much than killing'.

23. A.I.R. 1960 Delhi 177.

mother had earlier noticed the signs of an approaching epileptic seizure on the day of the occurrence and told a witness about it. The Kerala High Court concluded that he did kill his mother during the fit of an epileptic insanity not knowing what he did. According to the court the complete absence of motive or provocation, the nature and multiplicity of weapons, the duration of attack, the maniacal fury with which the attack was delivered and subsequent conduct of the accused are all indications that the accused was acting under some insane impulse. [24]

Sushil Murmu v. State [25] is an unfortunate case of infanticide where a mother killed her one-year old daughter by cutting her throat with a razor. She had undergone treatment for manic depressive psychosis or schizophrenic psychosis. She had also auditory and visual hallucinations. She used abusive language and was assaultive. Setting aside the conviction of the accused the Delhi High Court held,

> "The absence of motive assumes not only unusual importance, but also almost conclusive and crucial importance in a case where a mother has murdered her child, and that too, a child of such a tender age as hers. As a matter of fact, in such case, the sole question for decision as the act of a mad woman; the act itself is ineluctably the chief evidence of insanity". [26]

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24. Daniel Kunnu v. State of Kerala, supra, p.28 per K.Sankaran, C.J. and Aiyar Chandy, J. at p.37.
25. A.I.R.1968 Delhi 177.
26. Id. per Dua and Ismail, JJ. at p.180.

Previous and subsequent conduct of the accused

Conduct of the accused showing preparation or premeditation for the commission of the offence often rules out the possibility of the accused being insane at the time of the offence. Thus, the extraordinary cunning manner in which the accused scaled over the walls to enter the house where the victim was sleeping, as also the preparation he had made in taking a torch at night to locate the deceased victim, was a factor which stood against the accused in his plea of insanity.[27] similarly, the presence of weapon in the bed-room where the murder was committed at midnight[28] and closing of the door,[29] were held strong circumstances against the plea. The accused approaching the deceased, catching hold of him unawares with a firm grip on his chin and plunging the dagger suddenly across his neck were all evidence against the plea.[30] so also is the evidence showing the accused

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27. State of U.P. v. Ahmadullah, A.I.R.1961 S.C.998.
28. D.G.Khaleel v. State of Orissa, A.I.R.1963 S.C.1063.
29. See also Shamlal Mali reported v. State of Madhya Pradesh, A.I.R.1978 S.C.1505; Hamid Ali v. [illegible] A.I.R.1967 Pat.322; In re Veerama [illegible] A.I.R. 1965 Mys.129; In re [illegible] A.I.R.1961 Mad.174. But this fact was not considered weighing against the accused in Hamid Hussain v. State, A.I.R. 1960 Kar.24.
30. [illegible] v. State of Punjab, A.I.R. 1967 Sup.98. In R.M. Malkani v. State, 1973 Cri.L.J.488, contd...

inviting the deceased victim, his wife, to accompany him to a jungle where she was killed, with a weapon the accused had kept with him.[31] The accused threatening either the victim or those who intervened before the commission of offence is also treated by courts as weighing against the possibility of accused's mental derangement at the commission of offence.[32]

Similarly conduct subsequent to the commission of the offence is also very much relevant, though not conclusive.[33] in the determination of the state of mind of the accused at the time of commission of offence. Hiding, attempting to escape immediately after the commission of

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(f.n.30 continued)
the accused father-in-law, at the opportune time when nobody else was there in the house, took duster of the family dicky for purpose and attacked the victim giving her 15 injuries. held guilty.

31. [illegible] v. The State, A.I.R.1965 H.P.68.

32. [illegible] v. The State of U.P., supra, n.29; [illegible] v. [illegible], A.I.R.1957 Pat.343; [illegible] v. State, 1960 M.L.J.1183; Hussain Bibi v. Emperor, supra, n.26; [illegible] v. [illegible], A.I.R.1970 Goa. 1. [illegible] has been considered in Hussain Emperor, supra, n.26.

33. [illegible] v. State of [illegible], A.I.R. 1973 S.C.2313. [illegible] observed, "The man dash that no motive was proved or that he made no attempt to run away when the door was broken open would not indicate that he was innocent", at 2315. Also see [illegible], A.I.R.1953 Mad.174.

the offence and resistance to arrest are strong circumstances indicating the guilty of the accused.[34] Concealment of the dead body or weapon, or otherwise attempting to destroy the evidence is another indication of guilty.[35] Words or other conduct indicating grief, fear, or consciousness of the wrongfulness or consequences of the offence may often be interpreted as negativing the plea of insanity.[36] In some cases the absence of such circumstances

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34. [illegible] v. [illegible] (supra, p.8) The accused tried to conceal the corpse of the deceased son and hid himself in the jungle. Also see [illegible] v. [illegible], A.I.R.1958 Cal.1; [illegible] v. [illegible], A.I.R. 1958 All 223. [illegible] v. [illegible], supra, p.20; [illegible] v. [illegible] (supra, p.20); [illegible] v. [illegible], A.I.R.1951, Sau.17; [illegible] v. [illegible], A.I.R.1959 All 134; [illegible] v. [illegible], A.I.R.1960 M.P.108; [illegible] v. [illegible], A.I.R.1960 Cal.222; In re [illegible], A.I.R.1960 Mys.48; [illegible] v. [illegible], A.I.R. 1960 Cal.108; [illegible] v. [illegible], supra, p.17 (the accused absconded for 8 years) and [illegible] v. [illegible], A.I.R.1960 S.C.18 (the man knew he had killed, claimed the gods and pointed stones as those collected there).

35. [illegible] v. [illegible], supra, p.8; In re [illegible], A.I.R.1960 Mad.570; [illegible] v. [illegible], supra, p.20; [illegible] v. [illegible], A.I.R.1960 M.P.109; [illegible] v. [illegible], supra, p.21; [illegible] v. [illegible], supra, p.24; [illegible] v. [illegible], A.I.R. 1961 S.C.705.

36. [illegible] v. [illegible], A.I.R.1960 Nag.66 (questioning the accused by the police the accused asked whether the inspector called him) [illegible] v. [illegible], A.I.R.1960 Mad.59 (the accused went to the police station, surrendered himself and produced the weapon); [illegible] v. [illegible], supra, p.2 (the accused was prevented to come out of the room till the village [illegible] came indicating him fear that he would be manhandled). But the fact that the accused did not

were held crucial and the accused was acquitted primarily on that ground. [37]

Motive

It is true that every sane man will be sufficiently motivated in his acts and omissions. But some time a morbid motiveless irresistible thirst for blood may induce a person to commit atrocious crime. One thing is certain. Insane people are incapable of rational action. They are incapable of motivated actions too. But, generally, this position does not solve the problems of the proof of insanity. In a criminal trial, failure to prove motive

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(f.n.36 continued)

appeal against conviction but was insisting that he be hanged even without trial was held not indicating full awareness of the illegality attracting responsibility but only a glimmering knowledge of illegality (Mst. Sikkan v. Chhotelal, A.I.R.1952 M.P. 252). The fact that the accused himself was not held mentally ill (Nanak v. Emperor, A.I.R.1948 Oudh.179). The fact that the accused believing Sarn a daimon, supposed the murder by the village god Ayenh (Ayenh Ayeh v. State, A.I.R. 1960 Ori.1) and the accused not disbelieving the daimon because a village councilor (Chhatrapati Singh v. Emp. A.I.R.1949 Cal.128) were held irrelevant for sub-division. Because of the different interpretation it was to S.84 of the Code. See Ch.IV, nn.13-14 and 20-21.

37. Shamlal Dass Vs. State, A.I.R. 1958 Delhi 177; Punjab Govt. Vs. Kesho, A.I.R. 1960 Punj. 247; Ram Bharosey, A.I.R. 1954 Nag. 256. Also see Sahib Singh Vs. Emperor, A.I.R.1935 Oudh. 143. There are also differing medical evidence.

does not necessarily mean that there is no motive for the crime. The circumstance of an act being apparently motiveless is no ground from which the existence of powerful or irresistible influence of homicidal tendency can be inferred. Justice Nidhyabhilash while he was the judge of the Nagpur High Court said 'motives exist unknown and innumerable which might prompt the act'. [28]

Insanity has to be determined independently of the lack of motive for the crime. Lack of motive can be called in only to support of the plea of insanity and not as the conclusive proof of it. In other words insufficient or no motive is not, in itself, sufficient evidence of legal insanity.[29] But it may be a factor, an important factor.

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28. [illegible] v. [illegible], A.I.R.1940 Nag.66 at p.76 The accused Nilkal had two wives as they failed to bear him a male child. He was not shown ill. His talk with the police went day indicated that he knew the criminality of the act. Also see Bibhu v. [illegible] A.I.R.1963 Ori.23 at 24.

29. Cases are a legion on this point. Shamlal Moti Bhawsar v. State of [illegible], A.I.R.1952 S.C.[illegible]; [illegible] v. [illegible], (1886) I.L.R.10 Bom. [illegible]; [illegible] v. [illegible], (1896) 23 I.L.R. Cal.[illegible]; [illegible] v. [illegible], A.I.R.1963 Jab.[illegible]; [illegible] v. [illegible], A.I.R.1958 All. [illegible]; [illegible] v. State, [illegible], A.I.R.1957 Pat.[illegible]; [illegible], A.I.R.[illegible] Pat.[illegible]; [illegible] v. [illegible], A.I.R.1947 Pat.[illegible]; [illegible] v. [illegible], A.I.R.1958 Mys.[illegible]; [illegible] v. [illegible], A.I.R.1960 Mys.[illegible]; [illegible], A.I.R.[illegible] Pat.[illegible]; [illegible] v. [illegible], A.I.R.1961 Ass.[illegible]; [illegible] v. [illegible], A.I.R.1961 Bom.[illegible]; [illegible] v. [illegible], A.I.R.1958 Bom.[illegible]; [illegible], [illegible]

contd...

to be taken into consideration together with the other facts and circumstances of the case, in determining the state of mind of the accused. [40]

In the application of the motive factor different decisions clash. Generally, in a case in which the sanity of the accused is called in question, motivation for the crime assumes unusual importance. When a man who has absolutely no rational motive commits a serious crime of murder, the plea of unsoundness of mind can be more easily established than in other cases. In some cases, an absolute lack of apparent motive along with other circumstances proved favourable to the accused. [41] But in some others a total absence of

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(f.n.39 continued)
A.I.R.1952 Mad.239; [illegible] v. State of [illegible], A.I.R. 1953 Pep.17; [illegible] v. [illegible], A.I.R.1957 M.P.[illegible]; [illegible] v. [illegible], A.I.R.1957 Sym.68; [illegible] A.I.R.1959 Mad.239; [illegible] v. [illegible], 1960 K.L.T.1116; [illegible] v. [illegible], A.I.R.1967 Mys.[illegible]; [illegible] v. [illegible], [illegible] n.26; [illegible] v. [illegible], A.I.R.1968 Ori.104.

40. [illegible] v. Sheikh [illegible], (1864)1 W.R.19; [illegible] v. [illegible], (1918) I.L.R. 39 Cal.482; [illegible] v. [illegible], (1927)54 I.L.R.Cal.606; [illegible] v. [illegible], (1933) I.L.R.43. Bom.134; [illegible] v. [illegible], A.I.R. 1955 Mad.1196; [illegible] v. [illegible], A.I.R. 1959 Mys.267; [illegible] v. [illegible], A.I.R.1959 Cal.145; [illegible] v. [illegible], A.I.R.1959 Cal.179; [illegible] v. [illegible], A.I.R.1960 M.P.329; [illegible] v. [illegible], A.I.R.1961 Pun.283; [illegible] v. [illegible], A.I.R. 1962 Tripura 17; [illegible] v. [illegible], 1962 Cri.L.R. 1265 (Gauhati).

41. Ibid. Also see observations in [illegible] v. [illegible], [illegible], n.26) cit. in [illegible], A.I.R.1965 Mad. 330.

motive did not help the accused in gaining exemption from punishment.[42] While few of these cases can seem satisfying in this respect,[43] confession of the crime,[44] surrender of the person to the police,[45] deliberate attempt to conceal the crime,[46] full and clear revelation of the act,[47] concealment of the nature of the act of killing,[48] deliberately causing the victim to accompany the accused[49] and the like seem to be the factors which courts consider not to give the accused the benefit of exemption even in the absence of motive.

Although it was not considered a ground for inducement of insanity, absence of any motive for the crime was held, in the majority of cases, a circumstance that could be

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42. See [illegible], n.37.

43. [illegible] v. Lakshman Singh, (1926) 10 A.L.R.Rang. 311 (Her Holds was [illegible], n.37); [illegible] v. [illegible] (1926) 23 A.L.R. Cal. 624 ([illegible], n.3); [illegible], A.I.R.1953 Punj. 359 ([illegible], n.11); [illegible], A.I.R.1950 Punj.126.

44. [illegible] v. Lakshman Singh, [illegible], n.43.

45. Ibid.

46. [illegible] v. [illegible], [illegible], n.42.

47. Ibid.

48. [illegible], [illegible], n.43.

49. [illegible] v. [illegible], A.I.R. 1953 M.P. 68 (See Hindu Law [illegible], n.5).

considered for deciding the punishment.[50] The person may be that, sudden, spontaneous and unmotivated violence is more likely to be the result of a disturbed mind and so extreme penalty is not justified in that case. In many cases courts gave extreme penalty even when there is lack of sufficient motive.[51]

There are instances where the accused is insane even though he has some motive for the killing. In such cases he deserves to be acquitted.[52] Sometime persons may commit murder with some flimsy motive and that will form no ground for inferring insanity.[53]

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50. Crown Prosecutor v. Lakshman Dagdu, supra, n.42. Crown Prosecutor v. Kedar Jethya Kisan, supra, n.42; Kalicharan v. [illegible], supra, n.14; In re Kunnathil Ammal, supra, n.41.

51. In re Kaliyanda Iyengar, supra, n.42; State v. Narayana Naidu, supra, n.39; Crown Appellee v. The State of M.P., A.I.R.1974 S.C.216; The State v. Bhalla Ghasiram, A.I.R.1961 Assa.79.

52. The State v. Laxman, A.I.R.1970 Ori. 1: "... when a person is having an attack of schizophrenia may consequently he attacks those against whom he has grievances, real or imaginary. He considers that he is persecuted when in fact he is not." See Jubley, J.C., 66 Pri. Kunhi Ismail v. State, A.I.R.1960 Cal.1. The accused suffered from a delusion that he was Akbar of Mughal dynasty and his eldest son and wife whom he killed were Salim, his predecessor enemy, and Rukhi who gave birth to an illegitimate child.

53. Crown Appellee v. The State of M.P., A.I.R.1974 S.C.216. A life convict committed suicide in the jail of another life convict for the flimsy reason that the deceased prisoner's dust touched the bamboo stick which he had spread during time of prison labour. In re Kunhikoma,

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In [redacted] v. [redacted][54] the motive for the murder indicated that the act was an assumed self-defence in response to a persecutory delusion. The accused suffered this delusion in relation to his wife, whom he murdered. The delusion was almost similar to the one suffered by the accused in the famous M'Naghten's case.[55] But the Court did not accept the defence. The motive for the murder was the supposed suspected his wife's loyalty. The accused believed even to the extent that she attempted to poison him so that she could live with his own younger brother thereafter. Though he made confession to several people immediately after killing her with a sword he denied his confession and pleaded insanity. The Court said that even assuming that the appellant killed his wife under the delusion he cannot escape responsibility because he knew he was doing wrong and made preparation for committing the act because he took weapon with him and concealed it after the crime.[56]

Burden of Proving Insanity

What is to be proved in insanity cases is the state of mind of the accused person at the time of commission of

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(f.n.53 continued)
A.I.R. 1960 Mad. 576, the deceased accused the accused instigating him for the loss of a suit and the accused killed him. In both cases the accused were convicted.

54. A.I.R.1965, N.P.68.
55. 10 C & F 200 (1843): 8 E.R. 718.
56. [redacted] n.54 [redacted] Coopersmith, J.C. at p.71.

the offence. But in proving this state of mind his previous and subsequent immunity or state of mind is relevant though not conclusive.[57] Justice Subba Rao has said,

> "The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of S.84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime". [58]

Mental disorder is usually not a phenomenon of a moment. It requires some time to develop. It is proper therefore, to introduce evidence of his mental condition before and after that crime[59] in order to prove the accused person's responsibility or irresponsibility. The accused might have been subject to insane delusions formerly. He might have suffered from derangement of the mind. Subsequent to the commission of the crime a person's behaviour may be like that of a mentally deficient person. The accused might have been in a bewildered state of mind a day or two

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57. [illegible] A.I.R.1964 S.C.1563; [illegible] A.I.R.1964 S.C.1; [illegible] A.I.R.1968 S.C.15 at 167; [illegible] A.I.R.1973 S.C.778 at [illegible] A.I.R.1978 S.C.1545.

58. [illegible] A.I.R.1964 S.C.1563 at pp.1568-1570.

59. Ibid. Also see [illegible] A.I.R.1951 All.79 [illegible] J. of M.L.

before the day of occurrence. These circumstances may not, per se, sufficient to bring his case within the exception.[60] In an old Lahore case, [redacted] v. [redacted][61] it was in evidence that the accused was found to be a 'raving lunatic' by a civil surgeon a few hours after the commission of the offence. Still, it raised no presumption of insanity at the relevant time and he was convicted. In a Supreme Court case, namely, [redacted][62] strong evidence of previous and subsequent insanity was not considered which resulted in the conviction of the accused. Though there exists a difference of opinion whether evidence

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60. [redacted] A.I.R. 1927 Lah. 677 [redacted] 677; [redacted] v. [redacted], A.I.R.1928 Pat.243 [redacted] Rowe and Jwala Prasad, J.J. at pp.246, 248, 249; [redacted] v. Punjab Chemical Co., A.I.R.1931 Lah. 49 [redacted] Lahiry, J. at 57; [redacted] v. [redacted], A.I.R.1960 Mad.89 [redacted] Viswa Nath, J. at 92.

61. (1921) 22 Cr.L.J. 1230.

62. A.I.R.1960 S.C. 15 [redacted] Hidayatullah and Gupta, JJ. He was previously treated for schizophrenia in mental hospital more than once, the last treatment being 10 months before. After the crime he was detained again for total period only one year and six months after the judgment. It is submitted that the Supreme Court went wrong in appreciating the evidence after completely ignoring the evidence of mental treatment 10 months before and 5 years after the crime. The Supreme Court also did not appreciate the fact that he was not examined by an authority specified by the court immediately after the crime. It was done only after 3 years, on application by the brother of the accused. Id., p.16.

of previous or subsequent insanity could be treated as proof of insanity at the relevant time, cases in which such evidence was discarded as proof of it are comparatively rare in number than in which it is accepted. [64]

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63. State of H.P. v. Ahmadullah, A.I.R.1961 S.C.998; Jai Lal v. Delhi Administration, (1968.); Shamlal Lal v. State of Himachal Pradesh, supra, n.57 (The murderer's evidence of previous insanity was not accepted since the doctor was not examined by the defence); Sharma v. Union Territory, Delhi, supra, n.43 (which was postponed on being found unfit); Emperor v. Bhagwan, A.I.R.1919 Cal.248 (Hereditary insanity was also proved); Thiagu v. Emperor, A.I.R.1927 Lah.674; Ramlal v. Emperor, supra, n.39; Ramgopal Lal v. Emperor, A.I.R.1947 Pat.215; In re Manikam, A.I.R.1950 Mad.870; In re Govindaswami, Criminal, A.I.R.1952 Mad.174; State v. Gokul Chand, A.I.R.1955 Punj. 105; State of Punjab v. Baldev Singh, supra, n.60; Lalmani v. State, A.I.R.1959 All. 134; Ramalingam v. State A.I.R.1960 M.P.28 (evidence of relatives and doctors held not reliable); In re Ramaiah Ayyar, A.I.R.1959 Mad.139; In re Balakrishna, A.I.R.1960 Mys.68; Ajab v. State of Punjab, 1961 P.L.R.1116; Bhagwandas Bhatia v. The State of Assam, 1961 Cri.L.J.1808.

64. Ratan Lal v. The State of M.P. supra, n.57; Chhaju Ram Ram v. Emperor, A.I.R. 1936 Oudh. 143; Munir v. Emperor A.I.R. 1940 Oudh. 179; Vikram Singh v. State, A.I.R. 1954 Pep.4 (he was put in chains for some time); Kashi-ram v. State, A.I.R. 1957, M.B. 104; Venkatramanna v. State of Mysore, A.I.R. 1958 Ker. 24; The State v. Chunnilal, A.I.R. 1959, M.P. 200. The Court took note of the fact that though the doctor who observed him did not find any evidence of insanity the accused killed an undertrial prisoner for no apparent motive; Ram Singh v. State, A.I.R.1961 Pat.258; Shamlal Lal v. The State, A.I.R. 1960 Delhi 177; The State v. Balram, A.I.R.1970 Ori 1; Akbal Lohar v. The State of Assam, 1961 Cri.L.J. 1808.

Once a person has known insane, the possibility of the reoccurrence of insanity cannot be ruled out. Insane past insanity will weigh in deciding the insanity of the accused at the time of commission of the offence.[65] However, previous insanity before two years,[66] or five years[67] or ten years[68] was not accepted as proof of insanity. Still, in all cases where previous insanity is proved or admitted, the presumption of sanity at the time of commission of the act could be greatly weakened. In Mahbubna v. The State[69] the punishment daimion of the accused person of presumption by the wife, coupled with his previous insanity, was held by the court to have established conclusively that the accused was absolutely incapable of realising that his act was wrong or contrary to law, though he had a 'glimmering knowledge' of the nature and consequences of his act in stabbing his wife with an axe.[70]

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65. Just the mere fact of epilepsy in an accused may be insufficient for establishing the desired degree of unsoundness of mind. See Bhimsen Ashraf v. State, A.I.R. 1949 Nimb. 161.

66. State of U.P. Vs. Abnashlal, supra, n.63; Sidheswari Misra Vs. State of Assam, supra, n.53.

67. In re Rathinavelu, A.I.R. 1950 Mys. 69.

68. State Vs. Mahabuna, A.I.R. 1954 Sau. 105.

69. A.I.R. 1957 M.B. 104; see also the State Vs. Dhanshai, A.I.R. 1959 M.P. 308 at 309.

70. Id, per Dixit, J. at 107.

The grant of previous immunity may not be of help when at the trial there is evidence to the contrary, to the effect that he was sane at the time of commission of offence.[71] As has been said repeatedly by courts, in all cases where previous immunity is set up, it is most material to consider the circumstances which have preceded, attended and followed the crime. It is also relevant to inquire whether there was deliberation and premeditation. Courts will also examine whether an attempt was made to conceal the crime, the manner was conscious of the act and whether offered false excuses and made false statements.[72]

Subsidiary Immunity

Subsidiary immunity is relevant in cases where the defence of immunity is set up although it alone is insufficient to establish immunity of the accused in any case. Decided cases show that subsidiary immunity was held to be insufficient to establish exemption.[73] However, it is to be

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71. [illegible] v. [illegible], (1953) 14 Cr.L.J.65; [illegible] v. [illegible], supra, n.63.

72. [illegible] v. [illegible], supra, n.63; see also [illegible] v. [illegible], supra, n.3 and [illegible] v. [illegible], A.I.R. 1958 Mad. 68.

73. [illegible] v. [illegible], (1958) 2 W.R. 30. The accused was convicted by the sessions judge and sentenced to death. The high court sent the case to fresh digest after taking evidence in the progress of a civil suit. Some lessons of experts about his immunity. Subsequently...

noted that consensual and collateral insanity is corroborative of the evidence of the accused's insanity through not independent proof of insanity. Thus in [redacted] v. [redacted][74] the fact that the accused's brother was an idiot and his uncle insane was considered, among other factors, to be relevant to acquit the accused.

Relationship by blood

When the offender-victim relationship is of husband and wife[75] or of lover and the lover[76] it is more likely that some apparent ill-conceived or unknown motive like conse-

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(f.n.73 continued)

jury of the conspiracy she was sent in by the police as an informer. [redacted] v. [redacted], A.I.R. 1959 Cal.268. The accused killed his wife without any motive, and there was no attempt to escape or concealment. He confessed and said that his mind went blank at that time. There was evidence that he had put home quite himself and he had been disturbed and distressed by the shortage of cloth, rice and fodder. Even then he was convicted.

74. A.I.R. 1965 Mys. 221.

75. [redacted] v. State of [redacted], supra, n.57. The husband strangled his wife. He killed her one year after employing [redacted] v. State of [redacted], supra, n.57. The accused killed his wife and one year old child for no apparent motive; State of [redacted] v. [redacted], A.I.R.1958. The accused was schizophrenic and [redacted]. He killed his wife, wounded his daughter and attempted to commit suicide for some disturbances of his wife. All ended up in confusion.

76. State of [redacted] v. [redacted], 1978 K.L.T. 177. The accused was in love with [redacted]. He was agitated in that their marriage did not materialise. In desperation he killed her deliberately. He was held guilty.

jealousy or infidility[77] may prompt the offender in taking the life of the other. It may therefore be relevant to enquire into the relationship of the offender to the victim. murder committed soon after the marriage[78] is an important factor to be taken into account in certain cases where problems of dowry or some temperamental dislike are involved. They may be the motives behind the attack of the other spouse and may establish the enmity of the offenders. Suppose the relationship is cordial and there is no other circumstance which goes against the accused. Then a reasonable probability of the accused's mind having suffered from a disease affecting the exemption can be inferred[79]

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77. In Krishnan v. State, A.I.R. 1957 M.P. 104, the accused suspected that his wife (the victim) had done him some wrong and killed her. He was acquitted. In Hanumanaiah v. State of Punjab, (A.I.R. 1958 Punj. 104); Ambi v. State (1963) 2 Cri.L.J.128 (Mad) and Ramanand v. State (A.I.R. 1965 M.P. 68) the accused had a delusion on the fidility of their wives and killed them. But in all these three cases the accused were convicted.
78. D.G.Thakkar v. State of Gujarat, supra, n.58.
79. The accused were husbands and were acquitted of the murder of their wives in State v. Chhotelal, (A.I.R. 1959 M.P. 303), Kushal Kurmi v. State, (A.I.R. 1960 Cuj. 1) and Ramrao v. Ramrao, (A.I.R.1966 Mys.251).

though this alone is not conclusive.[80] The relationship between the accused and the victim and the motive for the offence are important factors to be taken into consideration in assessing the state of mind of the accused in

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80. In Ghamalal Malli v. State of Maharashtra, A.I.R. 1973 S.C. 2443, the husband was convicted of the murder of his wife and one year old female child even in the absence of any possible motive. In Ramnandan v. Emperor, A.I.R. 1919 Cal.248 and Emperor v. Sadhu Sahu, (A.I.R. 1973 Pat.263) the accused were convicted inspite of many other favourable factors. In Emperor v. Sadhu Ghio, A.I.R. 1973 Pat. 263, the accused was convicted when he murdered his wife, daughters and a son for no motive. In Hussain Bakh v. Emperor, A.I.R.1947 Pat. 152, the only factor against the accused was that he heard the cries of the young before killing his wife and two year old child and a little altercation arose between them before the murder. In Ramnarain v. Emperor, A.I.R. 1949 Nag.66, the accused killed his two wives for the suggested motive that both women failed to give him a male child. He was convicted. In Bhaia v. Bhiki Ahir, A.I.R. 1955 Sau. 105, the accused killed his second wife for no motive and was convicted.

cases of parricide,[81] matricide,[82] fratricide[83] and

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81. In re Ramiahamma, A.I.R. 1965 Mad. 283, the accused had been denied by his father, on the day of occurrence, an immediate partition of funds for starting a new business. He had a grouse against his father because he (the father) had transferred property in the name of the step mother. The accused murder his father. He was convicted. In Karam Chand v. Emperor, A.I.R. 1928 Cal. 238, the accused killed his father on the delusion that Kali had asked him to do that. He was acquitted.

82. In Queen v. Shaik Mahmadu, (1864) 1 W.R. 19, the accused killed his mother and also his wife and wounded his child for no motive whatever. He was acquitted. In Ramiahamma v. Rama, A.I.R. 1960 Mad. 36, the accused killed his mother with much fury on the flimsy ground that the ghee she served for him was of inferior quality. He was acquitted. cf. In re Ramiahamma Kalipatnam, A.I.R. 1953 Mad. 174, the young accused had a bitter quarrel with his mother regarding the execution of a promissory note by his brother. On the day previous to the day of occurrence and also on the day of occurrence the irritated mother refused to serve him food. He killed her with a spade. He was convicted.

83. Kamla Singh v. State, A.I.R. 1955 Pat. 309. The accused who was mentally ill was chained by the two brothers on the day of occurrence. On this ground he killed one of them and seriously wounded the other. He was acquitted. cf. Lakhmi v. State, A.I.R. 1959 All. 534 where an accused, addicted to ganja smoking and used to beat his wife and mother, killed his step brother on the notive that the deceased was against his way of life and denied money for ganja smoking. He was convicted; Mani Ram v. Emperor, A.I.R. 1927 Lah. 53. The accused killed with a sword four persons in rapid succession - two of his nephews aged four and twelve and the wife and son of his neighbour - for absolutely no motive, with no enmity and pre-arrangement and accomplices. Yet he was convicted.

indentation[84] the relationship and the motive for the offence are important factors to be taken into consideration in establishing the state of mind of the accused. Close and cordial relationship coupled with absence of motive may indicate that the accused was not sane when he committed murder. There are, however, some cases of parricides and matricides in which the accused persons were convicted eventhough there was hardly any sensible or sufficient motive for the offence.[85]

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84. Bhaba v. Chhabbilal, A.I.R.1959 M.P. 303, the accused was acquitted of the murder of his child and wife. Shanti Devi v. State, A.I.R.1968 Delhi 177, mother killed her one year old child by cutting her throat with a razor. No enmity or attempt for escape was there nor was there any remorse. She had been treated earlier for mental disease. She was acquitted.

85. Rajappa v. Emperor, A.I.R.1927 Lah. 674. The appellant a melancholiac suffering from occasional epilepsy killed his father with much fury and cruelty for the mere reason that the deceased father scolded the accused who beat his mother. Shama Sharma v. State, A.I.R.1957 Nyn.46. The accused attempted to injure himself. The mother interfered and the accused stabbed her. She cried out for help. His father rushed to the scene. It appeared to the accused that his father was approaching him in a fit of anger. He killed the father.

Parents killing their own children may go to show the mental derangement of such accused persons at the time of the offence though this in itself is not conclusive. Many motiveless murders of children by their parents ended in conviction[96] because of the lack of evidence for the complete impairment of cognitive faculties of the accused. In rare cases the accused persons were acquitted[97] even

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96. Sidhumati Devi v. State of Assam 1961 Cr.L.J.1005. The mother who had some mental derangement killed her three year old daughter for the reason that the child had some incurable disease in the thoughts. A.I.R.1960 Pat.230. The mother killed her child and attempted suicide by jumping in a well with the child four weeks after the child birth. Mother was convicted for the murder of infant children in the following cases namely, Bhupali Mahli v. State of Maharashtra, 1970 M.P.57; [illegible] v. [illegible], [illegible], p. 7; [illegible] v. [illegible], [illegible], p. 8; [illegible] v. [illegible], A.I.R.1959 Cal.149; [illegible] v. [illegible], A.I.R.1957 Pat. 269; [illegible] v. [illegible], A.I.R.1977 S.C.600; [illegible] v. [illegible] (1961) 2 S.C.C.508

97. Malik v. [illegible], A.I.R. 1940 Oudh. 179; The accused was discharged after the death of his wife and eldest daughter. After murdering his two other sons it appeared that he was proceeding to police station. He was arrested on his way; Ambikadin Ahmad v. The King, A.I.R. 1949 Cal. 188. After killing his seven year old son on the account, according to the accuser, of some evil from possession, he confessed to his guilt though he did not disclose it in the presence of a village chowkidar.

though the accused were conscious that killing is illegal. The trend of judicial approach is not consistent in this respect. On the question of liability in indictable cases, an eminent jurist observes.

> "A man who after killing his child, goes forthwith to the police station to surrender himself, and gives a lucid account of what he has done, would certainly seem to know the nature and quality of the act committed, and to know that in doing it he did wrong. Yet if he had previously shown some symptoms of madness, and had killed his child with no discoverable motive and no attempt at concealment, a judge on the modern practice might encourage a jury to regard these facts as evidence of his labouring under such insanity as would render him irresponsible."[88]

The close relationship of the offender to the victim may be a factor indicating mental disturbance because there can be a presumption that a sane person may not intend, in normal circumstances, to harm his own kith and kin. But suppose one minute an utterly strange person for no apparent motive. Can there be a similar presumption that a person will not, without proper motive, harm absolute strangers? The judicial approach in Australia is not consistent. In one case[89] the facts show that the

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88. Kenny, Outlines of Criminal Law, (19th ed. 1948), p.83.

89. [illegible] v. [illegible], A.L.R. 1938 Cr.R. 143. [illegible] of the accused showed that he had previously suffered from hallucinations, a disease which usually causes after poverty. He said that he wanted to kill big people.

accused slept on verandah unravelling in the train, killed one and injured two others. There was no motive. Neither attempt at concealment nor premeditation was considered as an indication of the state of mind of the accused. He was acquitted. In another case,[90] the accused killed a stranger in front of a Kali temple in broad day light for absolutely no motive, calling, 'victory to Kali' and 'Prathala prathama, Sankhini palamma'. He was convicted because he was threatening others who came in his way and attempted to run away after the murder. Killing of infant children by men other than parents more often resulted in conviction.[91]

Lessons in this law.

From the foregoing discussion of the application of various factors by courts in deciding the state of mind of the accused in alleged insanity cases, it is clear that the

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90. Ramamurthi Pillai v. State, A.I.R. 1969 Ori. 222.

91. Gulzai v. The State, Supra. No.50; Gulzai v. Delhi Administration, Supra, 50; In re Lakshmi, Madras, A.I.R.1960 Mad.219; Indra Chandra v. State, A.I.R. 1960 Cal.108. See also Lalli v. The State of Assam, (1958) Cri.L.J.1358 on facts of murder of an infant child by a stranger for no apparent motive, ended up in acquittal of the accused. The Court mainly relied on the mental derangement of the accused manifested in the flimsy defence aspect itself. When a five year old child was found missing, the accused was called where the whereabouts of the child and he said that he had sent him to God, and the body of the child was discovered from a nearby tank.

weight attached to the factors varies. The variations in applying these different factors cannot be wholly justified by the variations in factual situations.[92] In appreciating the factual situations while applying the evidentiary rule[93] in section 105 of the Indian Evidence Act and the substantive law[94] in section 84 of the Code subjective elements have their sway.

The inherent defects of the M'Naghten Rules,[95] on which the procedural and evidentiary provisions of the Indian law are modelled, affords an explanation for this uncertainty as is done in applying the substantive rule of liability in insanity cases. The substantive law provision in section 84 of the Code demands complete impairment of cognitive faculties for the purpose of bringing the accused under the exemption. No shades of mental disturbance in between will be sufficient. Evidentiary rule places the initial burden on the prosecution through the

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92. [illegible] nn.44-49 and Ch.VIII, nn.34-44.

93. Ibid.

94. For e.g., Ashimuddin Ahmed v. The King, A.I.R.1949 Cal.183 and Nanhoo and Nanak, JJ, Bandhumati v. [illegible], A.I.R.1940 Cal.1. See Shaikh and Kabir, JJ. in [illegible] v. State of Punjab, (1956) 2 S.C.C.356, and V.I.Krishnan Iyer, J. for the discussion of this Queen cases in Ch.IV, nn.13-28.

95. See generally Ch.IX.

burden is on the defence to prove the exemption from liability. How much of burden is shifted in the process? It is too difficult for a definite answer in the absence of legislative guidelines. Manifestly, there will be clash of different points of view. The way out is for the Legislature to define clearly the extent of burden of proof on both the prosecution and the defence in mental cases after giving due allowance for different gradations of mental disturbance which calls for a reformulation of the substantive and evidentiary law on the point. In the assessment of the subjective guilt of the mentally disturbed offender objective evidence is not sufficient. Discussion of decided cases has revealed that even an insane person may attempt to conceal his crime or to escape from consequences showing his knowledge about the nature and wrongfulness of the act.[96] His mind has to be probed from a subjective point of view and for this psychiatric evidence will have to gain more acceptance. The role of psychiatric evidence in the determination of guilt is discussed in the next chapter.

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96. Amply illustrated like cases v. Lakshman Nanda (1956) 10 I.L.R. Pat. 511 and Queen Vs. [illegible] (1886) 23 I.L.R. Cal. 616, are the most illustrations where the Court felt constrained to convict the accused because of the inadequacies of law.

CHAPTER X

ROLE OF WITNESS

In the previous two chapters the burden of proof in insanity cases and the criteria for determining insanity were discussed. The role of witnesses for proving the question is not to be under estimated. In this chapter the role of witnesses especially expert witnesses are discussed.

Testimony of medical expert

What is the role of medical evidence in proving or disproving the claim of an accused person to be insane? According to M'Naghten's case, a medical witness who has been present in court and heard the evidence, may be asked as a matter of science, whether the facts stated by the witnesses, supposing them to be true, show a state of mind incapable of distinguishing between right and wrong.[1] How far is it applicable in Indian Law? What, if any, are the developments in western countries? What are the changes needed in Indian Law?

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1. Daniel M'Naghten's case, 8 E.R. 718 (1843) per Tindal, C.J. at 722.

The opinion of an expert is relevant in all cases where a question of science is involved. The Indian Law recognises this. [3]

The questions are (1) whether the accused had been of unsound mind at the time of the commission of the act and (2) whether by reason thereof was he capable of knowing the nature of the act or the wrongfulness or illegality of the act. These are questions of fact as well. In England they are decided by jury and in India by court.

A qualified expert may testify to the accused person's mental condition either upon his personal examination or on the testimony in the case if he has heard it in the court. Such a witness can also give his opinion upon hypothetical factual situations even though he has no personal knowledge of the accused person. A psychiatric expert who has made a personal examination of the accused after commission of the crime, may tell about his mental condition at the time of the examination and also whether it may have existed at the time of the offence. He may

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3. Indian Evidence Act (1872), s.45. Relevant part of the provision reads:

> "When the court has to form an opinion upon a point ... of science ... the opinions upon that point of persons specially skilled in ... science ... are relevant facts".

also opine whether the accused is feigning or simulating insanity. An expert who has not known the accused, but has only heard the trial may be permitted to state his opinion based on evidence where the facts are simple and undisputed, and it becomes consequently a question of science only. The reason for this restriction is that in case of disputed and conflicting evidence such a practice would require the expert to determine its truth and value and then make the scientific inferences therefrom.[3] In this respect the fifth question and answer in M'Naghten case are relevant.[4]

Two earlier decisions of the Nagpur High Court, Emperor v. Ramdeen[5] and Ramesh Lal v. Emperor,[6] although they seem to clash with each other, are important in this respect.

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3. Wakefield, "Mental Disorder as a Criminal Defence", (1954), p.279.

4. M'Naghten, Ch.XI, nn.7 and 12.

5. A.I.R.1946 Nag.321 per Sen and Hemmady, JJ. The accused and his wife in one court and his mother in another court wanted to see a match. On the way, he asked the driver of the cart to stop and on his refusal, killed him and, took the reins of the cart himself and drove away quickly and shouting violently. He went to the place where his mother lived, instead of proceeding to the match's place and killed his wife in that house. Witnesses standing near of the house declared and when they opened the door he appeared to them like a mad man, with reddish eyes. He had to be tied.

6. A.I.R.1949 Nag.66 per Bhagwatibhushan, J. The accused committed double murder of his two wives. He stabs a time when nobody else was there in the house except an

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Incidentally the same medical expert seemed to have given evidence in both the cases but in one[7] his evidence was accepted in acquitting the accused while in the other[8] the evidence was rejected as irrelevant and the accused was convicted.

In [redacted] v. [redacted][9] Justice M.Hidayatullah of the Nagpur High Court referred to the fifth question and answer in M'Naghten's case[10] and approved them. According to him expert opinion can be invited only in exceptional cases where there is no dispute about the facts or their interpretation. Again the question 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

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(f.n.6 continued)

infant girls, at night, used a particular type of weapon and there was also some motive in his commission of the offence. The motive suggested was that both the wives failed to give him a son.

7. [redacted]'s case, [redacted], p.5. It came in evidence that he belonged to a psychopathic family, his brother died as an idiot, and his uncle as insane. Dr.Roy's evidence of the accused suffering from insomnia and drinking sometimes as borne out from the facts and records in the case was accepted in acquitting the accused.

8. [redacted]'s case, [redacted], p.6. Dr.Roy who gave evidence in [redacted] (Ibid.) gave evidence in this case also viz. one admitting the accused but only on hearing the evidence. The Court made a scathing criticism on his testimony and rejected it. The accused was convicted.

9. A.I.R.1960 Nag. 66 at p.72.

10. Ch.IX. ans.7 and 12.

competent or qualified to judge. The legal inducement from facts is a matter of judicial opinion. It is not of expert testimony because experts should not be allowed to usurp the function of the court. Holding that the opinion of medical witness on the state of mind of the accused at the time of the commission of the murder is barely relevant as being helpful, the court said,

> "I have quoted above that the opinion of a medical witness, however eminent he may be, must not be used 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. Any opinion which tries to determine the very issue which the court has to try must be disallowed though the court may consider it if there is no dispute as to facts whatever. I say all this because Emperor v. Khairati[11] must be understood in this sense. In my opinion that case does not lay down any contrary law". 12

A view of this kind was taken by certain eminent writers[13] in the past. Certain modern writers[14] oppose

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11. Khairati, n.8.

12. Emperor Emp. A.I.R.1943 Nag.66 and Hidayatullah, J. 26 p.73.

13. Ameer Ali, "Psychiatry and the Conditioning of Criminal Justice", 47 Yale L.J. 219 (1938). Mayne, Criminal Law of India, (4th ed. 1914), p.168.

14. Mehta, "Admissibility of Psychiatric Evidence : Towards A Coherent Policy", (1977) Cen.L.R. 178; Also Ramesh, "Psychiatric Evidence" [1981] Crim.L.R. 743.

this view. The practical value of expert evidence is to be considered. It is with this view in some Indian cases[15] experts are asked to give their opinion whether the accused had distinguished between right and wrong. It may be said that in most cases of insanity, the question whether the accused was afflicted with some kind of mental disorder or not could be easily determined. The difficulty arises where it is admitted that the accused is to some extent abnormal and the question is whether at the relevant time he was so mentally disordered asto be incapable of distinguishing between right and wrong. It is here that the court needs the help of the experts to arrive at the correct finding. [16]

Medical opinion played an important role in some cases.[17] In some others it did not.[18] The trend of

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15. [illegible] v. [illegible], A.I.R.1928 Cal.238; [illegible] v. [illegible], A.I.R.1935 Outh. 143; [illegible] v. [illegible], A.I.R.1946 Nag.321.

16. K.N. Sharma, "Defence of Insanity in Indian Criminal Law", (1965) 7 J.I.L.I. 325 at p.376.

17. [illegible] v. [illegible], supra, n.14; [illegible] v. [illegible], supra, n.14; Ahmad v. [illegible], A.I.R.1943 All. 327; [illegible] v. [illegible], A.I.R.1934 All. 413; [illegible] v. [illegible], A.I.R.1955 Mad.1128; [illegible] v. [illegible], supra, n.5; Nahanlal v. The State of M.P., A.I.R.1971 S.C. 778.

18. [illegible] v. Shaik Mustafa, (1864) 1 W.R.19; [illegible] v. [illegible], (1865) 3 W.R.9; [illegible] v. [illegible] (1867) 7 W.R.61; Mohammad Hussain v. [illegible] (1913) 14 Cri.L.J. 61; In re [illegible] Ammal, (1919) 20 Cri.L.J.626;

contd...

judicial holdings in India show that scientific evidence is neither conclusive nor essential for the court to decide a mental case.[19] But as a matter of procedure it is incumbent on the magistrate or the court to send the accused to a psychiatric expert for observation where a plea of insanity is taken on behalf of the accused or when the magistrate has reason to believe that the accused is suffering from mental disease.[20] Where the report or the evidence of the mental expert is available the court should analyse such opinions as satisfactorily to accord proper importance to them.[21] Where the other evidence and circumstances in the case would otherwise support a reasonable doubt about the state of mind of the accused at being insane at the time of commission of the offence the failure of the magistrate or the police in not subjecting the accused to mental examination would be taken as the contributing factor in acquitting the accused. [22]

(f.n.18 continued)

[illegible] v. [illegible], (1951) 32 Cri.L.J.1220; [illegible] v. [illegible], A.I.R.1960 M.P.49 Bimla v. Mild[illegible], A.I.R.1965 Pun.186; [illegible] of H.P. v. [illegible], A.I.R.1961 S.C. 290; Dal[illegible] v. State of [illegible], A.I.R.1954 S.C. 136; [illegible] v. Emil[illegible], A.I.R.1960 S.C. 15; [illegible] v. [illegible], A.I.R.1972 S.C.1103.

19. Ibid. also infra, n.22.

20. Under sections 328 and 329 Code of Criminal Procedure, 1973. See Ch.XIV, fn.38, 39.

21. [illegible] v. [illegible], A.I.R.1960 Mad.66 and Nidhya-[illegible], J. at p.75.

22. Bahadur v. The State of H.P., A.I.R.1971 S.C.770 and S.K.Ghosh, J. in Ghosh v. State of Bombay, 1960 M.L.J.(Cri) 369 contd...

[illegible] Witnesses

Non-expert witness may obtain an important role in proving or disproving the sane when sanity of an accused person is in question. Laymen sufficiently acquainted with him may give evidence in the Court on his premedicant, attendant and subsequent conduct showing derangement of the cognitive faculties. No general rule has been laid down by the Courts how much acquaintance is necessary in order to make one give a competent opinion on the accused's mental condition. It is left to the discretion of the Court in each particular case.[23] Reliability and disinterestedness of the witness and prior opportunity of the witnesses to get acquaintance of the conduct of the accused are factors which a court will consider in deciding this.

(f.n.22 contd)

[illegible] and Mrs. Anna Chandy, JJ; Abdul Latif v. [illegible] (1961) Cri.L.J.1206, per [illegible], J. [illegible] v. Bakhshi, A.I.R.1959 Mad.756. The Court [illegible] Magistrate is not duty bound to order a medical examination of the accused upon mere defence of insanity. He killed two children aged 4 and 7 for no apparent motive after closing the door by chain. He could by coolly obey a struggle and he was apprehended in nature. The Court put aside the appraisal of the accused. In [illegible] v. Bakhshi [illegible], (A.I.R.1959 S.C.13) the accused was [illegible] a [illegible] half year old girl whose hair had been cropped previously for ritual dietary and subjected to medical examination by the prosecution only hours after the examination of the children depriving him of an opportunity to get medically examined. This feature did not weigh in the decision of the Court in convicting him.

23. [illegible] v. [illegible], A.I.R.1946 Nag.211; [illegible] v. [illegible] A.I.R.1958 Cal. 179; Ghosh v. Emperor, 1930 A.L.J.1197 and Abdul Latif v. Sharfun-ul-Anam, 1961 Cri.L.J.1206 (Contd).

However, testimony of near relatives may be rejected as they are likely to be interested. [24]

Psychiatric Evidence in England.

Because of the relation of mental illness and its symptoms to the capacity to act in accordance with moral and legal norms, the psychiatric assessment of the person is really helpful in meting out justice to the accused. Probably a psychiatric expert may not be in a position to give categorical answers to the questions on the extent of knowledge of the defendant of the wrongfulness of his act when he committed the crime. The psychiatrist may not also give a definite reply whether the accused could have controlled his impulsive act. He can attempt to give only an organic picture of the accused's mental state. [25]

The correct approach to the problem of relevance and admissibility of psychiatric evidence in a criminal trial seemed to have been given by Alec Samuels [26] in a

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24. State of M.P. v. Ahmadullah, A.I.R.1961 S.C.998; D.G.Dudhat v. State of Gujarat, A.I.R.1965 S.C.1563.

25. Glueck, Law and Psychiatry, (1962), p.61.

26. "Psychiatric Evidence", [1981] Cri.L.R.763 at 763-763 Diamond and Louisell, "The Psychiatrist as Expert Witness: Some Ruminations and Speculations" (1964-65) 53. Mich.L.R.1235; Frank Bates, "Admissibility : Psychiatric Evidence: Toward a Coherent Policy",(1977) Can.B.R.178; Cross, Evidence (5th ed.) pp.444-445.

present article. Especially from the point of view of the defendant in proving the guilty mens rea or criminal intent following general propositions[27] are included in this approach.

(1) All relevant evidence should be admissible, unless there are very strong reasons to the contrary.

(2) Evidence which the defendant wishes to adduce in order to support his case or to challenge the prosecution should be prohibited only for the most cogent reasons.[28]

(3) The credibility or accuracy of a prosecution witness is open to challenge by the defendant by adducing evidence, including expert evidence, relating to the physical and mental health and history of the witness.[29]

(4) The expert must keep within his sphere of expertise and area of competence.

(5) Evidence of the expert, especially the psychological or psychiatric expert, must be treated with care and circumspection but not hostility.

(6) Weight, evaluation, appraisal and decision are for the jury.

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27. Ibid.

28. Ibid. Also see R v. Miller and Simons, [1954] 2 All. E.R.267 per Devlin, J. at 269; Myers v. Director, [1974] A.C. 86 per Lord Morris at 105-107.

29. Ibid. Also see, Toohey v. Commissioner, Police Commissioner, [1965] A.C. 595.

The defendant is entitled to adduce evidence of mental disorder, and of other abnormalities caused by drink or drugs. He can also ask for expert psychiatric evidence when he takes the plea of insanity, automatism or diminished responsibility. An appraisal is possible of the effect of the factual situation upon the liability of the defendant by way of opinion evidence relating to understanding and culpability of the defendant. [20]

This line between normality and abnormality:

Is medical evidence on normality admissible? When doctors say that the defendants were not mentally disordered but even the jury did not deem any intent to commit murder, the Court did not admit the evidence. It was apparently not permissible to tell the jury or the Court how the mind of a normal man works i.e., the formation of intent. The Court held in such cases that the witness cannot be an expert on the ordinary man which is the exclusive province of the jury. [21]

Normality and abnormality are not divided by a clear line, they merge into one another, there is a vast

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20. R v. [illegible] [1965] 1 All E.R.[illegible]; R v. [illegible] [1957] 1 Q.B.[illegible]; [illegible] v. [illegible], [1963] 1 Q.B.[illegible]; R v. [illegible] [1965] 2 All E.R.[illegible]; R v. [illegible] [1965] 3 Q.B.[illegible].

21. For instance, see R. v. [illegible] [1975] Q.B.[illegible].

grey area. Though the ultimate decision is for the jury or the Court as the case may, on questions of mental disorder, the expert may, in these days, quite properly express an opinion upon the ultimate issue in the case.[32] It cannot be said that automatism or 'sleep walking' is not something within the realm of the experiences of the ordinary person. A proper foundation must be laid for such a defence, and it must be supported by expert medical or scientific evidence. The layman ofcourse may have difficulty in distinguishing the genuine from the false or fraudulent mental disease, the medical, psychiatric or psychological defects from the malingering.[33]

In diminished responsibility cases expert evidence is essential. Mental disorder casts a different complexion upon any change of offence. It prevents the formation of criminal intent; even if not, it will nonetheless have an effect upon the nature of the charge, the gravity of the offence and the sentence to be passed.[34]

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32. Semble ibid., at 766. He says that "there there is any live issue as to insanity or otherwise D should submitted to obtain expert evidence. It should always be open to him to challenge the presumption of sanity if he can".
33. Id. at pp.766-766. Also see Bratty v. A.G.for Northern Ireland [1963] A.C.386 at 409, 411-414; C.A.Mitchell and Aglionby, "Psychopath in the Criminal Process", [1969] Crim.L.R.648.
34. Sultan Khaleque, Insanity the law and the offender, (1980), pp.5-6.

When charged with a normal offence one can seek to show that he was abnormal at the time of the offence and therefore not likely to have formed the necessary intent.[35] When charged with an abnormal offence one may seek to show that he was normal, and therefore not likely to have done the act. If this is the position, then, says Samuels,[36] that there is little sense in seeking to admit or reject psychiatric evidence on crude classifications of offences and offenders and defences as normal or abnormal because whether normal or abnormal may be the very matter in issue.

After the coming of the Homicide Act 1957 in England, it seems fairly to have been accepted in law that when, on a plea of diminished responsibility, the medical evidence is all in favour of the defence, then the jury should not ordinarily discard it.[37] In R v. Matheson,[38] the respondent was convicted by the jury of a prevailing number of a boy of fifteen years. All the three doctors

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35. R v. Matheson, [1958] 2 All E.R. 87 Lord Goddard,J at 90; Bratty v. Att.General, [1963] A.C.386; Sum, Sir A Cammack QC (then acting R.P.Cohen, "Medical Evidence of Diminished Responsibility", (1965) N.L.J. 665.

36. Alex Samuels, Homicide, at p.768.

37. See R v. Matheson, [1958] 2 All E.R. 87.

38. Ibid.

called for the defence agreed that Robinson was so abnormal as substantially to impair his mental responsibility for the killing. Prosecution produced no medical witness. The jury convicted him for murder. On appeal the Court of Criminal Appeal held that a verdict of manslaughter should be substituted on the ground that the jury verdict could not be supported having regard to the evidence. Lord Goddard said:

> "While it has often been emphasised, and we would repeat, that the opinion in these cases . . . is for the jury and not for doctors, the verdict must be founded on evidence. If there are facts which would entitle a jury to reject or differ from the opinions of the medical men this court would not and indeed could not disturb their verdict but if the doctors' evidence is unchallenged and there is no other on this issue, a verdict contrary to their opinion would not be 'a true verdict in accordance with the evidence'."[39]

Thus, Lord Goddard took the view, that on the two questions of Section 2 of the Homicide Act, viz., whether there is abnormality of mind/from the specified causes and second, whether the abnormality is substantial enough to impair the defendants' responsibility, if there is unchallenged and uncontradicted medical evidence on such questions, the jury are bound by that. Lord Parker in R v. Byrne,[40] took a different approach. Accepting

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39. Id. per Lord Goddard, C.J. at p.99.

40. [1960] 3 All E.R.1. Lord Parker, C.J. at pp.4, 5; for facts, see Byrne, Ch.XIX, n.18.

to him the jury are bound by such evidence only on the first question and notwithstanding such evidence on the second question the jury is entitled to disagree if even if there is no other material in the case that would justify them in differing from the opinion of the doctor. Lord Parker said,

> "Whether the accused was at the time of the killing suffering from any 'abnormality of mind' . . . is a question for the jury. On this question medical evidence is by no means conclusive, but the jury are entitled to take into consideration all the evidence including the case of prosecution of the accused and his demeanour. They are not bound to accept the medical evidence if there is other material before them which, in their good judgment, conflicts with it and outweighs it. The etiology of the abnormality of mind, namely, whether it arose from a condition of arrested or retarded development of mind or any inherent cause or was induced by disease or injury, does, however, seem to be a matter to be determined on expert evidence. Assuming that the jury are satisfied on the balance of probabilities that the accused was suffering from 'abnormality of mind' from one of the causes specified in the parenthesis of the sub-section, the crucial question nevertheless arises, was that abnormality such as substantially impaired his mental responsibility for his acts? . . . This is a question of degree and ultimately one for the jury. Medical evidence is, of course, relevant but the question involves a decision, not merely whether there was some impairment . . . but whether such impairment can properly be called 'substantial', a matter on which jurors may quite legitimately differ from doctors". 41

The position seems to be that the jury are bound by the doctors' evidence that the defendant was suffering from

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41. Ibid.

abnormality of mind only if (i) the medical view is unanimous, (ii) it is not challenged in cross-examination and (iii) there is no other material in the case entitling the jury to go against the medical evidence.[42] Matheson[43] does not in any way conflict with this position. In Matheson the medical evidence was unanimous and unchallenged.

In order to prove substantial abnormality impairing defendant's responsibility the medical evidence will have to be specific and free from doubt. In Walton v. Queen,[44] a psychiatrist gave evidence that the defendant satisfied the test in Section 2 of the 1957 Act. Two other medical witnesses also gave evidence. It is true that the latter did not contradict the psychiatrist. But their evidence fell far short of the conclusions of the psychiatrist. The Privy Council, disallowing the appeal from the conviction of murder said that the quality and weight of this medical evidence fell a long way short of that in Matheson.[45] The jury had before them evidence of the conduct of the appellant before, during and after the

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42. [1958] 2 All E.R. 67.
43. See N.D. Cohen, Matheson, at pp.467-468.
44. [1978] A.C. 788.
45. [1958] 2 All E.R. 67.

killing. They might also have thought that there was nothing in the evidence indicating a man whose mental state happened on insanity.[46]

Expert evidence is not only desirable but also of great importance because subjective assessment of guilt is getting more and more recognition.[47] The greater is the emphasis on subjectivity the more is the role of expert evidence. Expert witness can bring out what is within the defendant himself.[48]

Modern psychiatry and psychology have achieved tremendous progress in mental health problems. The experience and ability of those who practise these professions are of valuable service to law courts and society at large. There is no more any moral or valid justification for leaving the jury or the judge to look in the dim light of their ordinary human experience while the ever-growing scientific knowledge on the dark subliminal workings of the criminal's mind would give them more light to make better and just decisions. The jury or the court, as the case may be, are susceptible to ignorance and prejudice. Any scientific information in understanding and

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46. Whitmore v. Queen [1978] A.C.788 per Lord Keith at 794.
47. See Smith and Hogan, Criminal Law(4th ed.1978) p.67. For contrary view see Glanville Williams, "Controlling Involuntary Conduct", (1975) 91 L.Q.R.560 at 582; Also see David Crosley, "The Measure from Mungen", [1982] Crim. L.R.196, where the author says that the measure from Mungen principle, affirming the subjective approach in criminal responsibility is without any justification.
48. Abdul Hussain, Ibid., at 760.

evaluating evidence can be beneficial to them and to the ultimate question of seeing out justice to the mentally affected individuals and of protecting society from such dangerous persons.

Butler Committee recommended that all evidence as to the state of mind of the accused should be admissible, subject to giving advance notice to the other side.[49] Even in issues of ordinary human experience, collection of information, assessing the reliability of evidence, and evaluation of the people, behaviour and situations can be more effectively done if scientific evidence outside the experience of judge and jury are made available. The question whether the expert is called by the prosecution or the defence makes little difference before a competent judge and an informed jury. In homicide cases in England, the prosecution always obtain a psychiatric report. This is given sufficient weight. There is no question of usurpation of the role of the judge or the jury. The psychologist or the psychiatrist only assists them. The present law of uncertainty whether the evidence is sometimes admissible, and sometimes not, is illogical. The expert evidence should be admissible if it is relevant to an issue in the case. The jury or the judge can evaluate

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49. Report of the Committee on Mentally Abnormal Offenders (Butler Report), Cmnd. 6244 (1975) Paras. 18. 46-49 and 19.21.

the expert evidence, tested in the forensic setting, draw upon their experience of life, and bring in an informed, considered and responsible verdict. It is said that medicine, science and law must draw close together.[50]

In India the system of jury trial[51] is no more in existence. Consequently the judge is responsible for not only the final decision but also for the evaluation of the evidence. This does not minimise the role of the psychiatric evidence because as far as knowledge of mental health and medicine is concerned the judge is a layman. The approach of courts in admitting medical and psychiatric evidence has not been consistent; sometimes such evidence was held admissible and sometimes not.[52] Obviously, the strict adherence to the right and wrong test of responsibility has been mainly responsible for having only a limited role for medical evidence. Logically such evidence ought to have been held admissible whenever it is relevant for the final decision which is to be made by the court. Availability of competent medical witnesses may be limited. But this is no reason why whenever such competent witnesses depose before the Court their evidence may not be admitted.

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50. Alex Simmie, Op. Cit., p.770.
51. For a critical assessment why the concept of jury system did not gain ground in India, see S.N.Jain, "Public Participation in Criminal Justice Process - An Indian Experience", (1976) 18 J.I.L.I. 134 at pp.138-141.
52. See supra, nn.16-22.

PART V

LAW AND PSYCHIATRY

CHAPTER XI

PSYCHIATRY, MENTAL ABNORMALITY AND CRIME

Crime is an act or behaviour defined as crime by criminal law. But crime cannot be defined in abstract terms. The concept varies according to ethnic, values, ideology, politics and time. In other words, crime is a cultural, political-cum-legal concept.[1] Only if it is founded on correct ideology and science an assessment of crime can be scientific. Psychiatric knowledge substantiates this assessment and hence gets more and more recognition in criminal law which governs the human conduct and behaviour. [2]

Are Crime and Mental Illness Identical?

Are all criminals to be considered insane? Experiences show one thing. Every one who is mentally insane does not commit crime.[3] Yet some theorists hold

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1. See, David Schlafer, "The New Criminology & Some Critical Issues", (1980) All India Criminology, Vol.28, pp.1-8; Also see J.N.J.Pandey, Psychology and the Criminal, (H.N.Tolpadi, Bombay), (4th ed. 1988), pp.1-2.
2. The discussion is based on authors, Psychiatry and the Criminal, Delhi,(1984), see Ch., pp.
3. Also see Jaffe, R.L. and Jaffe, Ch.XV, R.L.

that all criminals are mentally disordered, since they will not engage in such dangerous behaviour.[4] This theory is illogical from the practical point of view. It does not distinguish between crime and mental illness. There exists a distinct class of offences namely 'white collar' or 'socio-economic' offences. These offences have very little to do with mental disorder or emotional disturbances. The offences are attributable to environmental conditions and social structure of the offenders. It is true that the most striking characteristic of a large majority of criminals is emotional immaturity. When emotional immaturity can be considered as a defect in mental health the relation between criminal behaviour and mental illness can be generally deduced. [5]

'Free will'

Every individual possesses the capacity to choose between good and evil. This is the basis of the freedom

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4. Also see Ashton, op.cit., 12.
5. Business and professional men commonly resort to criminal practices which are to a high degree tolerated by their associates and upheld indirectly by the canons of ethics. In 'White Collar Crime' Crime, 13 American Sociology Review, 132 (1948) as cited in Vold, op.cit., p.113; Also see Sutherland, White Collar Crime (1949), p.38.
6. Wollheim, op.cit., p.12.

of will theory. On the other hand, according to the 'deterministic' theory man does not possess this capacity to choose between good and evil but is an instrument in the hands of external factors. In other words the course of his action is pre-determined. The conflict between these two theories is of primary as well as practical importance to criminal responsibility. On the determination of this tangle depends the solution of the overpowering conflict between law and psychiatry. Many psychologists and psychiatrists accept now a strictly deterministic philosophy, in which there is no room for any supposed freedom of will. But this view is at variance with the philosophical and ethical principles, on which our traditional penal law is based.

How long should we go in discarding free will as an obsolete concept? In an attempt to resolve the dilemma Glueck said,

> "The concept of freedom of choice and control must be pulled down from the clouds of cant in psychiatrically defined ... (A)n understandable picture, legal definition of an individual's freedom of will in his particular capacity for conscious, purposive, intentional action when confronted with a choice of alternatives. As soon as 'freedom of will' is so defined, it becomes evident that individuals differ in their capacity to make reasonably choices and to manage the manipulation of means to achieve ends with reference to the prohibitions of the penal code. They differ in this respect just as they vary in intelligence, in physique, in health, or in any other human quality."[7]

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7. Sheldon Glueck, Law and Psychiatry, (1962), pp.11-12.

Glueck[8] raises an imaginary picture. This shows the freedom/determinism proportions of different groups - the feeble-minded person, the extreme psychotic, the average sociopathic, the psychopathic, the genius and the fictional "average responsible man". He suggests a practical means of determining the guilt of the law breaker by measuring his free choosing capacity and the deterministic features of the genetic and environmental factors. The free-choosing capacity of the 'average responsible' or prudent man ranges from fifty to eighty-five percent leaving a fifty to thirty-five percent to the conditioned factors showing a deterministic dominance. The well integrated genius may perhaps show seventy to ninety percent free choice capacity. Psychotic and psychopathic persons may show a low percentage of ten to forty and thirty to forty-five free choice capacity respectively.

A pertinent question arises. In the person, determined by biological, genetic and socio-cultural conditioning in human behaviour, how to choose between good and bad? This is a theoretical problem. It can be got over in practice only by a change of approach towards criminals. Psychological and medical treatment can be given to all criminals who are claimed to irresponsible

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8. Id. at 10-11.

treatment. In the case of these criminals the are affected by mental ailments and at the same time beyond treatment can be kept aloof and separated from society if they are dangerous to the others.

Basic Elements of Psychiatry:

Psychiatric diseases are incapable of exact scientific proof. However, they can be said to be functionally based on certain psychological postulates such as (1) integrity of personality, (2) influence of the unconscious and (3) the concepts of regression and regression? [9]

Individuals Personality

An individual is integrated in body and mind. Psychic health is the product of both body and mind put together. Man's capacity to reason and to make conscious choice between good and evil is to a great extent affected by his intellect and emotions. Intellect, emotions and the will are interdependent, each reacting on the other. They do not perform independent functions in separate compartments of the brain. A disorder in one sphere of mental activity will affect the whole mind as a psychic apparatus.

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9. For a full discussion of these postulates, see Waldman, Ibid., pp.10-13.

Personality, is 'the individual in action'. It determines his reaction in all life situations, in health and in disease. The symptoms of most serious mental diseases are largely those of release of emotions. The social controls, acquired relatively late in life, are often the first to deteriorate. This makes the underlying basic structures free to act as it likes.

The Unconscious Factor

Our basic attitude towards religion and politics and our likes and dislikes of things and people are for the most part unconsciously motivated and controlled. The controlling power of the 'unconscious factor' is such that the human mind has been compared to an iceberg, with seven-eighth of its bulk below the surface. Many people act in a particular manner and then search out for reasons justifying their action. These reasons may not be justifiable according to others. From a complex intermingling of causes and motives the unconscious motives decide and persuade us to make his choice. Of these motives and causes the most acceptable ones can be considered and appreciated to understand the role of the 'unconscious' in making choices and the meaning of criminality which results from such choices. [10]

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10. Ibid. The author refers to the method of psychoanalysis developed by Freud in our understanding of the 'unconscious factor' first by using hypnosis and later by the method...

<u>Repression and Regression Factors</u>

Faced with a distressing situation, the human being is prone to seek escape. He resorts to certain well recognized psychological mechanisms. Repression and regression are these mechanisms. Repression is a process of forgetting. It is often considered as a blessing. The painful episode or wish, often sexual or hostile, is pushed below the level of consciousness. Neurotic symptoms are frequently of this origin. Repression differs from suppression. The former is unconscious; the latter is consciously occurring. Regression is a similarly unconscious sliding back to an earlier period in one's

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(f.n.10 continued)

technique of free association. It helps patients bring to the surface memories repressed below the level of consciousness. In this psychoanalytic method the patient is taught to relax. He is allowed to relax his conscious censorship and to have any random thoughts coming to mind. The critical censoring mechanisms are relaxed and painful events and attitudes released from the mind. Then it is found that many of these events and attitudes are from early childhood. Many are connected with that area of behaviour which in our culture is under such rigid taboo 'sex'. The study is of great importance. But this method, it is said, is of little practical use in criminal law because it is time consuming and requires such complete subject-cooperation.

The author refers to another test namely "word association test", developed by Carl Jung, which can be used in crime detection with care. There the examiner gives the stimulus word and the subject responds with the first word that comes to mind. An analysis of these responses often reveals to a remarkable extent what lies below the conscious level. Unusual delay in responding calls attention to sensitive areas meriting further exploration.

development. Faced with an extremely threatening or painful situation, the person gives up his natural level of behaviour and catches hold of the old characteristics of his child-hood or even infancy.

Psychological Analysis of Criminal Behaviour

Mentally inadequate persons are potential 'criminals'. This is the psychologic and psychiatric theory. Therefore origin of criminal behaviour can be traced to mental illness or disorder.[11] Is the theory proved by experimental observation?

Psychotic persons behave in strange manner. Symptoms are disorganization of inner controls, delusional hallucinations. Their actions are unpredictable. They are likely to fall into criminality. Some crimes are motivated not by personal gain but by 'danger' psychic centre. At the subconscious of his mind, the criminal craves for punishment. He gets relief from getting punished. This is particularly so in the case of shop lifting which is more

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11. Benjamin Karpman said, "The criminal is a sick person; crime is a disease, a symptom of mental abnormality. If lawyers are to be the physicians of society criminals should be provided with treatment". See The Criminal, Criminals, and His Offenses, Philadelphia, [illegible], (1954), p.113; also Will Anyone Really Understand and Control Criminals, (1974), pp.115-137.

as a sign of psychological disturbance. In a study,[12] of the rate of admissions in mental hospitals during the years 1964-68, those admitted for committing shoplifting due to mental illness were three times as large as those committing shoplifting generally without having any mental illness. The study included 1525 women shoplifters.

On the other hand, there are studies[13] giving different pictures. In one such study only 1.8 percent of the criminals examined are found to be psychotic, where as 6.9 percent are neurotic, 11.2 percent are psychopathic and 2.4 percent suffer from other mental defects.[14] That means only few offenders are psychotic where as neurotics are comparatively more, psychopathic are much more. These data do not support the theory that there is a high rate of mental abnormality among the offenders. A high statistical relationship between crime and mental illness thus stands negatived. So does the causal relationship.

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12. Gibbens, T.C.N.&Prof Glaser & Prince Dayan, "Mental Health Aspect of Shoplifting", British Medical Journal, no.3. (1971), p.448.

13. Gluecksmeyer & Gluecksmeyer, Juvenile Delinquency and Jobs. (New York, 1968), p.102.

14. For the psychiatric classification of the mental disorder see Idem, n.36.

Psycho-analytic approach

Psychoanalysts believe that to understand criminality a deeper psychology than the traditional one is required. In the study of human behaviour and criminality psycho-analytical theory lays emphasis on two factors. One is the motivational priority of instinctual expression and unconscious psycho-sexual conflict.[15] Another is the adaptational and environmental factors which drive one towards criminal behaviour. [16]

Freud's[17] theory of psycho-sexual development may be considered as the core of psycho-analytical theory of criminal behaviour. According to this theory, a child progresses through three distinct, yet, overlapping, stages of sexual development which culminates in an oedipal conflict between the child and the parents. It is said that during the developmentally crucial state, around the third year of the life, the child unconsciously desires to take possession of the parent of the other sex and develops a

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15. This theory is enunciated by Freud as the forerunner in the field. See Sigmund Freud, Sexuality in Psychoanalysis, (1922).

16. Abrahamsen, David, The Psychology of Crime, (New York, 1960), pp.39-41.

17. Ibid, n.15.

fear known of jealousy of the parent of the same sex, who is at the same time still loved, and fears the impossibility of gaining any real gratification for these powerful urges. For the later emotional life of the child much will depend upon the way in which the emotional tangle of this period, which may be called the oedipus phase, is resolved. In majority of children this sexual fantasy is accompanied by a great deal of anxiety or fear of castration, and feeling of guilt. The conflict and some of the instinctive urges are later on suppressed and controlled and a process of identification with the parent of the same sex takes place. This then leads to the formation of conscience or the growing of independence of the child's ethical code in relation to that of his parents and then again to personality formation.

Freud and his early followers believed that criminals are not able to master their oedipal conflict. Hence, they suffer from an excess unconscious sense of guilt that seeks alleviation through punishment. 'The guilt feeling', according to Freud is derived from the oedipus complex and is a reaction to the two great criminal intentions of killing the father and having sex with the mother.

Aichhorn[18] holds that delinquency is the result of an interplay of psychic forces. The model of socialization implied in Aichhorn's theory is the family. An individual character and his criminal tendencies are determined by the changing phases of this resolution of his oedipus conflict. Faulty resolution leads to a life of crime. A person commits crime in order to be punished for an offence that seems less offensive than their sustained oedipal transgression. Crime is thus conceptualized as an atonement ritual. Only the unconscious anticipation and experience of punishment makes crime possible for a criminal, since it relieves his inner conscience. These early psychoanalytical studies on crime emphasized the irrational, infantile, and unconscious dynamics of crime.

Critics of the psycho-analytic approach assert that the study of crime depending upon the instinct theory is inadequate for the explanation of criminal behaviour. According to them, the assumption that behaviour, criminal or otherwise, is primarily an overt manifestation of an infantile unconscious conflict is questionable. It is true that unconscious conflicts influence an obvious impact on behaviour; but it is subject to multiple determinants. It

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18. Wayward Youth,(1935). p.70.

still remains an unproven assumption that what is unconscious constitutes a more basic motivational influence than conscious or social determinants. The notion of oedipus complex is yet not proved. Viewing crime as the symbolic expression of an unconscious conflict is to add minimum the motivational role of precipitating factors within the environment. However, the focus on the family as the primary agent of socialization for the child upon instinct theorists to the criticism that they ignore the world at large in their conceptual schemes.

Dut. Alexander Pfeuz,[19] another follower of Freud, went beyond the Freudian instinct theory in an attempt to account for the variety of motivational factors observed in his analysis of several psychopaths. He described specific character definitions of some criminals which accounted for their criminal behaviour. He also observed that a number of criminals appeared to be neither neurotic nor psychotic.[20] This adaptational theory of criminal behaviour moved away from Freudian unconscious instinct theory of crime. Importance is given instead to external realities and conscious motivations.

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19. "Psycho-analysis And Social Disorganization", Journal of Criminal Psychopathology, (New York, 1950), pp.31-45.

20. Ibid.

Psychoanalytical studies conducted by Abrahamsen[21] reveals three definite modes in which a person may fall into criminality:

(1) When asocial tendencies are exposed to offending influences and are further incited by the effect of a precipitating event.

(2) When there is a powerful unconscious desire for punishment, owing to unconscious, deep-seated guilt feelings developed through past experiences and

(3) As an expression of aggressiveness.

Antisocial tendencies are exhibited in one or more of these direct or indirect ways to such a degree that the individual can no longer hold back from committing a crime. There are three factors, according to him which accounts for the origin of crime namely, criminalistic tendencies, the total situation, and the individual's mental and emotional resistance to temptation.[22] Crime is precipitated when the individual's resistance to the temptations of his criminal tendencies in the situation is inadequate.

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21. Abrahamsen, The Psychology of Crime, New York, (1960), p.33.

22. Id., p.37.

Psychological Classification of Criminal Behaviour.

Psychological classification of criminality stresses the mental, emotional and psycho-analytical characterization of the criminal.

Alexander Fyumi [23] presented a classification which is known as the Freudian typology. He classified criminals into two classes: (1) The neurotic criminals, whose stand against the society is the result of a conflict between social and asocial dimensions of his own personality and which conflict can be traced, by psycho-analytical method, back to childhood experiences and to circumstances of later life. (2) The normal criminal whose psychic organization is similar to that of normal individuals, except that he identifies himself with criminal types. [24]

Another psycho-analytic Freudian typology adopted by Abrahamsen[25] has two main divisions:namely 'the outer' and

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23. "Psycho-analysis and Social Disorganization", Journal of Criminal-Law, Penal Code, New York, (1954), pp.38-46.

24. While co-ordinating with Hugo Stumb in a famous book, he gives a third class of criminals, namely, the criminals whose criminality is considered by some psychological process of organic nature i.e., bisexual etiology, the first two classes, the neurotic and the normal criminals being described as psychological etiology and psycho-sexual etiology respectively. See Alexander and Stumb, The Criminal, The Judge and The Public (Illinois Translation) Collier Books, (1963), p.66. See also Ch.X, on Ed.

25. Abrahamsen, David, "The Psychology of Crime", New York, (1960), pp.116-122.

'the chronic'. The acute offenders are not properly criminals because their antisocial tendencies are provoked by certain circumstances. They may be called situational offenders who involve in criminal acts by some chance or mistake. The chronic offenders are again classified into neurotics, psychotics and psychopathic.

Maudsley[26] classifies mental illness on the basis of the commonly recognised forms of disorder, psychiatrically and clinically observed, into the following categories:

A. The psychoses

(1) Manic-depressive (2) Schizophrenic

B. The neuroses (also called psychoneuroses)

(1) Character neuroses (2) Symptom neuroses (including anxiety states, hysteria, obsessive-compulsive disorders (psychasthenia) and neurasthenia)

(3) Traumatic neuroses.

C. Psychopathic personality (including some so-called sexual psychopaths)

D. Organic brain disorders

(1) Senility (2) Paresis (3) Head injuries

(4) Epilepsy.

E. Congenital intellectual deficiency (feeble-mindedness).

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26. On. cit., p.14.

Mannheim's classification has the advantage that it shows the discrete characteristics of the psychiatric and clinical entities so that it is of practical utility in deciding responsibility and assigning punishment or treatment which ever is to be made applicable.[27] No classification of criminal behaviour can be perfect; nor can classification alone give a perfect understanding of criminal behaviour. Classification, if it should help prevention, correction and control of crime, must be based on a precise theory of crime which is pragmatic and permitting its application to systematic grouping of crimes and criminals. Classification will be useless if not linked to theoretical model having correctional application.

Psychopathic Personality

Psychopathic persons forms a separate group. Psychopathy is an area where there is controversy whether exemption from criminal responsibility is to be extended to or not.

A psychopathic person is said to be morally undeveloped, incapable of loyalty, callous, irresponsible and impulsive. He does not at all feel himself guilty when he

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27. For a detailed analysis of the characteristics of the various types of mental disorder, see Vallender, Studies, at pp.14-33.

does commit a crime. He does not learn from experience.[28] Karpman classified[29] them into two.

(i) the aggressive-predatory, and

(ii) the passive parasitic.

The former is characterized by constant aggression and the latter by an ability to satisfy needs as a parasite. The psychopath's criminal deeds lack purposeful progress towards a pre-decided goal. He resents punishment and confinement.

Cleckley listed some sixteen characteristics in defining the psychopathic personality.[30] Criminal psychopaths

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28. R.D. Hare & D.N. Cox, "Clinical and Empirical Conceptions of Psychopathy, and the Selection for Subject for Research", Psychopathic Behaviour, (John Wiley & Sons, New York), (1978), p.1.

29. Benjamin Karpman, The Sexual Offender and His Offenses: Etiology, Pathology, Psychodynamics and Treatment, (New York), (1954), pp.155-156.

30. A. Cleckly, The Mask of Sanity, (1950), p.338. Superficial charm, absence of delusions and other signs of irrational thinking; absence of nervousness or psychoneurotic manifestations; unreliability; untruthfulness and insincerity; lack of remorse or shame; inadequately motivated behaviour; poor judgment and failure to learn by experience; pathological egocentricity and incapacity for love; general poverty in major affective reactions; specific loss of insight; unresponsiveness in general interpersonal relations; fantastic and unwelcoming behaviour with drink and sometimes without; threats of suicide rarely carried out; sex life impersonal, trivial and poorly integrated; and failure to follow any life plan.

show more obvious emotional instability than the average man. Another study[31] shows that some sixtysix percent of the patients show clear psychopathic tendencies at the age of seventeen. Many more characteristics of psychopathy are revealed from studies and research and it is possible to establish connection between psychopathy and criminal behaviour. [32]

Many of the psychopathic personalities may not be 'insane' within the meaning of criminal tests of responsibility. But it is certain that they are not normal. In the eyes of the public some deserve punishment.

There is a controversy in England on the question whether or not psychopaths should be exempt from criminal liability on the ground of mental disease or illness. [33] Yet they have been given some protection under English legislation. The legislation includes 'psychopathic disorder under 'mental disorder'.[34] The most recent legislation, namely, Mental Health (Amendment) Act 1982, took

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31. Gibbens, T.C; Robertson, G & Dalle, "Psychopathic and Recidivist Offenders in Mental Hospitals", The Mentally Abnormal Offender, (1968), p.149.

32. See supra, nn.29-31. See also H.Prins, Offenders, Deviants or Patients,(1980), p.153.

33. See G.Williams, Criminal Law, (General Part) (1961), pp.522-526.

34. See Infra, Ch.XXXI, n.21.

away the compulsory confinement of the mentally handicapped persons in mental hospitals. Such confinement is now restricted to persons of "abnormally aggressive or seriously irresponsible conduct". [35]

In the United States also psychopaths not coming under the legal test are given some legal protection. This legal protection can be grouped under three main heads. [36]

(1) Where the mental abnormality serves as a ground for reducing punishment.

(2) Where it serves as a ground for avoiding criminal proceedings.

(3) Where it is taken into consideration in sentencing or in detaining punishment.

Sexual psychopaths

Of the different psychopaths, sexual psychopaths form a separate category which deserves special treatment. Many States in the United States have passed laws to deal specifically with 'sexual psychopaths' or 'psychopathic

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35. For a discussion on these aspects see Lenny Conklin, "A Review of the Mental Health Amendment Act", (1968) 122 N.L.J. p.1127 et seq. Also see Ch.XXII.

36. Waltzer, op. cit. at pp.174-175.

persons' who have shown a lack of power to control their sexual impulses[37] However, intellectual deficiency of sexual psychopaths is manifest in their unusual sexual behaviour. It may even be said that nearly every mental disorder may have sexual misconduct as a symptom. But at times the person may commit rape or murder and it is likely that he repeats his offence unless apprehended and prosecuted. It is also said that unusual sexual behaviour is only a minor symptom of their mental deficiency. Perverts are some times led by their feelings of sexual inadequacy. Their wish for superiority to commit a sex crime may even result in murder. The hysterical type of sexually perverse persons however, tends to be more of a nuisance than a menace. This type of men centered themselves with exhibitionism. [38]

A sex offender is one who has committed a sex act which is legally banned and penalised. Most technical sex offenders go undetected. It is said that if all such offenders in the United States are caught in the legal net, perhaps nineteen persons of the American male population, would at some time in their lives be jailed.[39] Though many

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37. Id. at pp.37, 196-205
38. Id. at p.38.
39. Tuteh, Sexual and Criminal Psychology, New York, (1965), p.402.

statutes deal with sexual offences in western countries there is no clear definition of what will constitute a sexual offence and different terms are used.[40] Many offences can be put under this category (1) prostitution which is primarily a socio-economic problem rather than a psychiatric one, (2) exhibitionism, or indecent exposure which is a neurotic type of offence and which occurs only among males, (3) paedophilia or sex relations with children, (4) unnatural sex offences like bestiality or sex relations with animals and (5) rape, the most common sexual offence.[41] Some say that sex offenders are psychotics.[42] Sue Wallace denies

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40. Id. at 49-52. Such as sexual abuse, open lewdness and "unnatural practices", deviable sexual assault (stopping short of coitus), deviable rape, statutory rape (with female below the age of consent), incest, non-marital sex relations with a minor, prohibitory sex acts, abnormality, homosexuality, transvestism (dressing and appearing in public as the other sex), voyeurism (spying on the sex relations or nudity of others) sex murder, sodomy (unnatural sex act like homosexuality, bestiality, or oral genital relations between consenting men and women) adultery, fornication (habitual contact with two unmarried individuals) prostitution, pimping and pandering, brothel keeping.

41. For a detailed discussion on these offences, see Wallace, Rape, at pp.29, 30.

42. Abrahamsen, Op.Cit., pp.153 and 157. A study conducted by him on some 102 sex offenders found that all of them suffered from mental or emotional disorders, ranging from compulsion conditions and character disorders to psychoses. The following are the results:

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this and says that it is not difficult to reform sex offenders. [43]

The investigators unconscious motivation for committing offences other than sexual offences may also be something connected with sex, hidden in the subconscious mind of the offender.[44] For example a murder may be committed because of the offender's distorted sex or due to his

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(f.n.42 continued)

Simple schizophrenics	5
Paranoid schizophrenics	4
Catatonic schizophrenics	2
Pseudo neurotic schizophrenics	1
Paranoid condition	1
Psychoses due to alcohol	2
Schizoid personality	1
Character disorder	23
Organic psychopaths	2
Passive alcoholics	7
Psychoneurotic	19
Obsessive - compulsive neurosis	24
Anxiety state	10
Conversion hysteria	1

Most of the above offenders studied by Abrahamsen had been brought up by mothers who were stern, cruel, or sadistic and who apparently made the boys insecure and fearful of women. Because sadistic aggressiveness frequently causes annoyance in their homes, these boys grew up with the idea that women had to be taken by force. This mental framework often forced them to commit rape, and other kinds of sexual assaults.

43. On. cit., p.30.

44. Weihofen opines that offences that seem to have no sexual implication may actually be sexually motivated. Ibid., p.28. See also James C.Coleman, Abnormal Psychology and Modern Life, (1974), pp.390-404.

aggressive drive for sex or his false notion of self-esteem and prestige. Strong emotions of jealousy can be found in these kinds of murder. [45]

It has been found that difference in sexual instincts may be due to the influence of some chemical secretion in the body and can be controlled either by clinical therapy or by surgical operations.[46] These potentialities of crime prevention opens new dimensions in the war against crime and have to be fully exploited in the criminal justice system.

Most offenders particularly sex offenders present a problem which is actually two-fold. On the one hand it is a medical or psychiatric problem in which sociological, psychological, environmental and hereditary factors play their part in varying degrees. On the other hand, in the eye of law, the majority of sex offenders, psychiatric patients or not, are not insane. A relevant question arises. Can a medically insane individual be legally

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45. For example, see Ahmedulla's case (SUPRA, Ch.VIII nn.21-23).

46. J.Paul de. River, Crime and Sexual Psychopath, (1958), p.124.
"Influence of endocrine glands and their secretions on sex is fully recognised by authorities ... . Sex hormone do influence the anatomical character of the individual. It is well recognised that if sex glands are removed prior to puberty there is often a complete absence of sex urge ... . After such behaviour has been conditioned it is facilitated by certain sex hormone. Castration in the adult does not completely remove erotic desire. We therefore must look upon sex hormone as unconditioned stimulus". cf. Kate Friedlander, The Psycho-analytic Approach to Juvenile Delinquency, (1951), pp.151-159.

responsible for his criminal acts? This is a theoretical problem. But it has to be solved pragmatically. Inevitably, there arises a need for change in the attitude towards sex offenders. The proper handling of these sexual deviants can be accomplished successfully by utilizing the gains of psychotherapy, endocrine therapy and surgery.

By way of summing up, it may be said that there is some difference of opinion among the psychologists and psychiatrists on the relation between crime and mental disease. Confusion exists amongst them on the diagnostic categories of mental diseases. Consequently there is difference of opinion amongst them on the approach towards the criminals. However, psychologists and psychiatrists are agreed on the need for treatment for those category of mentally abnormal offenders who are susceptible to treatment.

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CHAPTER XXX

DEVELOPMENT IN THE UNITED STATES

Developments in the field of psychiatric and psychologic knowledge had its influence in the various criminal law systems in the United States which resulted in the abandoning of the old 'M'Naghten Rules'.[1] 'Right and wrong' test is a product of the moral assertion on the presumption of 'freedom of will'. But it was felt contrary to the elementary principles of morality to punish a person who suffers from mental illness. Such illnesses may include confusion, withdrawal, continuous moodiness and brooding or other affections. They involve by and large the total personality though they may not at the same time prevent the person from faintly appreciating the right and wrong of his acts. So new approaches in fixing criminal responsibility and treatment afterwards were sought.

Innovations in Penal Definitions of Insanity

The above feeling prompted the Supreme Judicial Court of New Hampshire, more than a century ago to declare

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1. In some States it is still the only test or the main test. See infra, n.38.

in Sinclair v. Jenness:[2]

> "No argument is needed to show that to hold that a man may be punished for what is the offspring of disease would be to hold that a man can be punished for disease. Any rule which makes that punishable cannot be law".

As soon early the M'Naughten rule was declared on year earlier in Sinclair v. Pike.[3] It had been argued there that the defendant was suffering from dipsomania, which was claimed to be a species of insanity caused by addiction to drug or alcohol. The Court had instructed the jury that 'whether there is such a mental disease, and whether the killing was the product of such disease were questions of fact for the jury'.[4]

This raises a broader and deeper scope of psychiatric testimony inevitable in assessing the responsibility. Both in Jenness and in Pike the courts looked into the psychiatric

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2. 30 N.H. 369 at 394 (1871). The rules propounded in this case and an earlier decision, Sinclair v. Pike, 49 N.H.399 (1870) have already been discussed early, see supra, Ch. XII, nn.20-22.

3. 49 N.H. 399 (1870), see supra, Ch.XII, nn.20-22.

4. Sinclair v. Pike, (1871) 50 N.H.369 per Ladd, J. at 398-399. "Whether the defendant had a mental disease ... connot as such a question of fact as whether he had a bodily disease; and whether the killing of his wife was the product of that disease was also as clearly a matter of fact as whether thirst and a quicksand prior are the product of a fever. That it is a difficult question does not change the matter at all. The difficulty is intrinsic ... symptoms, phases, or manifestations of the disease as legal tests of capacity to entertain a criminal intent ... are all calmly matters of evidence to be weighed by the jury upon the questions whether the act was the offspring of insanity; if it was, a criminal intent did not produce it; if it was not, a criminal intent did produce it, and it was a crime".

evidence in order to determine whether or not the act of the accused person was the result of mental disease. This, it is submitted, is the correct way of dealing with suspected insanity cases. It is true that the role of the court is reduced to a little extent. What is hitherto left to the domain of courts for decision in their discretion is now decided only objectively taking into account of what the psychiatrists say. The decisions, called as New Hampshire decisions, had very great influence[5] after about a century over another American decision held by Federal Court, namely Durham v. United States.[6] The Durham

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5. Glueck says that, the New Hampshire rule is, in essence, the philosophy of Durham rule. See, Law and Psychiatry, (1962), p.58; Cyclone Taylor says, that "the New Hampshire rule has been misunderstood and equated with the Durham product test. The latter is a medical test where as the former is basically an evidentiary rule." See "The Decline of Durham", (1967) Cri.L.R.227 at 228; Nelson Silving also says New Hampshire and Durham do expressing the same philosophy and he criticised both decisions severely. See, "Mental Incapacity and Criminal Law", Current Law Legal Problems, Vol.II, (Macdonald, Ed.1958), p.1 at pp.12-20. See also Ch.XII, n.30.

6. 214 F.2d. 862 (1954). The Court of Appeals reversed the defendant's conviction of the crime of housebreaking which involved only a comparatively lesser punishment, contrary to the major decision on insanity which involved murder and the punishment of either death or life imprisonment. It was urged that the trial court had not correctly applied the rules governing "insane act guard" and that the existing right-and-wrong irresistible impulse tests should be supplanted as obsolete. The defendant had a long and varied record of imprisonment for thefts, commitments for treatment in mental hospitals discharges from the Navy for having 'profound personality

rule has also been discussed elsewhere.[7]

After reviewing[8] the testimony of the psychiatrists and the mother of the defendant, the Colombia Court of Appeal reversed the conviction and concluded that "the psychiatric testimony was unequivocal that Durham was of unsound mind at the time of the crime", and that the trial judge had not properly applied the prevailing evidential rule that as soon as 'some evidence' of mental disorder is introduced, sanity, like any other fact, must be proved as part of the prosecution's case beyond a reasonable doubt'.

(f.n.6 continued)
disorder', and attempt to commit suicide. In the mental hospital where he was admitted after suicide attempt, his condition was diagnosed as 'psychosis with psychotic personality'. After discharge on 'recovery' he got into more trouble passing bad cheques and was found by the jury in a lunacy inquisition to be of unsound mind. On readmission to mental hospital he was diagnosed as 'without mental disorder, psychopathic personality'. Again on discharge he committed housebreaking at the charge in question counts. The prosecutor had informed the trial judge that because of the past commitments and filing without trial of charges against the accused, he did not think he ought to take the responsibility of dropping the present charge. The trial judge rejected his defence of insanity and convicted him.

7. Supra, Ch.XIX, nn.36-38. Also see 21.Am.Jur.2d.124. It reads "The rule was adopted in the conviction that as an exclusive criterion the right and wrong test is inadequate in that (1) it does not take sufficient account of psychic qualities and scientific knowledge, and(2) it is based upon one symptom and no common validity is applied in all circumstances; and that the irresistible impulse test is also inadequate in that it gives no recognition to mental illness characterized by knowing and volitional".

8. Supra, n.6.

The court not only remanded the case for a fresh trial but also took the opportunity to invoke the authority to formulate a new test of irresponsibility (in Colombia) and its inherent power to make the change prospectively.[9] The Court enunciated the rule, namely, the rule to be applied on the retrial of Durham 'that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect'. [10]

The Court expounded in Durham certain critical aspects. It defined the term 'disease' in the "sense of a condition which is considered curable of either improving or deteriorating", and the term 'defect' in the "sense of a condition which is not curable of either improving or deteriorating, and which may be either congenital, or the result of injury, or the residual effect of a physical or mental disease". A troubling question was left open. What is mental disease? Durham confines it to a state

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9. The Court took support from statements from Dr. Zong Eng, National Juridicundence of Nanking, (1936). Cardozo, "Book Medicine Can Do for Law," Law and Literature and Other Essays, (1938), p.106, and English Royal Commission on Capital Punishment. See Glueck, Mental., pp.65, 66.

10. Upon new trial, Durham was again convicted; the second conviction was also reversed for containing a prejudicial statement of the trial judge together with the instruction to the jury that 'if the authorities submit to their best opinion on this point (that the accused would remain in the hospital until determined to be of unsound mind) he will be released very shortly. Durham v. U.S., 237 F.2d 760 (1956) as cited in Glueck Mental., p.51.

capable of improvement or deterioration? Can it be said that it includes psychoneurosis? Can it also be said to cover the psychopathic or sociopathic personality types?

Glueck[11] upholds the Durham approach as a great improvement in the relationship of psychiatry and law. Its advantages according to him are,

(1) it widens the scope of the relationship of various mental illness to irresponsibility;

(2) it permits a much wider and deeper scope of psychiatric testimony;

(3) the division of labour implied in the rule permits the jury to perform its traditional function, to apply 'our inherited ideas of moral responsibility to individuals prosecuted for crime';

(4) the morality of choosing between right and wrong and the exercise of free will are balanced with the moral need for exonerating the mentally ill.

There are, however, some criticisms. The foremost among them was that unlike M'Naghten, the Durham provides the jury with no explicit standards or guidance as to the nature and degree of the mental incapacity required for non-liability. The second criticism is that the test makes the psychiatrist, not the judge or the jury, the decision-maker.

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11. Op. cit., pp.91-94.

An attempt was made to improve the test of responsibility by adopting the formula of the American Law Institute in their Model Penal Code. This also has already been discussed in a previous chapter. [12]

In United States v. Freeman,[13] which was discussed thoroughly in a previous chapter[14] a Federal Court has applied the formula in the Model Penal Code and emphasized the need for looking into expert psychiatric evidence.

United States v. Currens[15] is still a modification of the Model Penal Code formula: It says,

> "The jury must be satisfied that at the time of committing the prohibited act the defendant, as a result of mental disease or defect, lacked substantial capacity to conform his conduct to the requirements of the law which he is alleged to have violated".

This test adopts the 'substantial capacity to conform' to the requirements of the law. This appears in part of the Model Penal Code formula. But this omits the

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12. Supra, Ch.III, texts of nn.45-50. Also see 21 Am.Jur. 2d 122. "This [Model Penal Code test] is based on the view that the rule should take account of improvement of expression but that the irresistible impulse formulation is inapt, because the term 'impulse' suggests limitation to sudden, momentary, or spontaneous inclination to commit unlawful acts".
13. 357 F.2d 606 (1966). For an appreciation of this decision, see Cyrus Vance, The Insanity of Insane Criminals, [1967] Crim.L.R. 257-270.
14. Supra, Ch.III, texts of nn.49-54.
15. 290 F.2d. 751 (1961). Also see 21 Am.Jur. 2d. 122.

cognitive aspect in the formula, i.e., capacity to appreciate the criminality of the conduct. This total omission of all reference to cognition cannot be justified. In fact, the M'Naghten rules are criticized not for the use of cognition aspect but for ruling it the only criterion of responsibility. This test looks only at the fact whether or not there is a mental disease or defect so as to lack substantial capacity to conform his conduct to the requirement of law.

It is true that all the tests involve the always baffling problem of degree. They reflect, in legal concepts, the reality of ethical and psychological conclusions of individual capacity for free conscious purposive choice and control. In this context Glueck[16] suggests the duties of

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16. Glueck, pp.23, 108-116. The author proposes,

> "If you are convinced that the defendant at the time of the crime, was suffering from mental disease or defect which impaired his powers of thinking, feeling, willing or self-determination, and that such impairment probably made it impossible for him to understand or control the act in its charged with at the subject, normal persons understand and controls his acts, you should find him lack ability at the moment of commission.
>
> If you are convinced that the defendant at the time of the crime, was suffering from mental disease or defect which impaired his powers of thinking, feeling, willing or self-determination, but that such impairment probably made it impossible for him to understand or control the act in its charged with or the subject, normal understands and controls his acts, you should find him only partially responsible.

cont'd...

a verdict intermediate between full 'guilty' and full 'not guilty' - a mid position of 'partial' or 'diminished' or 'attenuated' responsibility by improving upon the M'Naghten Rule. This undoubtedly makes it imperative for the courts to elicit psychiatric evidence on which the decisions on insanity have to be based. Application of the psychiatric evidence makes diminished responsibility relevant and compelling.

Diminished Responsibility in the United States.

An important area of reform of the insanity defence in the U.S. involves the doctrine of diminished responsibility which is founded on the notion that there are certain situations in which a person should have the penalty for crime reduced because of a mental abnormality that falls below the level of legal insanity.[17] The development and

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(f.n.16 continued)

> If you are convinced that the defendant was not suffering from mental disease or defect at the time of the crime you should find him guilty". At pp.105-106.

17. Arenella, "Diminished Capacity and Diminished Responsibility Defenses: Two Children of a Doomed Marriage", 77 Columbia L.R. 827, 830 (1977). Arenella proposes the model of the diminished responsibility defence. Under this model, "the jury is asked to consider whether a mens defendant's mental abnormality at the time of the crime prevented him from entertaining the specific mental state prescribed by statute". If the formal obligation exists, however, "permits the jury to mitigate the punishment of a mentally disabled but sane offender in any case where the jury believes that the defendant is less culpable than his normal counterpart...

application of this concept in England has been dealt with in one of the previous chapters. [18]

The test for determining diminished responsibility differs from that for determining insanity. When a defendant offers a plea based on insanity, the issue is whether he can be held criminally responsible for his acts. With diminished responsibility, the issue is to what degree a person found guilty of such criminal act should be held responsible.[19] In resolving this issue, courts have opened the door to psychiatric opinion on virtually all aspects of the accused's mental condition. Evidence judged insufficient to prove legal insanity may be relevant to prove diminished responsibility.[20] Although the doctrine was originally developed to provide fair treatment of a defendant convicted of murder or another capital offense,[21]

(f.n.18 continued)
[illegible] the commission the same criminal act". Id. at 630. A model penalty mitigates the penalty for the offense charged. Id. No state has yet adopted the latter approach, although at least fifteen jurisdictions have adopted the first one model. Also see Robinson and Hagan, "In Defense of Insanity Defense", 31 [illegible] p.9 at p.26 (1968).

18. [illegible], Ch.XII, ss.15-26.

19. Ayoub, [illegible], n.17 at 628.

20. In [illegible] v. [illegible], 51 Cal.2d 716 (1959), the California Supreme Court ruled that evidence of "mental abnormality not amounting to legal insanity" is admissible to prove that the defendant did not possess the requisite specific intent. Id. p.726.

21. Report of the Royal Commission on Capital Punishment, Cmd.8932 (1953), p.144.

courts have applied it to any crime requiring a specific mental state. [22]

Since the diminished responsibility doctrine goes beyond the insanity defense in its application, it becomes obvious that the doctrine was developed to "ameliorate the law governing criminal responsibility ... ." [23] For example, the diminished responsibility doctrine will have a great effect in jurisdictions which hold that evidence of a defendant's impaired volitional controls cannot be offered to prove legal insanity. [24] Evidence of such "irresistible impulses" may be offered to show diminished responsibility. [25] Although the doctrine of diminished responsibility may be viewed as a modification of the procedures surrounding the insanity defense, the doctrine is not a substitute for the insanity defense. Diminished responsibility simply results in conviction for a lesser offense, whereas the insanity defense, if proven, results in acquittal.

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22. See People v. Wilson, 67 Cal. Rptr.679, 681 (1968) (voluntary); People v. Conley, 33 Cal. Rptr.454, 457 (1963) (involuntary). The defense is not available for crimes requiring only a general intent. People v. Hood, 102 Cal. Rptr. 304, 308-10 (1972) (arson). All cited in Weinstein and Rupert, supra, p.27.
23. People v. Henderson, 35 Cal. Rptr. 77, 82 (1963).
24. Appendix, supra, n.17 at 954.
25. People v. Gentenzil, 108 Cal. Rptr. 798, 800-801 (1973).

Professor Arenella contends that there are two problems with the rule of diminished capacity.

First, the doctrine may supplant rather than supplement the insanity defense. English studies have shown that when the number of diminished responsibility pleas increased, the number of legal insanity defenses decreased.[26] If a major concern regarding the insanity defense, however, is that its use should be curtailed, the rule of diminished responsibility provides a viable alternative plea, the use of which could be beneficial to the criminal justice system. Increased use of diminished responsibility pleas will cause decreased use of the insanity defense, which in turn would lead to fewer abuses, especially in cases in which its use is deemed by the public to be unwarranted.

Professor Arenella's second concern is that "use of the diminished responsibility defense to remedy flaws in the insanity test sidesteps meaningful reform of the insanity defense itself".[27]

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26. Arenella, supra, n.17 at 854.

27. Ibid. Professor Arenella further contends that "(i)n effect, partial excusers do not cure the basic defects of the [insanity test] they merely reduce the court's incentive to confront the difficult question of proper criteria for exculpation".

The above arguments of the learned writer, it is submitted, seem to be based on the unsupportable assumption that the criminal justice system cannot accommodate both an reform of the insanity defence and an improvement of the plea of diminished responsibility. However, it is better to exempt culpable defendants to a lesser offence than to alter the severity of acquitting them on the plea of insanity. So diminished responsibility provides a workable plea of insanity.

Nevertheless, it has to be noted that in many jurisdictions of the United States, M'Naghten test is still being followed as the primary test of criminal responsibility. In at least twenty-one states, it is the only test, and in others it is still the main test supplemented only by the irresistible impulse test. [28]

Developments in the Field of Evidence, Procedure and Treatment

In consequence, the Durham rule[29] logically suggests that offenders mentally disturbed are liable only to submit themselves to treatment and not for punishment. That is

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28. Wallace, Mental Disorder as a Criminal Defence, (1964), p.68.

29. See Text of n.10, supra. The discussion is based on Glueck, Ibid., pp.111-141; Wallace, Op.cit., pp.330-350 and Lewis O.Pelton, "The Durham and the Psychiatrist", (1956) 21 Albany Law Journal, pp.60-69.

their responsibility. At not their right, to be treated in mental hospital after the trial is over, or even before the trial when they are found unfit for trial. Will not such a position make one feel that Durham rule is more liberal to the accused than either M'Naghten alone or M'Naghten supplemented by the irresistible impulse rule? This feeling naturally arises when it is found that applying Durham rule the culprits may likely get themselves released from the liability and be sent to hospitals and mental asylum while in the latter two tests the accused persons will have to undergo some confinement or other. Such a problem therefore there is an almost complete relation between the tests of responsibility and subsequent treatment or punishment. The consequences of acquittal or conviction upon a plea of insanity, the nature and length of detention in a hospital or a penal institution, and the procedure for mandatory commitment for life upon acquittal on the ground of insanity in the case of murder or manslaughter are significant factors bearing on the responsibility of the offenders. But however, in every State jurisdiction in the United States a person acquitted on the ground of insanity is usually committed to mental hospital. Such institutions of course varies mutually in facilities and personnel.

A major development in the field of procedure is the Massachusetts Briggs Law, which provides for psychiatric

examination of persons indicted for capital offenses, and repeated offenders.[31] Examinations are conducted by psychiatrists. These psychiatrists are appointed by either the parties or the Court but the Department of Mental Health and before it is known whether the defendant will plead insanity. Another development in Massachusetts is the Court-clinic service for both adult and child offenders. The clinic diagnoses defendants in case any question is raised about mental status, so that, the judge, rather than being forced to make a quick layman's appraisal, has the psychiatrists in court to set on his direct source of information and knowledge on such question. Whenever needed, offenders sent for diagnosis in the Court clinics are given psychiatric treatment.

Clinics can aid courts in screening cases for possible commitment to mental hospitals. They can help making sentencing decisions in an objective manner. Clinical advice will make the probation officers more informed. Provision of clinics will be a great step forward and a model for India to adopt. However, prosecution of law with psychiatry is new and should not be limited to the defense of insanity. There is room to be done in collaboration of psychiatry and

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31. See Weihofen, Mental., p.140-145. Few states have adopted this method for dropping many years of irresponsible commit.

the law. A more fundamental attack on the entire problem is now-a-days called for, based on a theory more promising to the protection of society through rehabilitation of offenders than traditional criminal law theory. [31]

"Guilty but mentally ill".

The English position is that a verdict of not guilty by reason of insanity is given when legal insanity is proved. [32] It was thought to be a welcome idea to introduce a verdict of 'guilty but mentally ill' when a person is mentally ill but not legally insane. This latter concept is incorporated in the Code of Criminal Procedure of the Michigan state in the United States. [33] It is said that Michigan legislature was responding to a judicial decision. The legislation ensured the institutionalisation of the abnormal offender.

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31. Recent researches have revealed that dangerous is formed largely during the first few years of life and psychiatric treatment for persons at risk of deviant behaviour is envisaged in youth. Glueck op.cit. at p.141. The dangers of the therapeutic state has also been pointed out by writers on the subject. For e.g., Louis.O.Fuller supra. "For more than a quarter of a century, the legal and para-legal establishments in the United States were committed to rehabilitation as the proper goal of sentencing. This philosophy followed in the wake of the psychiatrists and social scientists who believed that they possess the power to 'cure' so called deviant behaviour ... A judge can suddenly find himself in the position of the executioner with the belief that he is helping the offender by sentencing him to prison for the purpose of treatment or cure. He neither believed that such incarceration was cruel". Ibid. at pp.62-64. Also see Schlesinger & Haynes, supra, at p.62.

32. Introduced by the Criminal Procedure (Insanity) Act 1964, S.1.

33. See Schlesinger, J. and Haynes, A.K., "In Defence of Insanity...

Under the above scheme, a person who is determined to be legally insane at the time of offense will be found not guilty. A person is legally insane if, "as a result of mental illness ... or as a result of mental retardation ... that person lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law". [34] On the contrary, a person can be found guilty but mentally ill. This is so when a man guilty of an offense is determined to be mentally ill rather than legally insane at the time of the commission of the offense. The Michigan statute provides that one found not guilty by reason of insanity must be placed immediately in a psychiatric center for evaluation. The center can report on the present sanity of the defendant. The center also reports whether he meets the criteria for civil commitment. On the basis of these reports he can be either discharged or committed after a judicial hearing. A person found guilty but mentally ill, however, is treated for the

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(f.n.33 continued)
The Insanity Defense", (1983) 35 Mercer Law Journal 9 at pp.13-15. Also see Idem, Ch.XXII, S.2. The Michigan Statute (Act.S.No.1028) does depart from the traditional verdicts. 'guilty' 'not guilty' 'not guilty by reason of insanity' and 'guilty but mentally ill.' Illinois, Montana, Indiana, and Georgia have followed suit. Some three half of the states are considering this verdict.

34. This is the provision in the Michigan Statute. The discussion is based on Robinson and Dubber, Ibid. For the text of the provision, see Id., p.16 n.36. Cf. model Penal Code of the American Law Institute, and Idem, Ch.XII, S.46.

present mental illness. He also receives the sentence that would be imposed for the guilt of the crime.

On sentencing to a prison term, he is committed to the custody of the department of corrections for further evaluation and treatment. If treatment is ordered and the defendant later discharged from the department of mental health, he returns to prison to serve the balance of his sentence. If the prisoner is placed on probation, the trial judge, upon recommendation of the psychiatric center shall make treatment a condition of probation. The effect of the statute into requires hospitalization or confinement of all mentally ill offenders, including those who do not meet the standards establishing legal insanity. [25]

The Michigan statute is laudable as it provides a statutory right to treatment for mentally abnormal defendants whose illness does not rise to the level of legal insanity.[26] However, it is said that Michigan courts have frustrated the goal by holding that a defendant adjudged guilty but mentally

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25. Schwitzgebel and Nugent, op.cit., pp.16, 17.

26. Schwitzgebel and Nugent point out that the concept underlying a plea of guilty but insane must be viewed as a contradiction in terms. The doctrine of mens rea being firmly embedded in Anglo-American estimated criminal law, a sane defendant who lacks the required specific intent necessarily must be declared not guilty. They also point out that the plea of guilty but mentally ill is nothing more than a codification of the diminished capacity rule with added statutory right to treatment. Ibid. pp.17-18.

ill but not the right to complain if he in fact receives no treatment.

Bifurcated trials

Can issues of guilt and sanity be tried separately? There are legislative attempts towards such a possibility.[37] In almost all cases of these bifurcated trials the first stage of the trial is devoted to determining the guilt of the accused. Only at the second stage the attempt to find whether or not the accused is mentally ill was made. Intent is an essential element of guilt. Insanity is held to negate this requisite intent. Hence it is difficult to find an insane person guilty. One may doubt whether the bifurcated trials put the cart before the horse.

It is also held that determining a person's guilt without admitting evidence of his mental state at the time of committing the offence is denial of due process. However, it was held in United States v. Spaine[38] that the bifurcation of trials is a necessary element in certain situations. In Spaine, though the failure to bifurcate was deemed to be harmless error, it was held a defendant who pleaded not guilty

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37. States such as Arizona, California, Colorado, Texas and Wisconsin have enacted laws. For details, see id., pp.18-21.

38. 421 F.2d 1119 (D.C.Cir. 1969).

by reason of insanity had "raised a substantial claim that the constitution entitles him to a bifurcated trial".[20] The decision suggests bifurcated trial might be necessary when a defendant presents alternate pleas because pleading the insanity defense effectively admits commission of the criminal act but denies responsibility. The unitary trial would be ill-equipped to separate evidence relating to two defenses.

It is true that bifurcated trial procedure has certain problems. First, one may be found 'guilty' in the first phase of the bifurcated trial even though he lacked the requisite intent. Schlesinger and Pugsley say that under strict bifurcation no evidence of 'intent' or 'insanity' can be admitted in the first phase, since the two are psychiatrically indistinguishable. They continue to say that the inability to distinguish between psychiatric evidence relevant

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20. Id. at p.1181, 1186. The defendant argued that the constitutional right to bifurcation was premised on two grounds. The first is that he has an absolute due process right to put the government to its proof, and at least a common law right to plead not guilty by reason of insanity. Refusing him to exercise right to put the government to its proof in order to obtain the benefit of the insanity defense places an impermissible burden on the exercise of his due process right. Secondly, the fifth Amendment provides him with the right not to be compelled to testify against himself. His only means for avoiding this was to support his claim on insanity. Had he failed to testify and to present other evidence relevant to his insanity claim, but highly prejudicial on the issue of guilt...

to 'guilt' and evidence relevant to 'sanity' rendering bifurcated trial indistinguishable from the ordinary procedure, thus having overcoming issue being the only one for the second phase of trial which is nothing new to insanity procedure.[40] Possibility of abuse of psychiatric opinion is the second problem. There is only one way to solve this problem. Psychiatric testimony over the disposition of the defendant after trial is to be subjected to cross-examination and scrutiny at each stage. A third problem is the helplessness of the defendant in bifurcated trials who refuses no defense and pleads guilty expecting that a certain treatment programme will be recommended as a sentence. Finally, in most instances, an accused's rights are violated if guilt is determined without reference to insanity, and, therefore, mandatory bifurcated trials should not be allowed in criminal procedure. However, courts should have discretion to order bifurcation if the defendant pleads alternative defences. [41]

(f.n.39 continued)
guilt, he would have been forced to abandon his insanity defence. This omission - loss of his strongest defence to the crime charged - makes his testimony a compelled one and therefore inadmissible on the issue of guilt.

40. See Schiedower and Meyers, Insanity., pp.24, 25.

41. Id. at pp.25, 26.

There is a strong juristic plea in the United States for the abolition of the defence of insanity. Even though different models of abolitionsare suggested the plea against the abolition is also equally strong.[42] It is pointed out that abolition will create constitutional due process challenge as the mental element of the crime cannot be taken away from an offence. Though the United States Supreme Court has not directly dealt with the matter it has given sufficient indication of disapproval of any such abolition of the defence.[43]

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42. See id. pp.39-40 for views for and against the abolition of the defence; also see George Fletcher, Rethinking in Criminal Law, (Toronto, 1978) pp.833-841.

43. For instance see cases like, Robin v. U.S., 159 U.S.459 (1895)-held, sanity is an element of every crime and therefore must be proved beyond reasonable doubt by the prosecution, Robinson v. California, 370 U.S.660(1962); 8 L.Ed.2d. 758-held, that a statute that punished any person 'addicted to the use of narcotics' was unconstitutional because it violated the prohibition against cruel and unusual punishment in the sense that it made the 'status' of narcotic addiction a criminal offence and that illness cannot be the basis for a criminal conviction.(per Stewart, J. at p.763.); also see Christopher Slobogin, "Ingalls v. Bell: The Chronic Unlawful Conferee of the Insanity Defendant", (1976) 31 Emory Law Journal, p.71.

CHAPTER XXIX

DEVELOPMENT IN ENGLAND

Does substantive law of mental abnormality still centre round the M'Naghten Rules in England? If not, to what extent does the law stand modified? Have the developments in psychiatry influenced its growth? This chapter examines these problems.

The concept of Diminished Responsibility

For a long time in England the M'Naghten Rules had been the only test for determining criminal liability of the mentally affected person. Later it was supplemented with the concept of diminished responsibility as a ground for partial exemption. [1]

The concept of Diminished Responsibility removes to some extent the inadequacies of the M'Naghten Rules. Mere difficulty in exercising self-control due to psychopathy is not sufficient under the M'Naghten Rules for a court to pass an order of 'not guilty by reason of insanity'. [2] It is

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1. S.2(1) of the Homicide Act 1957. For the text see 1957 L.R.(Statutes), pp.14-17; also see Ch.XXI, n.13.

2. The development of the wording of the 'verdict' exempting the accused from punishment on the ground of insanity is interesting. Until 1800 the verdict was 'not guilty', contd...

already seen[3] that 'wrong' under M'Naghten Rules means 'legally wrong'. Absence of the power of self-control is not ~~xxx~~ as evidence of incapacity to distinguish between right and wrong.[4] In a particular case, there may be medical evidence that the disease impairing the accused's powers of self-control also impaired his capacity to distinguish right from wrong. But in the absence of such evidence absence of power of self-control is no defence since it does not fall within the M'Naghten Rules.[5] This inadequacy is removed by the introduction, by legislative measure, of the concept of diminished responsibility in English Criminal Law. Though the expression 'irresistible impulse' as such is not used, it is covered by legislation. [6]

The concept of diminished responsibility enables courts to take into account certain mitigating factors.

(f.n.2 continued)
In 1800 the phrase was changed to 'acquitted on the ground of insanity' (see Criminal Lunatics Act 1800). In 1883 the verdict became 'guilty but insane'. (see Trial of Lunatics Act 1883) Later, by virtue of s.1 of the Criminal Procedure (Insanity) Act 1964 the verdict has become 'not guilty by reason of insanity.

3. See Ch.XI, nn.28-35.

4. R v. Windle, [1952] 2 Q.B.826 per Goddard, C.J. at 832 For facts see Ch.XI, nn.33, 35.

5. For instance see A.G.for State of South Australia v. Brown, [1960] A.C.432. The respondent was charged for murder by shooting. The medical evidence showed that he was a schizoid personality one of the symptom of which is irresistible impulse. At the time of the act he knew the nature of the act but he did not know it was wrong. The conviction and sentence to death was restored by Privy Council. per Lord Tucker, J. at p.459.

6. Supra, n.1.

In cases of murder this helps the court to avoid passing of the sentence of death where such circumstances exist. Courts are given the discretion to reduce the punishment. It can give a verdict of imprisonment for life or even lesser terms of imprisonment. It can in the alternative make an order of hospitalisation.[7] The Court can entrust the accused with a legal guardian.[8] It is true that under this law the burden of proving that he comes within the ambit of the legislation is on the accused.[9] However, the burden can be held to be discharged by proof on preponderance of probability; as in the case of insanity plea the accused need not establish his plea beyond reasonable doubt.[10] The net result will be that the offence of manslaughter will substitute the one for murder and finding entered accordingly.

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7. Section 60 (1) of the Mental Health Act 1959.
8. Ibid.
9. See the text of Section 2 (2) of the Homicide Act, 1957 in Ch.XXI, n.13.
10. R v. Dunbar [1958] 1 Q.B.1. The accused a young man of 24 years entered the house of the deceased woman, old and very deaf and killed her in an attempt to steal her property. The accused had previously stolen money from the same house. The accused took the plea of diminished responsibility within Section 2 (1) of the Homicide Act. It was held that when such a plea is taken to a charge of murder the jury should be directed that the burden of proof on the defence under the section is not as heavy as the burden which rests on the prosecution to prove its case beyond reasonable doubt and that the burden on the defence is discharged if the evidence justifies the conclusion that the balance of probabilities is in favour of the defence". per Goddard, C.J. at 12.

The accused can rely on the defence of diminished responsibility even in cases where he knew that he was doing was wrong. The mere fact that killing was premeditated does not by itself destroy the plea. [11]

The Homicide Act of 1957 is wide enough to encompass at least some psychopathic disorders.[12] The expression 'abnormality of mind' in the Act[13] was held in R v. Byrne[14] to be wide enough to cover the activities of the mind in all its aspects. In other words it will include impairment of cognitive aspects as well as other aspects connected therewith. After the decision of Byrne's case, there were significant judicial pronouncements. Insanity or mental abnormality is interpreted in a sense wider than the sense given to it in the M'Naghten Rules; it has been held that someone on the borderline of insanity can raise the plea of

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11. R v. Matheson [1958] 2 All E.R.87 per Lord Goddard, C.J. at p.791. See also decision of the Court of Criminal Appeal in R v. Byrne, [1960] 2 Q.B.396. For a discussion of thisand other cases on the point see the text of nn.14-19 in Ch.XII; also post Ch.X, nn.38-40.

12. R v. Byrne, [1960] 2 Q.B. 396; per Lord Parker, C.J. at 403 (Byrne, n.11)

13. Section 2 (1) of the Homicide Act 1957.

14. Byrne, n.12.

diminished responsibility. [15]

A question may arise. Is the accused's mental abnormality sufficiently substantial to make the case one within the plea? The answer to the question may be found only after weighing medical evidence. R v. Ahmed Din.[16]

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15. See Rose v. Queen, [1961] A.C.496 per Lord Tucker, J. at 507, 508. The appellant murdered another person. The plea of diminished responsibility was taken. It was held, that a direction by the judge in dealing with the defence of diminished responsibility at the trial of the appellant who was convicted of murder and sentenced to death, that the jury were to assess the degree of abnormality of mind in terms of the borderline between legal insanity and legal insanity as laid down in the M'Naghten Rules was a serious and vital misdirection. If the insanity were to be taken into consideration, as would usually be the case, the word must be in its broad popular sense. Bratty v. Attorney, [1961] 3 W.L.R.965 per Lord Parker, C.J, at 968. The appellant was convicted for the murder of a bank guard whom he killed during a bank raid. In support the plea of diminished responsibility two psychiatrists for defence gave evidence based on what the appellant had told them of his delusions and which they accepted, that he was suffering from schizophrenia. Two medical witness for the crown gave evidence that the accused was normal. The judge did not sum up to the jury the medical evidence in detail but handed a copy of the shorthand note of the medical evidence without explaining the terms of the section. The jury convicted the appellant. Held that the practice of mere handing of such documents is a misdirection. However, the court did not interfere in view of the facts of the case.

16. [1962] 2 All E.R. 123.

was a case where the accused took a plea of diminished responsibility. It is true that the plea was supported to some extent by medical evidence. Medical evidence was adduced to the effect that he suffered delusions that the man the accused killed had committed adultery with his wife. But for these delusions, the doctors were of opinion the accused was not suffering from any mental abnormality. It was a question of fact to be decided by the jury whether the accused was deluded or whether he really had grounds for believing that his wife was unfaithful. On facts the case was decided against the accused. The accused's conviction was upheld by the Court of Criminal Appeal. But the case points to a significant aspect. Delusions, although are concerned with facts which would not have justified the killing and which would not have attracted M'Naghten Rules, are relevant to diminished responsibility. [17]

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17. Id. Lord Parker, C.J. observed,

> "In the present case, if the prosecution had considered step by step the ingredients in the section it would always have become apparent that any question of disease of the mind depended on something of which the jury had to be satisfied, namely, that the appellant had no solid grounds for believing in his wifes' infidelity. That is not a matter for the doctors. They may have their own views about it, but that is no better evidence than any other. It is not a medical question. As it seems to this court, the prosecution, while not open-conceding the doctors on the medical matters on which they were in full agreement, had a duty to pose the question whether or not the appellant was suffering from a delusion. Equally, as it seems to this court, it is

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The concept of diminished responsibility is of great practical importance. M'Naghten is not sought for where there is a charge of murder in which the accused was mentally abnormal in a substantial manner at the material time.[18] Capital punishment for murder was abolished in England, still the plea of diminished responsibility has greater significance. Punishment for murder is a fixed mandatory sentence of imprisonment for life. The plea of diminished responsibility helps bringing of mitigating factors which may result in a sentence lesser than imprisonment for life.[19]

(f.n.17 continued)

for the defence to prove the facts on which the doctors can express their opinion as experts. Here, they did not attempt to do, but relieved on hearsay evidence given by the doctors". at 125-127.

18. In 1970, there were only two cases in which the M'Naghten rules were successfully pleaded as against sixtysix cases where diminished responsibility was pleaded successfully. Cross and Jones, Introduction to Criminal Law (6th ed. 1972), p.88. Cf. Arenella, "Diminished Capacity and Diminished Responsibility: Two Children of a Doomed Marriage", 77 Colum.L.Rev. 827 (1977), 864.

19. Cf. Susana Dell, "Diminished Responsibility Reconsidered", [1968] Crim.L.R.809 at 816. Emphasising the need to abolish mandatory sentence for murder the author observes,

> "That doctors routinely testify to matters that are not within their professional competence, and the judges accept and act upon that testimony, bears witness to the necessity, while the mandatory sentence for murder exists, of making the diminished responsibility defence. The same necessity explains the successful use of the defence in cases where the argument for it is certainly far from being strong.
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> cont'd...

Mental Disorder and Hospitalisation

The mentally deranged require treatment. They may be a source of potential danger to others. Those who commit crimes have to be put under confinement which incapacitate them from committing further crimes. The reasons for committing the mentally deranged to mental hospital are thus diverse. It is for treatment whenever it is treatable. Some time it may be for avoiding harm to others in the society.

In England the Mental Health Act 1959[20] contains the law relating to commitment of persons suffering from mental disorder,[21] to mental hospitals. Commitment to mental hospital may be either a civil commitment or a criminal commitment.

(f.n.19 continued)
If the mandatory sentence for murder were abolished, there would be an end to the stratagems and manoeuvres which have now to be undertaken in order to give homicides suitable, instead of suitable sentences. Not only the defendants, but judges, doctors and lawyers would benefit from the change".

20. For the Text of the statute see 7 & 8 Eliz.2c.72 L.R. Statutes (1959), p.1265. The Principal Act is amended in certain provisions by the Amendment Act of 1982. See for a review of the Amendment Act, Larry Gostin "A Review of the Mental Health Amendment Act", (1982) 132 N.L.J., pp.1127-1128, 1151-1155, and 1179-1180. Also see Larry Gostin, "Human Rights, Judicial Review and the Mentally disordered Offender", [1982] Crim. L.R. p.779.

21. S.4 (1) of the Mental Health Act 1959 defines mental disorder to mean mental illness, arrested or incomplete development of mind, psychopath disorder or any other disorder or disability of mind. Of these the

contd...

Civil Commitment

The nearest relative of the patient or the Mental Welfare Officer may apply for the patient's admission to hospital. The application has to be accompanied by written recommendations of two medical practitioners.[22] The admission may be for observation[23] or for treatment.[24] The

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(f.n.21 continued)
first two viz. mental illness and arrested or incomplete development of mind (severe mental impairment) are major forms of mental disorder and the others minor forms. See the Mental Health (Amendment) Act, 1982, s.1.

22. Mental Health Act 1959, ss.25 (3) and 26 (3).

23. Id. s.25 (2). It reads:
"Application for admission for observation may be made in respect of a patient on the grounds -
(a) that he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital under observation (with or without other medical treatment) for at least a limited period; and
(b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

24. Id. s.26 (2) as amended by the 1982 Amendment Act. It reads:
"An application for admission for treatment may be made in respect of a patient on the grounds -
(a) that he is suffering from mental disorder, being -
(i) in the case of a patient of any age, mental illness or severe (mental impairment)
(ii) in the case of a patient under the age of twenty-one years, psychopathic disorder or (mental impairment) and that the said disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment under this section; and
(b) that it is necessary in the interests of the patient's health or safety or for the protection of other persons that the patient should be so detained.

nearest relative can veto action by the mental welfare officer in respect of admission for treatment. But this relative can never prevent action in respect of admission for observation. An admission for observation allows detention only for a period of twenty-eight days.[25] If the nearest relative unreasonably objects to admission for treatment, his objection can be superseded by order of the county court.[26] A juvenile court can make an order of committal to mental hospital in respect of a juvenile who is "in need of care or protection" even against the wish of his parents.[27] The duration of compulsory detention for treatment is one year, but it may be renewed for a further year, and subsequently for periods of two years at a time, on report of the responsible medical officer who is in charge of the patient's treatment.[28]

There may be compulsory admission for observation, treatment or guardianship under the Mental Health Act.[29] For compulsory admission the patient must be suffering from one of the certain forms of mental disorder, and it must be necessary in the interest of the patient's health

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25. Id. s. 25 (4).
26. Id. s. 52 (3) (c).
27. Id. s. 61.
28. Id. s. 43.
29. Id. ss.25, 26.

or safety or for the protection of other persons that he should be detained.[30] 'Mental disorder' is defined in general as mental illness, arrested or incomplete development of mind, psychopathic disorder, or any other disorder or disability of mind.[31] This provision is unchanged by the Amendment Act except that a person may not be classified as mentally disordered by reason only of "promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs". The four specific categories of mental disorders can be divided again into major and minor forms depending on the legal consequences involved. For application for compulsory treatment the patient must be suffering from 'mental illness' or 'severe mental impairment'[32] which are the major forms of mental disorders under the 1982 (Amendment) Act. 'Mental illness' is yet not defined in the Act. "Severe mental impairment" is defined as "a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct".[33]

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30. Id., ss.25 (1), 26 (1), supra, nn.23, 24.

31. Id., s.4 (1).

32. Id., s.26 (1) as amended by the Amendment Act 1982. The term was 'severe subnormality' in the Parent Act 1959.

33. The Mental Health Amendment Act 1982, s.1 (3).

The two minor forms of mental disorder are 'mental impairment' and 'psychopathic disorder'. Mental impairment is defined as severe mental impairment, except that it includes 'significant' (as opposed to 'severe') impairment of intelligence and social functioning.[34] Psychopathic disorder means "a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct ..." [35]

The legal effect of replacing the term 'mental impairment' for "subnormality" will be to remove the great majority of mentally handicapped people from the reach of those provisions of the Mental Health Act which require that a person must be suffering from a specific category of mental disorder. Mentally handicapped people, therefore, will not be liable for compulsory admission for treatment or reception into guardianship, or for admission under a hospital order (with or without restrictions) or an order or direction with the same effect as a hospital order, unless their condition is associated with "abnormally aggressive or seriously irresponsible conduct".

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34. Ibid. See Lezzy Gostin, Ibid., p.1127. He says that the legal differences between the two is by no means clear.

35. Mental Health (Amendment) Act 1982, S.2 (1).

However, it is said that since the definition of mental disorder has not changed, mentally handicapped people may continue to be subject to those provisions which require the person only to be suffering from mental disorder. [36]

The Amendment Act[37] makes provision for different terms of admission of mental patients according to need. It defines the role of Mental Welfare Officer at such admissions. The Act provides for proper discharge of the patients in time and also for passing of guardianship orders. Mental Health Review Tribunals[38] are there to hear appeals by or in respect of those detained in Mental Hospitals. The Amendment Act places a duty on the Hospital manager to refer to a tribunal the case of one admitted and who did not have a tribunal hearing in the first months of detention. Under the amended form the Review Tribunal has power to direct the discharge of patient immediately or on a specified future date.

Criminal Commitment

The insanity of a person accused of crime may be relevant, in the criminal process, at a number of stages

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36. Larry Gostin, Op.cit., p.1127.

37. The Mental Health (Amendment) Act 1982. See Larry Gostin, Op.cit., pp.1129-1132.

38. Mental Health Act 1959, S.3. See for an appreciation of the Tribunals, Jill Peay, "Mental Health Review Tribunals and the Mental Health (Amendment) Act", [1982] Crim.L.R.794.

viz., in deciding the fitness to stand trial, in raising the defence to the prosecution, in awarding the sentence by the Court, and finally, in considering the exercise of executive discretion to interfere with the sentence. A number of questions may arise. What powers exist under the Act for the different authorities? Do hospitals have adequate security precautions? What type of treatment the patient gets in the hospital? Is there sufficient provision to obtain release of the patient from the hospital in time? What role the medical officer plays in permitting release? What happens to the patient after his release? What is done in case nobody turns up to get the patient released?

Commitment on arraignment

While a person is being brought to court under a criminal charge the police have the power[39] to remove him to a place of safety if he appears to them to be suffering from mental disorder and to be in need of immediate care and control. Schizophrenic and other psychotic offenders are often dealt with by the police through this procedure.

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39. Mental Health Act, 1959, S.136.

The Home Secretary has the power[40] to transfer to mental hospital any person who is in prison awaiting trial or sentence, if certain conditions are satisfied. One of the conditions is that the person should be suffering from major forms of mental disorder, namely 'mental illness' or 'severe mental impairment'. Hence those suffering from minor mental disorder like psychopathy cannot be transferred to mental hospital under this provision.

During Trial

If the accused is found to be not in a fit condition for trial he is liable to be detained in hospital until his condition improves.[41] If the accused is not able to understand the course of proceedings, so as to make a proper defence, or to challenge the jurors or to understand the substance of the evidence, the court may declare him unfit to stand trial. The Butler Committee's view is that if the defendant is not capable of giving adequate instruction to his legal advisers and is incapable of pleading with understanding to the charge he should be

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40. Id., s.72.

41. Criminal Proceedings (Insanity) Act 1964, ss.4 and 5.

declared unfit for trial.[42] Since psychopaths have little cognitive disfunction it is not likely that they will be so declared unfit for trial.[43]

Hospital order without conviction

A magistrate has power to make a hospital order without proceeding to put the convict behind the bars.[44] Under the old law the magistrate had to be satisfied that the convict was suffering from 'mental illness or severe subnormality.[45] The new law has made the conditions more specific.[46] The person must have been one who suffers from

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42. See Report of the Committee on Mentally Abnormal Offenders, Cmnd. 6244 (1975), para 10.3.

43. Andrew Ashworth and Joanna Shapland, "Psychopaths in the Criminal Process", 1980 Crim.L.R.525, at 531.

44. Mental Health Act 1959 s.60 (2). It reads,
"(2) Where a person is charged before a magistrate's court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under sub section (1) of this section in his case as being a person suffering from mental illness or severe subnormality then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him".

45. S.60 of the Mental Health Act 1959.

46. Id. As amended by Mental Health (Amendment) Act 1982 S.12. See Lanny Gostin, op.cit., at p.1151.

mental illness or mental impairment. Two medical practitioners must have opined that the mental disorder is of such nature and degree which warrants medical treatment. Taking into account the nature of the offence and character and antecedent conduct of the offender the magistrate should be satisfied that a hospital order is the most appropriate method of disposal. They should also be satisfied that all arrangements have been made for admission to the specified hospital within a period of twentyeight days from the making of the order.

A defendant will be known to the court to be mentally affected only if he has been diagnosed as such and a medical report presented to the court. In practice, a medical report will be suggested to the court by the defence or probation service. This suggestion can be made when the offence discloses bizarre behaviour on the part of the accused. It can also be made if the offender has a previous history either of treatment in mental hospital or of a medical disposal by court. If, through talking to the defendant, the legal representative or the probation officer suspects that there is some mental imbalance, request for medical report can be made.

Probation order on conviction

Probation with a condition for treatment is commonly ordered by court for the mentally disordered. For this

the medical practitioner must satisfy the court that the offender's disorder 'may be susceptible to treatment'. Many practitioners do not believe that psychopathy can be cured or its condition can be improved by treatment.[47] Hence an order of probation with condition for treatment is not likely to be passed in the case of psychopaths.

Hospital order on conviction

A court may, after convicting the accused, make a hospital order for mental treatment of the offender. For this the court has to satisfy itself on the evidence of two approved medical practitioners, that the mental disorder of the offender warrants his detention in a hospital for medical treatment, and that it is the most suitable method of disposing of the case.[48] Psychopathic offenders present difficulties in this respect also. There is difference of opinion as to whether some psychopaths are treatable or not.[49] The order can be made only if a hospital is willing to admit the offender as a patient.

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47. Ashworth and Shapland, op.cit., p.633.

48. Mental Health Act 1959, s.60.(1).

49. R v. Gibbs, [1967] Crim.L.R.367, is a case of 'untreatable psychopath' in which a determinate prison sentence was upheld. The accused had stabbed to death a woman who rejected his advances. He pleaded guilty to manslaughter on the ground of diminished responsibility. But he was sentenced to 15 years imprisonment. There were several previous convictions, for dishonesty and indecency. He was a dangerous psychopath and not suitable for a hospital order.

Generally hospitals are reluctant to admit psychopathic offenders who often show violent and disruptive behaviour.[50]

The problem of treatment

Psychopathic disorder has been recognised by law as one justifying a different disposal.[51] Yet the medical treatment seems to have been generally ineffective in the case of the psychopath. The Butler Committee [52] made the following principal recommendations.

(1) that the term 'psychopath' should be abandoned and that the law should refer, without further definition, to 'personality disorder';

(2) that psychopaths should only be subject to hospital order if their disorder is believed to be connected with a medical or psychological disorder and there is the 'expectation of therapeutic benefit from hospital admission';

(3) that otherwise most psychopathic offenders should be sent to prison, where special experimental units for their treatment should be developed and

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50. Anthony Ashworth and Joanna Shapland, "Psychopath in the Criminal Process", [1980] Crim.L.R.628 at p.632.

51. See Mental Health Act, 1959 ss.4 and 60.

52. The Butler Committee devoted a separate chapter of their report to psychopathy, viz., Ch.5. See Report of the Committee on Mentally Abnormal Offenders, Cmnd. 6244 (1975), pp.77-88.

(4) that a 'reviewable sentence' should be available for the dangerous, mentally disturbed offender who could not be dealt with under the Mental Health Act, whether because his disorder is not sufficiently severe or because no suitable hospital will receive him or for other reasons, for example, that he is a psychopath with dangerous antisocial tendencies. [53]

(5) The Regional Secure Units must be set up 'for those mentally disordered persons, offenders and non-offenders alike, who do not require the degree of security offered by the special hospitals which in any event are overcrowded, but who, nonetheless are suitable for treatment under the open conditions of a local psychiatric hospital. [54]

The recommendations were implemented, in a modified form, by the amendment, to the Mental Health Act, in 1982.[55]

The Mental Health Amendment Act received Royal Assent on October 28, 1982. It made certain reforms in the provision for civil commitment, criminal commitment and discharge of patients and their legal status while in the hospital.

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53. Id., para 1.4.
54. Id., para 1.4.
55. Mental Health (Amendment) Act 1982. For a detailed discussion see L.Gostin, op.cit., p.1151.

The present law on mental health is an improvement of the old law. [56] The criteria for making a hospital order have been changed from "subnormality" to "mental impairment". The courts will not be able to make a hospital order in respect of a person suffering from a minor disorder unless the "treatability" criterion is fulfilled. The criteria on which the Home Secretary may transfer a mentally disordered prisoner to hospital is also changed. A patient subject to a hospital order or transfer direction, provided he is not subject to restrictions on discharge, gets certain benefits: shorter periods of detention, more frequent access to Mental Health Review Tribunals, and the "treatability" or "modified treatability" test on renewal of detention. The Mental Health (Amendment) Act 1982 extends its hands to patients while they are in hospital. In particular, it establishes the Mental Health Act Commission. This Commission has a general protective function for detained patients. Could the detained patient refuse treatment under the Mental Health Act 1959? The legal position was unclear. Part VI of the Mental Health (Amendment) Act clarifies the position. It makes comprehensive arrangements for the treatment of patients without consent.

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56. L.Gostin, op.cit., pp.1151, 1199-1203.

There is a category of treatment which requires consent and a second opinion by the medical practitioners.[57] This category of treatment for mental disorder applied to surgical operations for destroying brain tissue or for destroying the functioning of brain tissue, i.e., psychosurgery, and to forms of treatment as may be specified by regulations made by the Secretary of State for Health and Social Services. The second opinion must be given by a medical practitioner (not being the Regional Medical Officer) and two other persons (not being doctors), each of whom are to be appointed by the Secretary of State.

Mental Health Act Commission

The Secretary of State, has been authorised, to establish a special health authority to be known as the Mental Health Act Commission. [58] The Commission will have a general protective function over detained mental patients. It will keep under review the exercise of the powers and the discharge of duties conferred by the Mental Health Acts relating to detained patients. The Commission will have the following specific functions.

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57. The Mental Health (Amendment) Act 1982, s.63.

58. Mental Health (Amendment) Act 1982, s.56, read with National Health Service Act, 1977, s.11.

(1) to visit and interview patients,

(2) to investigate complaints,

(3) to appoint medical practitioners and other persons and

(4) to review treatment.

It is the duty of the District Health Authority and the local services authority, in co-operation with relevant voluntary agencies, to provide after-care services. [59] This provision applies to persons who having been detained for treatment or under a hospital order or transfer direction, cease to be detained and leave hospital. "After-care services" are not defined in the Act but the duty remains in force until the District Health Authority and social services authority are satisfied that the person no longer needs such services.

From M'Naghten Rules to the 1982 amendment of the Mental Health Act there has been a long march towards progress in the law in England. The problem of dealing with the mentally deranged is not a mere problem of defining and fixing their responsibility. The real problem is one of finding ways and means to appropriately deal with them from a medico-legal angle. The history of English law in this area shows an attempt to modify the law, substantive and procedural, on these lines.

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59. Id., S.51.

CHAPTER XIV

[redacted]

In the path towards justice to the mentally deranged person a fusion between law in action and psychiatric and medical knowledge is found necessary. How the two leading nations of the west tried to achieve this fact has been dealt with in the previous three chapters. What is the position of law in India? Is there a commission in India between knowledge on mental disease from psychological, psychiatric and medical points of view and the legal standards adopted for action?

A. [redacted]

Substantive law in India is based on the M'Naghten rules where only the impairment of the defendant's cognitive faculties is taken into consideration.[1] No enquiry is made into the degree to which the defendant's self-control is impaired. Despite proved severe mental illness, the defendant will be convicted if he is aware of the nature of the act and its wrongfulness or illegality. Alternative

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1. [redacted], Ch.IV.

cases [2] reveal an immense gulf between psychiatric knowledge on mental illness and the legally recognised criteria for exempting a person from punishment.

The common criticisms of the M'Naghten rules [3] are applicable to Indian law. 'Unsoundness of mind' is as controversial as 'disease of mind' and is capable of different interpretation. It can have a lay man's meaning, a medical meaning and a legal meaning. From a layman's point of view it vaguely includes anything from eccentric conduct to raving madness. Medical men are not satisfied with the legal definition of 'unsoundness of mind'. The courts also do not consider every kind of mental illness or unsoundness of mind legally significant. The term is not an effective expression to describe accurately the state of mind of the offender at the relevant time. The expression should contemplate or denote the particular kind, or degree, of mental abnormality. This kind or degree should fix up legal responsibility in different

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2. Some extreme cases are for example, [illegible] v. Lakshman Dagdu, (1886) 10 I.L.R. Bom.511; [illegible] A.I.R.1960; [illegible] v. Bhika, A.I.R.1957 Nyp.68, and 209; [illegible] A.I.R.1958 Mad.209; [illegible] v. [illegible] of Orissa, A.I.R.1964 S.C.1563; [illegible] v. Bihar, [illegible] A.I.R.1959 S.C.18. For the discussion of these and other cases, see Chs.IV-VI.

3. See Ch.II, ss.37-44.

genius. This particularly points to the imperative need to connect the medical diagnosis of the mental condition of the offender with the legal tests of criminal responsibility.

Present day psychiatry recognises gradations of mental disturbances in a wide range from normalcy to abnormality. Juristic thinking is yet to fall in line with these modern developments. Caught in the web of obsolete M'Naghten Rules the Indian law on insanity still hangs on the notions of the early nineteenth century psychology which conceived human as a bundle of faculties, each working independently. This conception neglects volitional and emotional aspects of the mind. According to modern psychology and psychiatry the mind cannot be split into water-tight, unrelated and autonomously functioning compartments. The mind and body are one continuum in which each part influences, and is influenced by, the whole.[4] Every case of unsoundness of mind cannot therefore be fitted into the straight jacket of an age-old legal definition.

Under Indian law, if the offender is sane enough to appreciate the difference between right and wrong with respect to the act committed and knows the act to be a

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4. See the text of n.9 in Ch.XI.

wrong one is to hold liable. The fact that an alleged irresistible or emotional impulse constrained him to commit the act will not be a defence. If the irresistible impulse results from mental unsoundness of a degree that impairs the cognitive faculties at the relevant time it can be a defence. But such cases are very rare. The underlying principle for exempting the insane from liability under Indian law, as also the M'Naghten rules, is that he has no 'free will' to choose between right and wrong. It may be pointed out that even under this concept of 'freedom of will' the non-availability of the defence of irresistible impulse is not justified. [5] The reason is clear. A person acting under an irresistible impulse has no freedom of will. It is not his will that regulates his act but the impulse. The impulse is irresistible; he cannot overpower it with his will. The 'free will' to choose between right and wrong is obviously absent. It is obviously unjust for the law to hold, in such circumstances, a person responsible for his act.

Irresistible impulse has been recognised in England as a partial defence. [6] It indicates that in the land of

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5. See also the criticism of the rules by Stephen, History, Ch.II, p.37.

6. Under s.2 of the Homicide Act of 1957. See also Ch.XII, p.13 and Ch.XIII, p.1.

their birth the M'Naghten rules have been considerably modified. But the Indian law still dances to the tune set by M'Naghten. No legislative attempt is made to modify the law though enlightened judicial opinion in India has been in favour of a change in the law. In an old case, Nabi V. Emperor,[7] the Oudh Chief Court lamented.

> "Though a century has elapsed during which the science of psychology has made great advances the law as then declared has remained unaltered".

In a comparatively recent case, Bhola v. Chhabila,[8] the Madhya Pradesh High Court said:

> "With the development of psychiatry as a recognised branch of science, we may have to revise our opinion regarding what constitutes unsoundness of mind for the purpose of section 84 IPC as laid down in some of the old cases". [9]

In an overwhelming majority of cases where the plea of insanity did not succeed because of the strict M'Naghten test courts have avoided extreme penalty by resorting in the place life imprisonment.[10] But it is no

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7. A.I.R.1926 Oudh 179 at pp.180-181.

8. A.I.R.1960 M.P. 302.

9. Id. 304 Naik, J. at 306. See also Ramchandra V. Bhola, A.I.R.1960 M.P.259.

10. Recently the Supreme Court, in Ramesh V. State of Kerala, (1979) 3 S.C.C.655, where Krishna Pillai displayed only something falling short of either legal insanity under M'Naghten Rules or even diminished responsibility, held that the lesser penalty of life imprisonment is preferable. On the question of sentence the court said at p.656-657.

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substitute for what the accused really deserve, namely therapeutic treatment, medicine and hospitalisation. An overhauling of the law on the point is warranted. The substantive law of immunity in section 84 of the Code should be suitably amended to recognise different gradations of responsibility. Partial responsibility for irresistible impulse or other mental abnormalities where the cognitive faculties are substantially impaired should be provided for. There is a growing body of knowledge and research on the psychiatric, psychological and physiological characteristics of different classes of mental ailments and abnormalities including psychopathy. In this respect the developments in advanced countries are known lights.

(f.n.10 continued)

> "It is not possible for courts to attempt, on the slender evidence there usually is on this aspect, to explore the murky depths of a warped and twisted mind so as to discover whether an offender is capable of reformation or redemption and if so in what way. That is a subject on which only experts in that line, after a thorough study of an individual's case history could hazard an opinion with any degree of confidence. Judicial psycho-therapy has its obvious and inherent limitations".

Also see Gurdip Singh v. State of Punjab, (1972) 3 S.C.C. 469, where mental abnormality not amounting to insanity was held a sufficient ground to avoid death sentence. In some cases however, relief in the quantum of the sentence [illegible] Gurmit Singh, A.I.R.1974, S.C.216 (where he was a life convict); Gurmit Singh Chhabra, A.I.R.1977 S.C.628 (where it was a wife petition to stay the execution and there was no appeal from conviction and sentence); Bishnu, A.I.R.1966 S.C.1; In re Balasubramania Iyengar, A.I.R.1965 Mad.280.

The Law Commission should reform

The Law Commission of India has to play a significant role in bringing about proper changes in the law in this area. Consisting of experts, this body can examine this question in all its aspects and suggest appropriate legislative measures. But the Commission did not use properly such an opportunity when it considered the question of amendment of the Indian Penal Code. It appears that the Law Commission took note of the strong criticism against the M'Naghten rules. [11] Though the Commission addressed itself to the question of amending the law, [12] ultimately it did not recommend any change.[13]

The reasons put forward by the Commission's report for not making any change in the law are not convincing.

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11. Law Commission, 42nd Report on the Indian Penal Code, p.90 ff. ***.

12. In view of the criticism of the M'Naghten rules in Britain and in view of the recognition of 'irresistible impulse' in the penal laws of several countries the Law Commission invited opinion on the following three questions.
"(a) Should the existing provision (Section 84) relating to the defence of insanity be modified or expressed in any form?
(b) Should the test be related to the offender's incapacity to know that the act is wrong or to his incapacity to know that it is punishable?
(c) Should the defence of insanity be available in cases where the offender, although aware of the wrongful, or even criminal, nature of his act, is unable to desist from doing it because of his mental condition?" Id. at pp.93-94.

13. Id. at pp.95-96.

One difficulty pointed out was that if the section is made more liberal the decision of courts would then have to depend on medical opinion to a greater degree than at present. It is submitted that this is not an acceptable argument. A decision of a court, to be based on sound footing, has to be made on scientific knowledge and experience. When the question is of unsoundness of mind of the accused, undoubtedly, medical experts can assist the court in arriving at sound decision.

Doubts were also expressed whether medical experts of the requisite quality would be available all over the country. [14] It is submitted that this fear is also unnecessary. One day or other our nation has to rise to the level of those nations where the problems are attempted to be effectively solved. The question, therefore, is whether the nation is prepared to devote its energy and resources for the better maintenance of mental health of the people. It is also to be noted that there is no restriction on the non-availability of mental experts in the country. If the number is insufficient we must revamp the medical profession in the country and should try to reach the desired level.

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14. Id. at p.93.

The third argument for rejecting any change is pointed out by the Law Commission in these words:

> ". . . the present provision caused no practical difficulty; and if in a particular case such failing strictly within the terms of section 84, the mental condition of the accused was such as to deserve special consideration, it could be left to the prerogative powers of commutation and remission vested in President and Governor". 15

In justice to the unfortunate group of mentally deranged persons a matter so insignificant that it is to be taken out from the domain of unbiased impartial courts and is to be left to the discretion of the executive? The Court which tried the case and had occasion to see the accused personally and to peruse the relevant records will be in a better position to decide the issue than the busy bureaucrat who advises the Governor or the President. Should the concepts of open court and impartial trial be thrown to the winds in the case of mentally affected persons? [16]

The report bristles with other contradictions. On the wording 'unsoundness of mind' in section 84 of the Code

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15. Ibid.

16. In this connection the words of Sumner Hall on mandatory sentence of murder are worth noting. "(I)f the jurors were put to the public it might well be found that they would consider it better for judges to decide in the open court what sentence was appropriate in each murder case, than for the decision to be made in secret by Home Office Administration and Private Board members". "Diminished Responsibility Reconsidered" [1963] Crim.L.R. 809 at 817.

as against 'disease of the mind' in M'Naghten Rules, the Law Commission said that it might be more in accordance with medical terminology to use the expressions 'disease of the mind' and 'mental deficiency' instead of the vague and unknown expression, 'unsoundness of mind'. But it did not recommend any modification in the wording in s.84 of the Code, since in the view of the Commission 'no difficulty appears to have been felt in understanding the sense in which this is used in the Penal Code'. [17]

The Commission examined whether it was necessary to introduce the concept of diminished responsibility on the lines of section 2 of the Homicide Act[18] of 1957 supplement section 84 of the Indian Penal Code. But finally it decided not to introduce it. The reason put forward was that the Code already gives discretion to the Court in sentencing in murder cases the death penalty not being obligatory. [19] In other offences also, the Commission felt.

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17. 42nd Report, p.93.

18. See Ch.XIX, n.13.

19. 42nd Report, paragraph 4.34, p.96. Special reasons are to be given now in case court is awarding death sentence section 354(3) of the Code of Criminal Procedure reads:
"when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence".
Also see, Indian Law Commission 35th Report on Capital Punishment, paragraph 9.32 (1956).

the mental abnormality of the offender will naturally be taken into account by the Court like any other extenuating circumstances. [20]

It is true that according to recent pronouncements of the Supreme Court death sentence is to be awarded only in the rarest of the rare circumstances because 'extreme penalty can be invoked only in extreme situations'. [21] The most recent pronouncement of the Supreme Court [22] has even declared unconstitutional and void the provision in Section 303 of the Indian Penal Code, giving mandatory death penalty for a murder committed by a person undergoing life imprisonment. It is submitted that a hospital order along with a sentence for life imprisonment is no real substitute for a reduced term of imprisonment and treatment which the mentally disturbed person deserves.

Substantive law on this point is to be suitably amended. There should be more scope for letting in

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20. 42nd Report, paragraph 4.34 at p.96.

21. Bachan Singh and Others v. State of U.P., A.I.R.1979 S.C.916 per V.R.Krishna Iyer at p.939; also see Mahbub Singh v. State of Punjab, A.I.R.1980 S.C.898.

22. Decision is yet to be reported. See, The Indian Express, Cochin ed., 1983, April 8, p.1; Malayala Manorama, Cochin ed., 1983, April 8, p.1.

psychiatric evidence for the determination of the relative degree of guilt of the need for treatment in the mental asylum and of the quantum of imprisonment. There is a large grey area of relatively lesser degree of responsibility in between the clear cases of irresponsibility under the 'right and wrong' test and total responsibility. The concept of diminished responsibility can be of great use to meet this requirement. Treatment in mental asylum should be provided in all cases of treatable ailments. Retributory punishment will not serve the purposes of sentencing in cases where the offenders suffer from mental disorders.

The Law Commission, however, has recommended certain reforms in the law relating to insanity due to intoxication.[23] The Commission concluded that a provision for enhanced punishment for self-induced intoxication is not desirable, so it left the matter to the discretion of courts as at present. Can mens rea be presumed in the case of voluntary drunkenness as in the case of knowledge? The Commission noted that the language of section 84[24] of the

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23. 43rd Report, paragraph 4.39, p.97.

24. See Ch.VII, n.8.

Code creates some confusion. While the former part of the section speaks of intent or knowledge, the latter part deals with knowledge only. An element of doubt in interpretation may possibly be felt by reason of this omission.[25] To remove this difficulty, the Commission recommended that reference to intention be omitted altogether from section 86 of the Code. The result of this recommendation will be to accept the clarification made by the Supreme Court[26] that intention has to be gathered from the attending circumstances.

The Commission ultimately recommended introduction of a section in the Penal Code in the place of the present Sections 85 and 86. The provisions so recommended runs,

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25. Bailey v. The State of Bihar, A.I.R.1958 S.C.465. The Supreme Court asked the question,

> "If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about this course where [illegible] is required? Are we at liberty to place intent on the same footing and, if so, why has the section omitted intent in its latter part?"

The Supreme Court itself answered,

> "So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober, but so far as intention is concerned we must gather it from the attending circumstances of the case, paying due regard to the degree of intoxication".

Id. at p.480 per Chandrasekhara Aiyar.

26. Ibid.

"85. Act of a person who is intoxicated. -
(1) Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law:

Provided that such intoxication was not self-induced.

(2) Where an act done by a person in a state of intoxication which is self-induced will be an offence if done with a particular knowledge, he shall be liable to be dealt with as if he did the act with the knowledge he would have had if he had not been intoxicated.

(3) Intoxication is self-induced in a person when he voluntarily causes the state of intoxication in himself". 27

It may be contended in this respect that the suggestion made is not completely satisfactory. To limit the defence of voluntary intoxication only to offences requiring specific intent is not justified. Presumption of knowledge of dangerousness of drinking is not scientific in the case of an inexperienced person who drinks for the first time. Some leniency has to be shown to such offenders. This is especially so in a country like India where drinking of alcohol is not prohibited but encouraged with a view to raising State revenue. 28

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27. Law Commission of India, 42nd Report, para 4.39, p.97. However, the Joint Parliamentary Committee on the Indian Penal Code (Amendment) Bill, 1972 did not accept any of these recommendations. See the text of the Bill (by way legend) in The Gazette of India (Extraordinary) dated January 29, 1976.

28. Despite the constitutional directive for prohibition. Article 47 of the Constitution of India.

It is also submitted that the explanation given to 'self-induced' intoxication [29] is not satisfactory. Where can it be said that intoxication is not caused voluntarily? In view of extremal physical force required to make it involuntary? Or whether some unavoidable circumstances like being compelled to take drugs on medical reasons, or being persuaded or forced by superior authority is sufficient to make intoxication not voluntary? The position still remains to be clarified; it is not clear in the draft provision suggested by the Law Commission.

An Substantial Reform at Procedural Level

The procedural provisions relating to accused persons of unsound mind were discussed by the Law Commission in its Fortyfirst Report on the Code of Criminal Procedure.[30] The recommendations have been adopted in the new Criminal Procedure Code of 1973. All the same the new provisions failed to bring substantial changes from the old procedural provisions.

On Inquiry

When a Magistrate has reason to believe that a person against whom an inquiry is held is of unsound mind

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29. s.85 (3) of the draft. Ibid.

30. Law Commission of India, Fortyfirst Report, Vol.I, Ch.28 paras 336-347, p.138.

and incapable of making his defence the Magistrate has to make an enquiry into that fact and cause such person to be examined by a civil surgeon or such other medical officers and shall take evidence from such officer.[21] Pending such enquiry the Magistrate has either to release the person on bail or to place him in safe custody.[22]

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21. Criminal Procedure Code, 1973, s.328. It reads,

Procedure in case of accused being lunatic. -

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

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of Section 330.

(3) If such Magistrate is of opinion that the person referred to in sub-section (1) is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

22. Id., s.330. It reads,

"Release of lunatic pending investigation or trial. -

(1) Whenever, a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the

court...

If the Magistrate finds the person to be of unsound mind and consequently not capable of making his defence he has to record that finding and postpone further proceedings.[33]

During trial

If during the trial of any person it appears that such person is of unsoundmindand incapable of making his defence the court shall try the fact of such unsoundness in the first instance and may consider the medical evidence before it in arriving at a finding. If the Court is satisfied of the fact of unsoundness and incapacity it shall record a finding to that effect and shall postpone further proceedings and dispose of such person under Section 330 of the Code of Criminal Procedure. The trial of this fact will be deemed to be part of his trial before the Magistrate or Court for the offence charged.[34]

(f.n.33 continued)
Magistrate or Court or such officer as the Magistrate or Court appoint in this behalf.
(2) If the case is one which, in the opinion of Magistrate or Court bail should not be given, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government.
Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912)".
33. Id., S.329(3), ibid, n.31.
34. Id., S.329. It reads,
"Procedure in case of person of unsound mind tried before court -

contd...

It appears from a reading of Sections 328 and 329 of the Code of Criminal Procedure that too much discretion is vested with the Magistrate and the Court to enquire or try the fact of unsoundness of mind and incapacity to defend. Under Section 328 the Magistrate having decided to enquire into the fact of unsoundness of the person, is bound to cause such person to be examined by a medical man. To that extent his discretion is limited. Under Section 329 there is no such compulsion at the time of trial. The Magistrate or the Court is only to look into the available medical evidence before the Court. Under both sections, the decision on the need for such an enquiry or trial is left to the personal satisfaction of the Magistrate or the Court. Under Indian conditions such medical evidence may be difficult to come from the defence side. And those who are capable of producing medical witnesses, it is submitted, may be discouraged by the strict rules of

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(f.n.34 continued)

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court".

admissibility.[25] The provisions have to be suitably amended making a medical examination of the accused person impressive soon after the offence is committed. Under the present rules of evidence and procedure medical examination of the accused takes place, if at all, days after the occurrence.

The statutory duty of the Magistrate to cause the alleged mentally affected offender medically examined has not been stressed by the courts in many cases.[26] Serious injury will result from the omission to exercise that statutory duty. The connection between the substantive law and the procedural rules have to be kept in mind. Sanity of the accused is relevant not only at the time of commission of the offence but also during arraignment and trial and on conviction.

'Unsoundness of mind' - Meaning for purpose of procedure.

Certain questions may arise in interpreting the provisions of the Criminal Code, in Sections 328 and 329. What is the meaning of the expressions 'unsound mind' and

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25. In many cases medical evidence is either rejected or not admitted. See Ch.X, n.18.

26. See, Bahal v. Delhi Administration, A.I.R.1958 S.C. 349 Gurmit Singh v. The State of M.P., A.I.R.1974 S.C.216.

'incapable of making his defence'? Who is to decide whether an enquiry is needed into the state of mind of the accused? On whom lies the burden of proof of showing that the accused is of unsound mind?

'Unsoundness of mind' in the above provisions of Criminal Procedure Code has a meaning different from the one in Section 84 of the Indian Penal Code. Under the Penal Code the test is whether the accused was capable of knowing the nature of the act he was doing or whether he was capable of knowing that it was wrong or contrary to law at the time of commission of the offence. Accordingly, for holding him not responsible there should be a complete impairment of the cognitive faculties of the accused at the time of the commission of the offence.[37] But under Sections 328 and 329 of the Criminal Procedure Code, the Magistrate or the Court is concerned not with the condition of mind of the accused at the time of the alleged commission of the offence but with the condition of mind of the accused at the time of the enquiry or the trial.[38] However, for

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37. See Ch. IV.

38. State of Haryana v. Sikhram, A.I.R.1960 Pun.30 per Achhruwala, J. at 31. Since there was nothing on record to show abnormal condition of mind of the accused during enquiry the commitment to the Sessions Court was upheld.

holding a person to be of unsound mind, he should be in a position not to be able to distinguish between right and wrong or not to be able to know the nature of the proceedings of the trial. Then only he can be said to be not able to make his defence because of unsoundness of mind.

One view is that the mandatory provisions of Section 328 [39] require the Magistrate not only to have the accused examined by the civil surgeon of the district or such other medical officer but to examine such officer as a witness. Hence non-compliance with this provision and failing to examine the medical officer who issued the certificate will vitiate the committal order.[40] A reading of the section will reveal that this mandate is there only when the Magistrate has reason to believe that the person is of unsound mind and he decides to enquire the state of mind of the accused. Similarly it is only in cases where the accused appears to be incapable, by reason of unsoundness of mind, of making his trial that the issue of insanity must be tried before the trial for the offence is proceeded with. This has been decided in an old case of 1928.[41]

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39. [illegible], n.21

40. [illegible] v. [illegible], A.I.R.1954 Trav.Co.428 [illegible], C.J. at 430; [illegible] v. [illegible], A.I.R. 1958 Trav.Co. 22, [illegible] Sankaran and Menon Nilak, JJ. at 23.

41. [illegible] v. Rahadur, A.I.R.1928 Lah.796, [illegible] Agha Haidar,J at 798.

the position has not changed so far. There is no provision in the Indian law making it incumbent upon a Magistrate to order a medical enquiry the moment a defence of insanity is put.

There is difference of opinion on the burden of proof to show that the accused is of unsound mind and is incapable of making his defence. One view is that the burden of proving that the accused is of unsound mind and incapable of making his defence lies upon the accused and it is for him to lead evidence on the point in the first place and such evidence as is led in his behalf can be rebutted by the prosecution. The evidence of civil surgeon under Section 328 of the Code [42] of Criminal Procedure is not prosecution evidence because examination of the surgeon is a statutory duty of the Magistrate. If the accused seeks to produce other evidence in rebuttal of the civil surgeon's evidence, the prosecution also is entitled to produce evidence in rebuttal of the evidence of the accused.[43] Another view is that burden of proving the sanity of the accused at the time of trial is on the prosecution. If the enquiry is under section 329 of the

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42. Supra, n.31 (Section 464 of the old Code of 1898).
43. Emperor v. Ghasiti Khan Ram, A.I.R.1938 Pesh.24 at 25.

Code of Criminal Procedure it should be regarded as a preliminary enquiry conducted for the satisfaction of the court, and in that view the prosecution ought to commence and give their evidence.[44] The onus of proof under section 329 of the Code of Criminal Procedure according to this view, is on the prosecution to show that the accused is, at the time of proceedings against him, of sound mind and capable of making the defence.[45] This view seems to be more logical and reasonable. Because, once the soundness of mind of the accused is doubted by the Magistrate or court, the presumption of sanity goes and it becomes the duty of the prosecution to prove the mental responsibility of the accused.

Discretion of the Court in trial proceedings

Under the Code of Criminal Procedure wide discretionary powers are given to the Magistrate or the Court to release on bail a mentally unsound person, who is not capable of making his defence, to the custody and care of his relative or friend.[46] If the Magistrate or Court is

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44. [redacted] v. Sunil Mohan, A.I.R.1955 Cal.479 [redacted] Pearson,J. at 479.

45. [redacted] v. [redacted] Chakravarty, A.I.R.1954 Trav.Co.435, [redacted] Kunhi, C.J. at 438.

46. Section 335 (1)(b), of the Code of Criminal Procedure 1973. However, Section 336 (3) reads,

contd...

not satisfied that the person can be released on bail, or if sufficient security is not forthcoming, the accused can be detained in safe custody in an asylum or in such other manner deemed fit and the matter may be reported to the government.[47] Here also the personal satisfaction of the Court or the Magistrate is decisive in deciding whether he is to be released on bail or sent to the mental hospital or asylum. The only constraint[48] is that no order of the detention of the accused in an asylum will be made otherwise than in accordance with rules as the State Government may have made under the Indian Lunacy Act 1912.

The Code of Criminal Procedure provides for the resumption of trial of the accused whose trial is postponed on account of unsoundness of mind. The trial can

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(f.n.46 continued)

> "No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1), except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall -
> (a) be properly taken care of and prevented from doing injury to himself or to any other person; and
> (b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct".

47. Code of Criminal Procedure 1973, s.330. See ~~supra~~, n.38.

48. Ibid.

be resumed after the accused has ceased to be of unsound mind.[49] The accused can be required to be produced before the Magistrate or the Court only "after the person concerned has ceased to be of unsound mind".[50] There appears to be a defect in the law. Though trial should start only after recovery, the Magistrate or the Court concerned should have occasion to see the alleged lunatic even earlier. This is necessary in order to avoid the possibility of indefinite keeping of the alleged lunatic, even after recovery, in the asylum without trial. The Magistrate or the Court concerned should have the power to summon the person to court. In the alternative the law should require the Magistrate or court to visit the mental asylum periodically to ascertain actual condition of the accused. It is doubtful whether it is safe to postpone indefinitely the receipt of the certificate of the Medical Officer to

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49. s.331 *id*. It reads.

> Resumption of inquiry or trial. -
> (1) Whenever an inquiry or a trial is postponed under section 328 or section 330, the Magistrate or Court, as the case may be, may at any time after the person concerned has ceased to be of unsound mind resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.
> (2) Where the accused has been released under section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

50. See *ibid*.

when the accused was subjected by court for observation[51] or the report from the Inspector-General of Prisons or the report of visitors of the mental asylum, as the state of mind of such persons.[52] A major defect in the procedure is that if the reporting is delayed the detention of the accused will go indefinitely.

If the Magistrate or Court considers the person capable of making the defence the inquiry or trial can be

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51. Under s.331(3), the certificate of such officer that the accused is capable of making his defence, is receivable in evidence. See ibid.

52. s.337 of the Procedure Code. The section reads.

> "Procedure where lunatic prisoner is reported capable of making his defence. - If such person is detained under the provisions of sub-section (3) of Section 330, and in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court, appointed, and the Magistrate or Court shall deal with such person under the provisions of Section 330; and the certificate of such Inspector-General or visitors or aforesaid shall be receivable as evidence."
>
> As under section 30 of the Indian Lunacy Act (IV of 1912), when any criminal lunatic is detained in the prisons or lunatic asylum, he shall be visited by the Inspector General of prisons or the visitors, as the case may be, once at least in six months, and they shall make a special report as to the state of mind of such person to the authority under whose order he is detained. See also infra, p.69

proceeded. If as a result of the trial the accused is acquitted on the ground that at the time of commission of the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of act, or that it was wrong or contrary to law, the finding should state specifically whether he committed the act or not.[53] In the case of acquittal on the ground of such legal insanity, the accused have to detained safe custody in an asylum or released to a relative or friend.[54]

Release of the unsentenced lunatic.

The procedure for release of the detained criminal lunatic, when he is declared fit to be released by the Inspector General of Prisons or visitors, is provided in the Code of Criminal Procedure.[55] When they certify that

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53. Id. Section 334.
54. Id. Section 335.
55. Section 338. It reads,

"Procedure where lunatic detained is declared fit to be released. -

(1) If such person is detained under the provisions of sub-section (1) of section 330, or section 336, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the State Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he hasnot been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission consisting of a judicial and two medical officers.

contd...

such a person may be released without danger of his doing injury to himself or to any other person, the State Government may order him to be released. In the alternative the Government may order that he be detained in custody or 'transferred to a public lunatic asylum if he has not been already sent to such an asylum'.[56] In case the Government orders transfer to an asylum it has to appoint a commission, consisting of a judicial officer and two medical officers. Such commission has to make a formal inquiry into the state of mind of the person, take such evidence as it deems necessary, and report to the State Government. The Government, then, may order his release or detention as it thinks fit.[57] The power of the government and the procedure to deliver the lunatic to care and custody of relative or friend is contained in Section 339 of the Code of Criminal Procedure.[58]

(f.n.55 continued)

(2) Such Commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or detention as it thinks fit."

56. Ibid. The wording of this section suggests that it is an option to send such a person to a public lunatic asylum. The transfer is not on result of any previous need for confinement and treatment but when he is not already sent there.

57. Ibid.

58. The section reads,

"Delivery of lunatic to care of relative or friend. - (1) Whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires such...

A perusal of the provisions in sections 328 and 330 of the Code of Criminal Procedure will indicate that while discretion is vested with the Government to release or not to release a convicted lunatic person who is declared fit to be released. Even if the Inspector General of Prisons or the visitors in the asylum certifies that one is fit to be released without danger of injury to himself or others

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(f.n.58 continued)

that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall -

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for inspection of such officer, and at such times and places, as the State Government may direct;

(c) in the case of a person detained under sub-section (1) of section 330, be produced when required before such Magistrate or Court.

Order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production the Magistrate or Court shall proceed in accordance with provisions of Section 331, and the certificate of the inspecting officer shall be receivable as evidence".

the Government may decide to detain the person in the prison or send him to a lunatic asylum if he is not already sent there once. The pathetic condition of offenders created by such a position is brought to light by the Supreme Court recently in one case.[59] The petitioner in that case was sentenced to life imprisonment in 1949. When he showed mental ailments he was transferred to another jail as a criminal lunatic. He recovered from his mental trouble and he was declared fit for discharge on medical report in December 1966. The report was also forwarded to the Government that he was fit for discharge in the case of his guardians and surety with a request that necessary orders should be passed for the purpose. But the State Government instead of directing release of the petitioner directed the Jail Superintendent to keep the petitioner in safe custody as a criminal lunatic for three years and then it was prolonged indefinitely. When the case was brought before the Supreme Court with the aid of the Free Legal Aid Committee, the Supreme Court said,[60]

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59. Ramji Mir v. State of Bihar, A.I.R.1968 S.C.1670.

60. Id. per Bhagwati, J. at 1671. It was true that the Superintendent on instructions from the State Government had contacted the father of the petitioner to know whether he was ready to stand surety for the petitioner and there was no reply from the father.

> "It is again not possible to understand as to why the State Government should have insisted on a surety before releasing the petitioner from the jail when the petitioner was found to be completely recovered and perfectly fit for discharge and there was absolutely no warrant or justification in law to detain him . . . . It is shocking to our conscience that a perfectly sane person should have been incarcerated within the walls of a prison for almost 16 years without any authority of law".

The Supreme Court ordered the State Government to release the petitioner forthwith providing him with fund for one week's maintenance. The court also directed the Government to file in court a statement setting out the names and particulars of persons who are detaining lunatics in the various prisons in the State of Bihar, whether convicted or otherwise. [61]

It is submitted that the powers of the Government under the two provisions just discussed will have to be structured and channelised by providing sufficient guidelines for the Government to act. Interdepartment from the judiciary may not be possible in all circumstances. A protracted procedure of report by the Inspector General of visitors, then indulgence from Government and again reporting by the Commission will make it impossible for the alleged offenders belonging to poor sections of society to get release from the asylum. Similarly the alleged mentally affected offenders will have to languish in asylums

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61. Id. at p.1672.

if the visitors or the Inspector General fail to promptly report that they are fit to be released.

Lunacy Legislation

The Indian Lunacy Act also requires scrutiny in this context. As the preamble says it is to consolidate and amend the law relating to lunacy. The term lunacy is not defined in the Act. 'Lunatic' is defined as meaning "an idiot or a person of unsound mind".[62] Criminal lunatic means "any person for whose detention in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of Section 466 or Section 471 of the Code of Criminal Procedure, 1898, or of Section 30 of the Prisoners Act, 1900, or of Section 103-A of the Indian Army Act, 1911".[63]

Chapter II of the Act deals with reception, care and treatment of lunatics. It provides for informal admission[64] and also for civil commitment, viz., formal admission on application.[65] It also provides for reception and detention of criminal lunatics.[66] When an order under

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62. s.3 (5), Indian Lunacy Act 1912.
63. s.3 (4), Id.
64. Id., s.4.
65. Id., s.5.
66. Id., ss.24, 25.

the Criminal Procedure Code, Prison Act or Indian Army Act is passed directing the reception of a criminal lunatic into an asylum that is sufficient authority for the reception and detention of such a person in such asylum.

Appointment of visitors is an important part of the supervision of the admission to the asylum. The State Government have to appoint for every asylum not less than three visitors, one of them at least shall be a medical officer. The Inspector-General of Prisons will be an ex officio member of the Board of Visitors of all asylums within his jurisdiction.[67] Two or more of the visitors, one of them being a medical officer, have to visit the asylum once at least in every month. They have to inspect every part of the asylum entire and examine every lunatic or boarder as far as practical. They have to examine every order and certificate for admission of lunatics. It is also their duty to enter in the visitors' book proper remarks regarding the management and condition of the asylum and the inmates.[68] The Inspector-General of Prisons or the visitors as the case may be have to visit any person

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67. Id., s.26. Generally the District Judge and the District Collector of district where the asylum is situated are members of the Board of Visitors.

68. Id., s.29.

alleged to be of unsound mind and detained in a prison or asylum once at least in every six months and a special report as to the state of mind such person has to be made to the authority under whose order he is detained.[69] Three of the visitors of an asylum, one of whom being a medical officer can by order in writing direct the discharge of any person detained in the asylum and such person shall thereupon be discharged.[70]

The legislation is as old as 1912. Much water has flown under the bridge. Legislation which is enforced there under in many of the provisions has been amended or repealed.[71] There is an urgent need for a mental health legislation in India as is done in England in 1959. As a matter of fact there is a proposal for such legislation. A bill was introduced in Parliament and has not yet become law.[72]

Mental Health Bill 1978

The Mental Health Bill[73] has many provisions similar

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69. Id., S.30 (1). Also see supra, p. 52
70. Id., S.31 (1).
71. For example, see reference to 1898 Criminal Procedure Code provisions in Sections 34 and 30 concerning criminal lunatics Bill No.86 of 1978. See for the text of the Bill. The Gazette of India, May 12, 1978 (Extraordinary) p.327.
72. The Bill was introduced in the Rajya Sabha and it has been referred to the Select Committee.
73. Bill No.86 of 1978. For the full text of the Bill see the Gazette of India May 12, 1978 (Extraordinary) p.327.

to the English law on the subject and is an improvement on the existing lunacy legislation in India. As the preamble says the Bill aims to consolidate and amend the law relating to treatment and care of mentally ill persons and to make better provisions with respect to their property and affairs. But how far is it an improvement from the stand point of the criminal responsibility of the mentally ill persons?

"Mentally ill persons" have been defined. "mentally ill persons" is defined as follows:

> "Mentally ill person" means a person who is in need of psychiatric treatment by reason of mental deficiency or any disturbance in his behaviour or mental state and includes a person who has all or any of the clinical conditions known as psychoses, psychoneuroses, psychopathic state, addiction, mental subnormality or psychopathic disorder, or such other condition of the mind as may be prescribed". 74

Though mental illness is not defined in the Bill the meaning can be derived from the definition of 'mentally ill person' when it includes persons suffering from certain category of illnesses or conditions. Thus the concept of mental illness under the proposed Indian Legislation will have as wide a scope as that assigned to it under English

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74. Ibid., Cl.2 (m).

legislation.[75] However, the definition of "mental disorder" under the British legislation has since been amended replacing the 'severe subnormality' with 'severe mental impairment'.[76] But the concept of 'mental subnormality', introduced in the British law in 1959 has changed to 'severe mental impairment' in 1982, still finds a place in the Indian Bill.[77]

Responsibility of the State and Central Government to establish and maintain psychiatric hospitals and nursing homes were recognised in the Bill.[78] Admission can be voluntary,[79] compulsory[80] and under special circumstances.[81] There can also be temporary treatment orders on application by a relative or friend.[82]

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75. In the British legislation also the term mental illness is not defined but it is included in the definition of the term "mental disorder". See s.4 (1) of the Mental Health Act 1959, ____, Ch.XXI, n.28.

76. See ____, Ch.XXI, n.28.

77. See ____, n.74.

78. (a) Those who are under the age of 18 years (b) those who have been convicted of any offence and (c) those belonging to such other class or category of persons as may be prescribed. Bill No.86 of 1978, Cl.3.

79. Id., s.15(1) (admission of a major by himself); s.15(2) (admission of minor by guardian); s.15(3) (admission by medical officer).

80. Id., clauses 22-24.

81. Id., Cl.19.

82. Id., Cl.20.

The Bill, in fact, have more provisions relating to civil commitment of the mentally ill persons than those dealing with criminal lunatics and mentally abnormal offenders. Procedures for civil commitments are elaborately provided in the Bill.[83] As far as offenders suffering from mental illness is concerned, clause 30[84] of the Bill is important. Admission and detention of such offenders is provided in that proposed section.

Under the proposed scheme "mentally ill offender"[85] is a mentally ill person for whose detention in, or removal to, a psychiatric hospital or psychiatric nursing home, jail or other place of safe custody an order referred to in clause 30[86] has been made. According to proposed clause 30

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83. For a full view of these procedures see Id., clauses 15-24.

84. Cl.30 of Bill No.86 of 1978. It reads,

> "An order under section 30 of the Prisoners Act 1900 or under section 144 of the Airforce Act, 1950 or under section 145 of the Army Act, 1950, or under the section 143 or 144 of the Navy Act 1957, or under section 330 or section 335 of the Code of Criminal Procedure 1973 directing the reception of a mentally ill offender into any psychiatric hospital or psychiatric nursing home shall be sufficient authority for the admission of such person in such hospital or, as the case may be, such nursing home or any other psychiatric hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein.

85. Defined in Id., Cl.2(i).

86. Supra, n.84.

of the Bill a person will be entitled to admission to psychiatric hospitals or nursing homes only if an order is passed under the respective provisions in the Prisoners Act, Army Act, Airforce Act, Navy Act, or the Code of Criminal Procedure finding him as a person of unsound mind. Accordingly, a person who is declared by a court of law or a court martial to be a person of unsound mind under the respective provisions will be entitled to be admitted to the psychiatric nursing homes. Unsoundness of mind after the commission of the offence and at the time of trial presents little difficulty because there the test of unsoundness is whether he is capable of making his defence.

Will a mentally ill offender suffering from clinical condition mentioned in the definition clause of 'mentally ill persons' automatically be entitled to a hospital order? Under the substantive law of responsibility the accused can have exemption from punishment and seek treatment in the alternative only if the legal test is satisfied. Even in procedural law he can be said to be not capable of making the defence if the magistrate or the court is satisfied of the fact in addition to the fact that he is suffering from one or the other form of mental illness mentioned in the Bill. But for the purpose of sentencing and to determine whether he is eligible for hospitalisation for treatment the test is whether an accused person was insane at the time of commission of the offence so as not to have

the nature of the act or the right and wrong___ of his act. So mentally abnormal offenders will be in a better position than the present only if the substantive law of responsibility is amended making lesser degree of mental states of irresponsibility sufficient for partial exemption and treatment. In England a mentally ill offender can have the benefit of hospitalisation because the substantive law of responsibility allows partial exemption from punishment and substitution of treatment in proper cases.

If this is done here, insanity for the purpose of punishment or treatment can have as wide a meaning as assigned to it under the concept of 'mentally ill persons'[87] for the purpose of civil commitment and treatment. It will enhance the content of clause 30[88] of the proposed Mental Health Legislation for the purposes of treatment of mentally abnormal offenders thus bringing a substantive change in the criminal responsibility of mentally ill offenders.

To sum up, the Indian law, substantive and procedural, on the criminal responsibility of the mentally abnormal undoubtedly needs thorough reform. Under our law insanity

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87. _____, p.74.

88. _____, p. 84

is either a complete defense or no defense at all. It recognizes no gradations of responsibility for crime. For purposes of conviction, there is no twilight zone between abnormality and normality. There seems to be disagreement as to whether evidence of mental abnormality for the defendant found legally sane can properly be a consideration even in fixing the penalty.

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PART VI

PERSPECTIVES

CHAPTER XV

LAW AND REALITY : SPOTLIGHT ON INTERVIEWS

A close examination of the views of the people affected with, and involved in handling, the problem under investigation will help assessing it in a socio-legal perspective. This chapter is the writer's own assessment of the views of the people he has interviewed and condition of those he has observed - lawyers, prison officials, psychiatrists, prisoners and criminal lunatics. [1]

Opinion of Lawyers

The lawyers interviewed unanimously agreed on one point: the present law in India is inadequate to meet out justice to the mentally affected persons. According to them the present law is inadequate to cover certain species of emotional and impulsive insanity that result in the commission of offences. They were pointing at cases of certain weak-minded offenders who were sane under normal circumstances but who burst out under pressures of extra-ordinary

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1. Category — No.interviewed.
   - Lawyers — 5
   - Prison officials — 5
   - Psychiatrists — 5
   - Prisoners — 12
   - Criminal lunatics — 12

circumstances. But for the force of such circumstances they would not have indulged in criminality. Looking at the rehabilitative aspect of sentencing, the lawyers are of the view that conviction of such victims of momentary impulses to long term prison sentences is of great injustice not only to these hapless human beings but also to society. What is needed is a sort of psychiatric or socio-therapeutic treatment to redeem them to society profitably. How can this be possible? The lawyers thought aloud. Substantive law is to be amended. It should provide for diminished responsibility and for lesser term of sentence. Confinement and treatment in mental hospitals can also be ordered. However this should depend upon the needs of each case.

The deyens of the bar had a variety of experiences of conducting cases. There are criminal lunatics who, according to them, deserve sympathetic consideration. One such instance is conspicuous. A wage earner coming from the village brings his child to a city hospital. Due to the negligence of hospital staff the child dies. In a sudden outburst he attacks many persons in the hospital with a weapon he got from the place. None died. But the attack results in grievous hurt of a few persons. Here is a case where the accused is becoming violent out of utter desperation from the loss of his child which would have been

avoided had the hospital staff been careful enough. What purpose is going to be served by convicting such a person and sending him to prison? It serves only one purpose, i.e., extirpation. Detaining him in prison will not serve the purpose of rehabilitation. He will never repeat such an act unless an equally desperate circumstance re-occurs in his life. This is most unlikely. Is the present law of criminal responsibility so viable to do justice in such exceptional cases? It is obviously inadequate to cover emotional and impulsive cases of mental abnormality. In these cases 'diminished responsibility' should be recognised. This is necessary also in most cases of infanticides, because except in exceptional circumstances no human being will commit the atrocious crime of murdering young children unless he or she is affected by some mental disturbance or imbalance. Yet, mere mental imbalance is not a ground for attracting legal immunity in section 84 of the Indian Penal Code.

There is another dastardly instance where a young man mercilessly murdered his parents and two sisters. He was in his early twenties toiling very hard to look after the family. His father was an alcoholic and never cared to tend his home. The young man's sister was ailing from the deadly disease of cancer. He was labouring hard to earn money for his sister's treatment. Turning a deaf ear to all these needs of home, his father usually came home fully

drunk and beats his mother. This bitter experience in his life makes the young man to think in terms of destroying the whole family so that the sufferings of his beloved mother and sisters can be put an end to. One day he brutally murders his cruel father, the mother and two of his sisters. He is caught hold of before he attempts to commit suicide. It is true he did the brutal murders but his action was manifestly out of compassion. Will anybody give any regard to the stark realities the young man had to face in his life? Law is often an ass in such cases and stands dumb founded. Law cannot come to his rescuing postings it may help him for commutation of the death sentence to one of imprisonment for life.

Instances are legion where the law lags behind the mores of the day. Two examples can be quoted. One was the case of an affectionate son who served his mother for long time during her illness suddenly killing her thinking that the act will put an end to her suffering. Another was that of an office clerk, obedient, co-operative and industrious in his office suddenly slapping his superior officer one day after hearing the news of his mother dying of chickenpox, a disease which had attacked him earlier.

One of the prominent members of the bar laid his fingers on the method of assessing the mental attitude of the offender. He emphasized on the subjective method of

assessment, namely, to look what actually was going on in the mind of the accused at the relevant time. For such assessment, the lawyer opined, the present rules of evidence are not sufficient. Psychiatric evidence must be employed for this purpose. He quoted an instance where a wife used to pester her husband with allegation of sexual infidelity which evidently was untrue. One day the husband commits suicide. The lingering sense of guilt haunts the wife. The thought that it was she who was responsible for her husband's death troubles her mind. The prick of conscience reaches to such an extent that one day she jumps into a well with her two children. She escapes; the children die. She was pregnant at the time of the commission of the offence. Can the present law give exemption from criminal responsibility for the offence she committed at such a very peculiar condition of her mind? Did she actually intend to violate law deliberately? Would she have committed such an offence but for the desperation resulted from her prick of conscience which made her think in a wrong way? Disturbing, no doubt, are these questions to the juristic mind.

There are other instances. A nun working as a clerk in a college used to misappropriate the amount which she had collected from the students as University examination fees. She had no need to deceive others because she did not have any financial difficulties. On psychiatric examination it

was revealed that she did it out of sheer fascination to steal other's money, and this is a disease called cleptomania. It is doubtful whether the present legal definition of insanity will absolve her from criminal liability if she was prosecuted again s. Another interesting character is a top managerial executive of a government company. He used to shrink out all names of persons belonging to a particular community from the list of candidates to be appointed in the undertaking. The motive behind this was that the officer in his young age had been badly insulted and denied job by the Principal of a college belonging to the said community. Every time he sees the list of candidates selected he will remember his early bitter experience in life.

Apart from legal scrutiny, these psychiatric cases need therapeutic approach.

All the lawyers were of the opinion that it is highly risky to take the plea of insanity under the Indian situation. A lawyer who used to study the psycho-social problems which lead his clients to the commission of the alleged offences felt that the defence of insanity is a high risk to plead. The lawyers gave many reasons.

Some of the psycho-social problems like offences committed due to emotional and delusional insanity do not get the protection of law in India. Taking the plea will

turn out to be an indirect admission of the offence and will result in conviction in such circumstances.

It is stated that the attitude of trial judges is most discouraging. Many of these judges, somehow, hold the notion that it is only when no other defence is available the accused takes the plea of insanity as the last shelter of escape from the hands of justice. This wrong approach, and the limited scope of the defence in substantive law, dissuade lawyers from taking the plea of insanity or mental disturbances and on the other hand encourage them to take the plea of denial of the charge. Thus the lawyers fail to present the true case seeking the attention of the court towards the unfortunate circumstances leading the accused to commit such offences.

Attitude of the investigating officers is also deplorable. By hook or by crook they will try to get the accused convicted. They add up facts to the real circumstances of the case, and weave stories of motive or of attempt to escape or to hide. Such false stories would easily cut at the root of the defence plea of insanity. A lawyer who has long experience as a public prosecutor holds the view that in many cases the story of the police that the accused is absconding is not true. More often than not when they do cook up such stories the intention of the police is to plant, in the mind of the court, a prejudice against the accused.

Another factor that discourages the plea of insanity is none other than the fear of the hospital sentence which the accused get in case the plea succeeds. Once he is committed to a mental asylum on account of acquittal on the ground of insanity his life may end up there whereas in case of conviction he need to suffer only life imprisonment which practically meant around 10 to 12 years of imprisonment in the prisons and which now will be a minimum of fourteen years.[2] Our mental asylums are hell and are proverbially said to be notorious for their nasty, savage and brutish life. The horrifying thought about the pathetic conditions in the asylums will never let one to ponder the insanity plea. It is sarcastically remarked that those who take the plea of insanity do not know the real conditions of the majority of lunatic asylums.

There is yet another difficulty presented by the insertion of Section 433-A in the Code of Criminal Procedure.[3]

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2. See infra, nn.3, 4.

3. S.433-A reads,

Restriction on powers of remission or commutation in Certain Cases. - "Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment".

and decision of the Supreme Court in Maruram v. Union of India,[4] that life imprisonment in certain cases means a minimum of fourteen years imprisonment in prison. The Court cannot now recommend to the Government under Section 433 of Criminal Procedure Code[5] for sympathetic consideration of hard cases of conviction for homicide which happened to be committed out of some mental or emotional disturbances but not amounting to the case of legal insanity envisaged in Section 84 of the Indian Penal Code.

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4. A.I.R. 1980 S.C. 2147. The Supreme Court held that Section 433-A of the Criminal Procedure Code obligating the actual detention in prison for full fourteen years as a mandatory minimum in the two classes of cases where the Court could have punished the offender with death but did not or where the death sentence was commuted to life imprisonment is within the legislative competency. Per Krishna Iyer, J. for himself and Chandrachud, C.J. and Bhagwati, Kanhal and Fazal Ali, JJ. concurring separately.

5. S.433 of Cr.P.C. It reads,

> Power to commute sentence. -
> "The appropriate Government may, without the consent of the person sentenced, commute -
>
> (a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);
>
> (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years, or for fine;
>
> (c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;
>
> (d) a sentence of simple imprisonment for fine".

A change in the law is necessary. The law should recognise circumstances that justify diminished responsibility. Homicide committed out of emotional and impulsive insanity should be considered as culpable homicide not amounting to murder. This will take away the restrictions put on the power of the Government in commuting punishment and pave the way for appropriate lesser terms of imprisonment, and treatment in the asylums depending on the nature of individual cases. A change in approach - a change in the judicial attitudes, in the prosecuting process and lastly, in the view of the public at large - is the need of the hour. Psychiatric evidence should get more acceptance. The lawyers find no reason why they should disagree with the proposition that in every case of murder, especially when a mental disease is suspected, the accused should be subjected to medical examination immediately after the incident. The enquiring magistrates who make the enquiry and police officers who investigate and prosecute the accused should keep an open mind to get at the truth, namely, whether or not the accused person was suffering from any mental disturbance.

had the occasion to interview one of the view that although in these cases offenders who suffer from any mental disease should be exempted from punitive penal sanction, they have to be deterred from committing further violence. In their eyes confining the offender to mental asylum for treatment is one way of preventing him from repeating violence.

The methods of treatment available in mental hospitals are mainly drug therapy, electro-convulsion therapy and psychotherapy. Drugs are the most common remedy in the case of psychotic patients. According to psychiatrists drugs coming in phenothiazine group have been found very effective in the treatment of psychoses. Generally, law gives exemption from punishment in the case of psychosis only. Psychotherapy is not effective for psychosis; it is effective only for neurosis some time called psychoneurosis.

There are certain limitations on the treatment of the mentally abnormal criminals. The interview threw a flood of light on these limitations. It is said that neurosurgery may have side effects; brain tissues cannot be put back to the original position again. Many psychiatrists and neurosurgeons do not approve surgery except in grave emergency where the patient is excessively aggressive and uncontrollable. Scope of psychotherapy is also very limited. Many neurotics against whom it may be potentially effective may not be co-operative. Compulsion is resisted. Co-operation

of the patient, as is reiterated by the psychiatrists, is a pre-condition for the success of psychotherapy and counselling.

Hospital treatment is generally not effective for psychopathy and other character disorientation. Expert psychiatrist opinion seems to be that to cure this type of mental disorder constant care and supervision of all those who come in contact with the patient is necessary. Long indulgence in deviant behaviour may have made some of these victims of mental disorder recidivists. One may agree with the psychiatrists when they say that such habitual offenders should be segregated from society and put in jails. But young and first offenders who commit offences in bad company and under unwholesome circumstances, stand on a different pedestal. They deserve treatment. In the first instance they have to be removed from those circumstances that made them deviants. Perhaps psychotherapy may do them good. Character counselling and character building through rehabilitative job-oriented education and training programmes in correctional institutions may go a long way in saving them from recidivism. In appropriate cases they may be admitted to mental hospitals for curing character disorder that is medically treatable.

Majority among the criminal lunatics redirected to mental hospital suffer from schizophrenia, manic depressive psychoses, organic brain disorders like epilepsy and con-

congenital intellectual deficiency.[6] The first three categories are curable unless the disease is highly advanced. According to psychiatrists intellectual deficiency is also curable in the initial stages. But the patients will seldom respond to treatment due to their inherent deficiency in intelligence. Patients belonging to all these groups have to be kept in mental hospitals and treatment tried upon them. According to the psychiatrists it is a wrong thing to sentence them to imprisonment on the sole reason that they were not able to establish the presence of their disease at the time of the commission of the offence. It is their considered view that if the offender showed symptoms of any of these diseases before or after the commission of the offence the patient has to be admitted to mental hospital for observation and treatment if necessary.

It is submitted that if at all they are sent to prison for the reason of their failure to establish legal insanity the prison rules should be liberalised to make their admission to mental hospitals possible and easier. The dividing line between legal and medical insanity is to be obliterated to this extent atleast. Activated by executive

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6. From the statistics of the Trivandrum Mental Hospital the general classification of the psychiatric patients is as follows. Out of a total of 4110 psychiatric type of patients for the year 1979, psychotics were 1672, neurotic personality disorders were 1434 and mentally retarded were 1113. See the Appendix.

indulgence and supervised by judicial vigilance[7] the administration of prisons and mental hospitals should strive hard to see that the criminal lunatics deserving psychiatric medical attention receive such treatment. According to psychiatrists, other types of character disorders, namely, neurosis and psychopathy, can be dealt with in the prison itself by strengthening the medical, correctional and rehabilitative facilities in prisons.

The criminal lunatics are kept along with the 'dangerous category'[8] of lunatics to which belong the

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7. There are several judicial pronouncements from the highest court of the land making it incumbent on the judges and magistrates to pay periodic visits to prison and check the impact of their sentences on the prisoners. See for instance, Mohammad Giasuddin v. State of A.P., A.I.R. 1977 S.C. 1926. Sunil Batra v. Delhi Administration, A.I.R. 1978 S.C. 1675; Charles Sobraj v. Superintendent, Central Jail, Tihar, A.I.R. 1978 S.C. 1514; Sunil Batra (II) v. Delhi Administration, A.I.R. 1980 S.C. 1579.

8. Butler Committee in England says,

> "Dangerousness is not a constant disposition. There are a very few "unconditionally dangerous" people who spontaneously look for trouble or search for victims, but dangerousness is generally a potential reaction which may be triggered by particular situations ... . For the purpose of our discussion we equate it with a propensity to cause serious physical injury or lasting psychological harm... . In deciding what to do about dangerousness, the impossibility of certain prediction of future human behaviour is the central problem".

See Report of the Mentally Abnormal Offenders, Cmnd. 6244 (1975), p.76.

wandering lunatics.[9] It is necessary that the really dangerous types of mentally abnormal offenders who are likely to cause serious mental and physical harm to others are to be identified and kept separately from the other criminal and wandering lunatics.[10] Violence among the criminal lunatics kept inside the same room, according to the doctors in the mental hospital, is due to the unpredictable nature of the lunatics. Because of the lack of facilities hospital authorities may be compelled to put the lunatics of different categories - violent, less violent and least violent - in the same room. At times this happens unknowingly.

Interview and observation of the criminal lunatics.

Certain criminal lunatics who were interviewed had the recollection of the happenings which constituted their offences. Some had only a faint recollection. Some others had no recollection at all. They include a person confined in the asylum since 1962 and declared unfit to be released.[11]

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9. The term 'dangerous lunatics' is not defined in the Indian Lunacy Act, 1912. It is true that they are mentioned in section 32(i) of the Indian Lunacy Act who are unfit to 'be at large'. But no guidelines are given to determine who is a dangerous lunatic. It is said even wandering lunatics are included into this category because they constitute a nuisance to the public.
10. [illegible] n.8.
11. He is acquitted on account of mental unsoundness. He remembers that he was brought by the police to the mental hospital from a place outside the state. He remembers the period in which he was arrested and brought to the hospital. He looked shabby and dressed in unclean cloth.

and another person acquitted on the ground of insanity and declared fit to be released but yet confined there for a long period from the year 1955 since no friend or relative turned up for his care and custody on security bond.[12] They also include two persons, one who suffered from a hallucinatory call to kill his mother[13] and another who suffered from homicidal mania and split personality.[14] Another person

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13. Aged about sixty and well dressed, he could communicate like a normal person in all other aspects than on a point in which he is delusional. He claims to have contact every day with celestial bodies like sun and moon. He remembers about the murder of his mother which happened in 1955. He had requested his father and elder brothers, on the day of the incident, to keep women away from the house. Without paying heed to what he said, his father and brothers left his mother in his house and went for a celebration in a church which was miles away. Only he and his mother were in the house on that fateful night. He had a hallucinatory call to kill a woman. He killed his mother. He claims to have informed the police about the disturbance in his mind.

13. Aged about thirty he remembers to have killed his mother. He assigns no motive. He was loving his mother except perhaps he used to abuse her when he gets angry at times. On the day of occurrence, he says, somebody stamped in his ears to kill and he responded to that hallucinatory call. He had fair recollection of the happening.

14. A twenty three year old young man, the patient killed two children. They were his brother's children. He killed them inside a room which was locked. He says that one neighbour entered the room, killed the children and escaped and that he is innocent about the murder. But when the police came they found him inside the room in which the murder took place. He says that he was unnecessarily brought to the hospital. The reason he assigns for the neighbour killing the children was that he wanted to have sexual intercourse with the mother of the children which she refused. From the history of the patient it can be that the neighbour is an imaginary figure. He places himself in the place of the neighbour

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interviewed suffered from the delusion that he is 'the government' having established police stations in different parts of the sky to punish people.[15] Another person is aware of the wrongfulness and criminality of his offence, but minus many ideas and talks profusely.[16] Those interviewed also include two women, the first, a member of a

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(f.n.14 continued)

and in that phase of his personality as the neighbour he is different from himself. It did not appear that he was deliberately telling a lie. This may be the symptom of the disease of split personality. He appeared to be mentally unbalanced and his talk inconsistent and incoherent.

15. He killed a lady. To him she was a stranger. He is acquitted on the ground of insanity but confined there since 1971. According to him, when sun rises the police station which he established in the sky opens. The penal punishment is awarded by him through this police station. Except for this delusional thinking he does not communicate anything as a normal person. He gives illogical and incoherent answers to questions put. While notes on interview with him were being made he was murmuring without lucidity, "You can take down everything I say. I am the government".

16. He killed his wife for taking his money and giving it to his own sister. He appears unmoved in describing the incident but he remembers the whole incident which happened in 1968. He appears to be conscious of the wrongfulness and criminality of the incident. He is aware that he is brought there as a punishment for the wrong done. He asks, "Is it not just that a person who has done wrong should be punished?" His wife did a wrong and he punished her. He did a wrong and the police punished him. Then he mixes up things with an episode that happened in the mental hospital. The Superintendent of the hospital was suspended pending enquiry. The patient says that the superintendent deserves it because he did a wrong. His thoughts are not clear. He mingles every thing together and speaks without a stop.

religious Sanyasini Sabha.[17] and the second, an old woman who suffers from delusion and pyromania.[18]

An evaluation

The above illustrations speak for themselves. Even confirmed lunatics are somehow aware of the nature of the act they have committed and of its wrongfulness. Were they aware or not of the wrongfulness at the time of their committing the act? True that the interview was not helpful in gathering information on this aspect. Yet the very basis of the right and wrong test is in doubt. It may also be that the fact that most of the patients now know the wrongfulness of their act shows that treatment to lunatic criminals has its beneficial results.

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17. She injured seriously the leader (Sanyasini) of the Sabha for having aided with his rival in a property dispute. She is aggrieved that the Sanyasini who is supposed to be impartial and on the side of justice showed partiality. According to her version, her brother is also responsible for keeping her in the lunatic asylum for depriving her of her property. She says that she is not a lunatic. If she is let out of the hospital again she will teach them a lesson for doing injustice to her. She does not express any remorse in the happening which led to her coming to the hospital. Though she communicates coherently her case sheet discloses that she is mentally disturbed.

18. She set fire to some houses of her neighbours. She says that she did it to bind the stars. She claims that she used to communicate with stars. When asked questions on this point she questioned my authority to ask about it. She asked, "Do you know the strength of the stars?" She is aware that she had set fire to the houses but she was justified according to her because she was doing something noble.

In 1979 in the Mental Hospital, Trivandrum, out of 2939 psychiatric types of patients[19] admitted only 399 were accepted as criminal types. The proportion between criminal lunatics and non-criminal lunatics for that year was 1540:399, i.e., about 13.5% were criminal lunatics. Statistics reveals that it was more than 13.4% in 1980 and about 3.7% in 1981. It could be seen that for the year 1979 and 1980 the percentage remained almost the same and that for the year 1981 it was reduced considerably. The percentage for the year 1982 is not available. From this varying trends a causal relationship between mental diseases in general and those of criminal nature cannot be conclusively established.[20] However, statistics of the Mental Hospital, Trivandrum, shows that although the total number of admissions increased steadily from 1978 to 1981 there is a sharp fall of admission of criminal lunatics for the year 1981.[21]

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19. See the appendix.

20. See also Report of the Committee on Mentally Abnormal Offenders, Cmnd.8244, para 4.4 at p.57. The report says,
"If someone commits an offence while suffering from degree of disorder it is likely to be assumed by the public at large that the mental condition and the offending act are connected; but this is not necessarily so. A person may have been led to commit an offence quite direct result of a mental disorder. In such a case, the cure of the offender may be expected to diminish the likelihood of any further offence, unless there is a relapse: but where his law breaking is not directly connected with his disordered mental condition, the cure of the mental disorder will have no effect on the commission of further offences ... A person may be cured of his mental disorder but still disposed to commit crime".

21. See the appendix.

A point with regard to the effectiveness of treatment is worth noting.[22] When the total admission of inpatient cases in Mental Hospital, Trivandrum, in 1979 was 2959, only 283 were cured, 2046 recorded as improved and the remaining recorded as having left the hospital. In 1980, when the total admission was 3044, only 339 were cured, 2046 improved and the remaining found left or otherwise discharged. In 1981, when total admission of inpatients was 3164, only 558 got cured and 2552 improved. The rate of cure showed a slight increase in 1980 compared in 1979 i.e., from 9.56% to 11.14%. The rate showed an increase to 17.64% in 1981. Similarly in the rate of improvement also, after a slight decrease in the percentage for the year 1980 from that for the year 1979 there was an increase for the year 1981. One feature is to be noted. Although there is higher percentage of improvement, percentage of cure is at a low ebb. There is no available statistics to know the rate of cure of criminal lunatics separately.

According to psychiatrists in the mental hospitals over population, poor accommodation, lack of co-operation from the mental patients and paucity of funds for development of treatment facilities are some of the main reasons for the failure in attaining the declared objectives. An

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22. See appendix.

independent observer will be taken aback to learn the unhappy environment in which the patients live in mental hospitals. The buildings are old and dilapidated. Sanitary conditions are miserably poor. Drainage is improper. The latrines, whose number is not even sufficient, do stink. The supply of water is scarce. The whole atmosphere is unhygienic and unwholesome. One may not be surprised if the life at such a place can itself be a source of mental and physical diseases.[23] The inmates seldom take bath. Their dress is ugly. Many patients are infected with skin diseases due to bug bites. Skin scabs are common. Food is not prepared and distributed with cleanliness. There are no recreational facilities, no facility for games, music or reading. Though weaving and tailoring are meant to be the occupational activities at Trivandrum and Trichur mental

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23. These mental asylums were subjected to severe criticism from various circles. The asylums were made the subject of official enquiry a few months ago when some patients escaped from there. The enquiry report says.

"The conditions in the hospital have deteriorated to such a miserable level that they provide a strong inducement to the patients to escape from their captivity . . . latrines are nothing but wholes, without a watercock. With so many people using this single facility, the filth and squalor have reached an extremely nauseating level. The overpowering stench originating from the latrines pervades the whole atmosphere".

About the sleeping arrangements, the report says.

"There are no cots or mattresses for patients to sleep. Only a few mats are given to them of which only some pieces remain now. While a few sleep on these mat pieces most others have nothing but the bare untidy floor to sleep on ... flies and insects swarm around patients who lie inert and immovable. Given the present environment in the ward it is quite obvious that these patients are unlikely to be cured of their diseases ever".

See the excerpts from the Report in Indian Express Daily, April 29, 1983, Cochin Ed., p.7.

hospitals the facilities are very seldom utilised either because of the lack of interest in the patients or because of the lack of genuine effort on the part of the hospital administration to put them to use. In the family and paywards some cots and beds are provided. According to the hospital administration, there are inherent difficulties in providing the patients with better sleeping facilities. Generally mental patients will not keep their personal things clean. Though female patients and the least violent among male patients are provided with beds in paywards they want to destroy the bed.

In Kerala asylums are over populated[24] prisons under-populated.[25]

The hospital administration, I am told, are eager to send the old patients back home when they are reasonably cured or improved. This is because they have to reduce overcrowding in hospitals and accommodate new entrants. But one difficult problem arises. Relations or friends do not

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24. At Trivandrum Mental Hospital some 1000 patients are admitted as on 13.4.1983 as against the authorised capacity of 507. Some 540 patients were admitted into Trichur Mental Hospital as on 28.2.1983 as against the authorised capacity of 261.

25. Ibid., n.20.

promptly come forward, with sufficient security bonds to accept the patients when they are found fit to be sent home. In the case of criminal lunatics special difficulty is created because of the punishments involved in effecting their release when they are cured. Psychiatrists in the hospital cannot freely recommend their release. At any time the disease may re-occur. The patients may become violent when they are back into a situation which once made them mentally deranged. There is a way out. If reasonable foreseeability of the future dangerousness is adopted as a guide for their release it may provide a satisfactory solution to the problem of the criminal lunatics languishing in mental asylums[36] and in certain cases in jails.[37] They should not be kept there even after they are reasonably cured and have undergone confinement for a period more than they would have, had they been sane. Unless their release will bring further trouble such patients should be released. It is their fundamental right to associate themself with society once they constitute no danger to the outside world.

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36. There are cases of persons languishing in mental asylums though, judged from their long years of peaceful and unexceptional life they spent in hospital, these persons no longer present a danger to others. For instance see [illegible], n.12.

37. Infra, n.42.

According to a psychiatrist interviewed, the attitude of society and of the kith and kin of the patients themselves are to a great extent responsible for the failure of the mental asylums. When the patients get cured in the hospital the relatives or friends seldom come forward to receive them. Society is reluctant to treat them as its decent members. The stamp of lunacy attaches, to the cured patients, as a stigma. Every move of theirs - every look, every word and every gesture - is likely to be misinterpreted. This makes them mad. They may slip down again to their old delusions and abnormalities. In our society, especially among the poor and the uneducated mental disease is looked down upon and viewed as a state caused by the influence of evil spirits. In the initial stages many people try to conceal it. They try exorcism to charm away the spirits. Help of the mental experts are sought only when the trouble gets worsened. Society as a whole should start viewing mental disease just like any other disease, curable with the help of science and medicine.

Persons dealing with mental patients will have often to face diverse human problems. The following are some live examples, from mental hospitals, revealed at the interview. One loving mother belonging to a lower middle class family came after travelling a long distance to see his young son who was in the hospital. The son was addicted to ganja and

wife and had destroyed most of his property pursuing his alcoholic pleasures. His father was not alive. Unruly in his house he created problems to his old mother. One day he poured boiling rice (Kanji) all over her. On police report he was admitted to the hospital. He was at the time of the interview normal and logically communicating, though boastful and talkative. Interestingly his mother herself was talking too much. Her sister was also in the hospital as a confirmed lunatic. The son was arguing for a release whereas the mother was not for a release, atleast for the next twelve months. The mother had a fear. The son will not take medicine at home. He will disobey her and become violent. She also expressed the difficulties involved in bringing him back to the hospital if he turned to his old abnormality. Her only prayer was that he need be released only after his illness is cured completely. The doctor who was prepared to release him could not however give her any guarantee that the son would not make any trouble at home.

Examples of this nature are not rare. Another old mother pleaded to the superintendent of the hospital not to release her son because she could not make sufficient security arrangements at home to keep him safe. She is in financial difficulties. The father was also not there to

keep the son under control. The old mother was afraid that her son's condition might deteriorate at home.

The above cases indicate hard situations arising from genuine fear of parents. There are, however, many instances where members of his family falsely describe a patient as a dangerous lunatic and set up some criminal complaints against him to get his formal admission easier and relieve difficult. Such cases also came to light during the interview. A patient suffering from a delusion that he was an 'Anti-Christ' [28] attacked his brother who in fact was eager to depict him as a lunatic to deprive him of his property and civil capacity. There was still another instance of epileptic patient. He said that he had attacked his brother's child with a motive. It was a protest against his brother who was reluctant to partition the family property and thus tried to deny him unjustly his share.

Referring to all these instances the superintendent of the hospital remarked that the problem of release of lunatics is not as simple a matter as it would appear. If they are not released the hospital administration is criticised. If they are released and any trouble occurs, the

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28. 'Anti-Christ' in the biblical language is a prophet to be born who would do away with all injustice in the world.

hospital administration will again be the target of attack. It is little realised that the problem has socio-economic dimensions apart from its legal intricacies.

The problem requires handling from its diverse angles. The freedom of the individual has to be ensured. At the same time the risk to society has to be avoided. Those who have cause to take care of them after release, have to be rehabilitated. The social outlook has to change. The Board of Visitors and Social Service Organisations, operating jointly, can to a certain extent deal with the problem successfully. As mentioned early over-emphasis on security should not bar release in cases where there is no reasonable forseeability that a person released is likely to turn dangerous.

The Board's supervisory role should be made more effective. Social service organisations can play a vital role in this field. They can make investigations, find out fit cases for release, bring these cases to the day light of public scrutiny, to the attention of the courts and make the administrative wheels move more quickly. Courts can make periodic visits to those patients who are admitted to mental hospitals under their order intervene in proper cases. Mental Health Tribunals on the lines envisaged under the British Mental Health Act[29] can also be thought of.

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29. Supra, Ch.XXII, n.28.

sanity hearings can be provided to patients to establish their sanity in order to get themselves released. In these hearings lawyers and mental experts should be permitted to assist the patients.

Jails the Prisons

There is no pressure of population in the two central prisons in Trivandrum and Trichur.[30] This is an unusual situation when one looks at the position at national level.[31]

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30. In Trivandrum Central Jail there is an authorised capacity of 1000 prisoners which can accommodate without difficulty a strength of even 1500 persons according to the Superintendent of the Prison. But the actual strength is 539 inmates as on 18.4.1983 including seven 511 men and 27 women. As against this, the strength of the staff itself will amount to more than 300 including one Superintendent, one Chief Jailor, and Deputy Jailor, many Assistant Jailors and other inferior executive staff, technical staff including instructors in industrial and agricultural training, and welfare staff including one Medical Officer, one Pharmacist and three Welfare Officers. In the Vijayur (Trichur) Central Jail as against an authorised capacity of 400 persons (386 men and 14 women) the actual strength is only 106 including 96 men and 10 women as on 20.4.1983. On the other hand, the strength of the staff is 107.

31. Through an order letting hundreds of prisoners in U.P. and Bihar jails the Supreme Court has expressed surprise and indignation at the overcrowding of the prisons. The Court pointed out that a prison with a capacity of people below two hundred had housed more than nine hundred prisoners with only twelve latrines to be used by them all. See The Hindu (Coimbatore Edition) dated 3.5.1983 p.9 and [illegible] (Cochin Edition) dated 3.5.1983 p.1.

In the Central Jail at the State capital mainly life convicts are kept. Sixtyfive percent of the prisoner population constitutes persons convicted for the offence of murder. There is provision for correctional and occupational training.[32] There is a dispensary with a pharmacist and a medical officer looking after the health problems of prisoners. Minor ailments are treated there. If major mental defects are found out the ailing prisoner will be taken to mental hospital for treatment.[33]

Prisoners interviewed revealed a variety of mental abnormalities. An old man was convicted for murdering his daughter-in-law who refused to have sex with him.[34] Another

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32. Training is provided in trades like smithy, carpentry, weaving and painting. Training in motor mechanism is also proposed according to the superintendent but the implementation is postponed on account of financial stringency. Agricultural work is also prescribed as prison labour. There is a library inside the prison with only some old books. The library is not much used by prisoners. News papers are provided. They are allowed to listen to radio inside the prison at the common facility. At times some films, mainly documentary, are shown to them. There is a temple and a church inside the prison. Learned men from all important religious come and give them lectures occasionally. There is mass ceremony in the church regularly on every Sunday.
33. According to the welfare officer of the Jail there was, however, no major mental case for the time being.
34. The attempt to rape was made on the third day of her marriage. Nobody other than the prisoner and the daughter in-law was there in the house. The prisoner said that he did not know what had happened on that fateful day. Initially the emotional and sudden advance of the spent up sexual energy of an ageing man might have been the cause.

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was a prisoner convicted of rape.[35] He disowned the charge even after three years of imprisonment. His version is that his landlord hoaxed him in the alleged offence with a view to depriving him of his tenancy. Another prisoner was an young man who with an overdose of sexuality married a second woman but misplaced her for the reason that she discharged and belittled him by refusing to live with him in his house.[36]

These cases raise certain fundamental problems in criminal reformation jurisprudence. In the first example of the father-in-law killing his daughter-in-law for refusal of sex, issues of psycho-physical dimensions crop in. Can this problem be effectively met by keeping the prisoner behind the prison walls? A view may be expressed that there is nothing to be redressed in him and what is required is effective

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(f.n.34 continued)
He might have wanted to prove his lost vigour. To this extent it is a psychological case. But when he persisted in his advancement, and the girl refused to give in, the thought of somebody coming to know about it might have prompted him to destroy her so that he can cover up the whole thing. Then he entered the realm of crime and brutality.

35. He was convicted by the trial court and confirmed by the High Court.

36. He was at the prime of his age, not much educated but healthy and earning fairly well. He said he has learned lessons from the long period of prison life but he cannot give any assurance that he will not be tempted to do such crimes again if disobedience came from his wife who is supposed to obey him. He claims that he did not have any bad habits like alcoholism and he expected loyalty from his wife. He intends to marry again after release.

determinate for which a term in prison is desirable. This is a mistaken assumption. What is required is to subject him to appropriate treatment so as to relieve him from the abnormalities that induced him to commit the crime. The second case indicates two possible eventualities; one failure of criminal justice delivery system and the other, the inherent limitation on attempts at reformation. If the version of the prisoner is true obviously the justice delivery system has misfired. The objectionable result then will be to turn a normal person into a criminal after the prison life. If his version is not true, as is most likely to be the case, it evidences a state of mind refusing to co-operate with any attempt at reformation. Are such cases to be left unattended to? Or on the contrary should not such cases be subjected to some thorough psychiatric observation and treatment? Third example of course is a case of psycho-sexual complexes which require deep psycho-analytical study and treatment.

Men may commit homicide in self-defence. They may not be able to prove the plea of self-defence before a court of law on account of some technical reasons. In such cases they will be convicted. In one case,[37] the prisoner interviewed was an officer in the Defence Accounts Service. He

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37. At the age of 35 when he committed the murder he was unmarried. His main complaint was that he was not getting parole leave for the last eight years to visit his mother and other relatives at home in Alleppey.

killed his superior officer was according to him, was a Pakistan spy. The prisoner had informed the higher authorities about that. For this reason the deceased was nursing a grudge against him and planning to kill him. It was in retaliation and self-defence that he had to kill his superior officer. He says that he was convicted because the higher authorities suppressed the evidence and he could not prove his case in the court.

There are other cases also where the plea of self-defence could not be proved and hence the accused was convicted. Two other prisoners[28] interviewed also claimed that they had committed the act in self-defence but was convicted since they could not prove it to the satisfaction of the court. Both prisoners are very young, upset about the fate of their families to whom they were the bread winner and at the verge of psychological collapse.

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28. In one case the prisoner was a middle aged contractor. He had to face the murderous assault from a deceased. The prisoner, was convalescing in his house from a severe head bone injury when the incident took place. He inquit about his fate and the thoughts about his daughter and family at home worried him. In the other case the prisoner who is very young in his early twenties was forced to murder his rival who was disturbing him and his old mother. According to his version he did everything in his self-defence. The rival had picked up quarrel with him and beaten him and his elderly mother. Having served only two years of his sentence for life he is very much worried in mind when he thinks about his future, his mother and his sisters at home.

In the cases of the above type a question arises. What is there to be ashamed in those prisoners if their action as they described was true and was done for self-defence? The examples show rather the weak points of our justice delivery system than anything for redressing the offendings.

Convicts should never be considered as prisoners eneies to be done away with; but should be treated as human beings with fundamental rights to live with dignity.[20] All prisoners who were interviewed had the feeling that the atmosphere in the prison was not congenial for mental tranquility and calm. This may account for the failure of correctional aspects of the prison set up. Inside the prison there are some facilities which emphasize on reform and correction. Provision even for transcendental meditation is made recently. But nothing works out at the functional level. Nothing produces positive results. The whole atmosphere of prison, unsympathetic to the external

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20. Francis Coralie v. Union Territory of Delhi, A.I.R.1981. S.C.746 at 753. In this present pronouncement the Supreme Court has reiterated that the rights to personal liberties in article 21 of the constitution are available to the convicts and this right includes the right to live in dignity. The fundamental rights of the convicted prisoners were recognized by the Supreme Court even in earlier cases. For instance see cases of Sunil Batra v. Delhi Administration, A.I.R. 1978 S.C. 1675; Charles Sobraj v. Superintendent, Central Jail, Tihar, A.I.R. 1978 S.C. 1514.

and emotional feelings of the prisoners is super imposed with authority. The attitude of the prison authorities towards prisoners is not conducive for reformation. Prisoners are treated as slaves. A change is needed - a fundamental change - in the emotional and cultural attitude of the prison authorities towards the prisoners. Those who commit offences out of emotions and momentary impulses are culturally not inferior to any one. But the prison atmosphere renders them slaves; it makes the prisoner without self-respect and self-confidence. Another aspect is that prisoners should be paid decently for their prison labour.[40] They should feel that they are usefully contributing to social progress.

Welfare activities are to be made meaningful and effective inside prison. For this the activities have to be reorganised by placing the welfare officers and members of the medical staff directly under the control of the Welfare Department. If it is to be made under the Home Department itself for administrative convenience, it has

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40. The present rate of wage is diplorably low. Recently the Kerala High Court has recommended enhancement of prison wages considerably. See also N.S.Chandrasekharan, "Prison Labour: Reformative and Rehabilitative Aspects", [1982] 8 C.U.L.R.161 at p.170. Pointing out the low wages paid to prisoners for their labour, the human rights violations involved in forced prison labour, the sheer exploitation of labour in prisons, the learned writer highlights the need for payment of minimum wages to prisoners for their labour.

to be made independent of the Prison Administration and put directly under Home Department. The Welfare officers should not be made to toe the line of the prison Superintendent and to act as his puppet.

The Central Prison at Yerwada is mainly meant for the habitual offenders and casual offenders who are only short term prisoners. Agriculture is the main form of occupational training given there. Probably because prisoners are few in number other forms of occupational training, for example weaving, may not be feasible in this prison. There is a hospital inside the prison. Reading and other recreational facilities are available. Food has been improved recently probably because of the recurring complaints received by the jail visiting committee. According to the welfare officer at Yerwada jail, smaller number of convicts inside the prison is not an indication of a reduced rate of theft and other economic offences committed by the habitual offenders in the state. The real reason for the huge fall in prison population is that the police is not prompt in bringing the culprits to book. Courts take a lenient view on majority of the few apprehended by the police and do let them off on probation. In the interview with some of the prisoners who had a record of several number of committals to the prison, it seems to be that the persons who were even caught and

arraigned for offence of theft are again locked by the police for such offence in the locality whether or not they have actually committed the offence. The real difficulty is that when the prisoner is released from prison he is not received with open hands in society. Prejudices of society affect his individual pride and isolate him from the main currents of social life. He may not succeed in finding out a suitable job. These adverse conditions bring him back to jail.

Some mentally disturbed offenders were kept in Yerwada jail. These inmates who were alleged to have committed murder were kept there on special cause. One case is that of a twenty year old young man who killed his wife. He used to have epileptic fits. He claims to have no memory of the incident.

In another case a man, who was working in a gold country[41] killed his wife doubting her chastity. He told that he did the act, obeying the orders of the 'tongue-god' with whom he usually communicated. However, his conversation indicated

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41. He said that he does a wrong thing when somebody in heaven says in his tongue to do so and not otherwise. He is only obeying the orders of the 'tongue-god'. He was working in the gold countries. He had doubtions about the unchastity of his wife and he killed her by cutting her into pieces, it is said, after an intercourse. He was exonerated on the ground of insanity. He is not yet released even after eleven years of his life sentence. The psychiatrist is yet to certify him out of danger. He is called by the prison officials, 'tongue-god' or 'schizophrenic'.

that he was eager to go home. He also said that the 'yangmgad' is now advising him to behave in a good manner and he will no more create any trouble if released.

The third one is the most pitiable and deserves sympathetic consideration on humanitarian grounds. An woman murdered a three year old kid of her sister. She loved the kid so passionately and the kid also loved her in return with infantile zeal. But one day she cut the kid with a weapon and jumped into a well together with the child. All these she did without herself knowing what was happening. She was acquitted on the ground of insanity. It is said she is quite normal now and fit for release. But even after 14 years of life in captivity she continues to be in the prison as nobody turns out with a bond for safe custody. [42]

The problem of release of the mentally abnormal offenders in prison is similar to that of criminal lunatics in mental asylum. The proper course as was stated early is to strike a balance between two values, i.e., security of

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42. After that murder incident, she was never found aggressive even once, by the prison officials and the hospital staff. Till one year back her father used to come and see her; he is also dead now. The sister, quickly angry over the act of killing her child which she may not be prepared to forgive, and probably with a view to depriving her of her very little of the property, does not want to take her care and custody on security bond.

the public from the possible dangers from the lunatics and the right of the mentally deranged to associate themselves with others. It is not advisable to keep such persons inside prison or asylum indefinitely to avoid any distant possibility of trouble or danger to others.

There is a provision in the Prisons Act with respect to lunatic persons for their removal to a lunatic asylum. [43] But the provision is useful only if the conditions in the asylum are better than that in prison. The Inspector General

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43. Section 30 of the Prisoners Act, 1900. The relevant part of the provision reads.

"(1) Where it appears to the State Government, that any person detained or imprisoned under any order or sentence of any court is of unsound mind, the State Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a Lunatic Asylum or other place of safe custody within the State there to be kept and treated, as the State Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law".

(2) Where it appears to the State Government that the prisoner has become of sound mind, the State Government shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the State or, if the prisoner, is no longer liable to be kept in custody, order him to be discharged.

of Prisons[44] has the power to certify a lunatic criminal fit to be released. But this power is exercised on the basis of the report of the Superintendent who has discretion to accept or not to accept the report of medical officers.[45] The first draft of non-medical officials on matters which require expert opinion denotes an unhappy position.[46] As soon as the medical report is there the criminal lunatic should be transferred to the hospital or asylum. At present the medical officer who has to report is subject to the control of the Superintendent of Prisons. To make the provisions of transfer and hospitalisation effective the medical officers should be independent.

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44. Under section 338 of the Code of Criminal Procedure. See Ch.XIV, n.54.

45. S.13 of the Prisons Act 1894 reads.
"Subject to the control of the superintendent, the medical officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the State Government under section 59".

S.14 of the Prisons Act 1894 reads.
"Whenever the medical officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the medical officer shall report the case in writing to the superintendent, together with such observations as he may think proper.
This report, with the orders of the superintendent thereon, shall forthwith be sent to the Inspector General for information".

46. Lamichaney, "Prisoners' Rights and Discretion of Prison Administration", [1961] C.U.L.R.140 at pp.148,149.

recently courts have started issuing orders to the Government and the establishment of prisons and mental asylums to release those who have been detained for inexcusably long time on the ground of insanity or mental disturbance.[47] The orders also lay emphasis on simplifying the formalities. This is a welcome development.

Interviews and studies substantiate that the 'right and wrong' test of criminal responsibility in Indian law is inadequate. There is an urgent need to adopt the concept of

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47. The Supreme Court has recently given directions to the Government of Uttar Pradesh and the Inspector General of Prisons to release those in prisons for more than fourteen years. The direction includes liberalisation of bail bonds and appointment of some Government officials as guardians whenever guardianship is necessary as in the case of one time lunatics. The Court has also ordered Bihar Government to subject all prisoners at Jamshedpur Prison to medical examination see supra, n.28. Also see Hanif Mir v. State of Bihar, (A.I.R. 1968 S.C. 1470), where the Supreme Court ordered the Bihar Government to release the prisoner petitioner forthwith, who was sentenced to life imprisonment and spent in the prison more than thirty three years of which some sixteen years were without any authority of law. He was sentenced to life imprisonment in 1940. He became a lunatic in the prison. Though he was certified as fit for release on security bond for care and custody as early as 1946 the Government decided to keep him in the prison as a criminal lunatic. (See Ch.XIV, nn.30-41).

diminished responsibility in substantive law to accommodate those cases of emotional and impulsive forms of mental abnormality. We need reform in the field of procedural law as well. The victim reveal also the miserable and unhygienic conditions of our asylums and prisons. All the tall talk about reforming the offenders and applying therapeutic treatment to lunatic criminals will be a cry in the wilderness unless the institutions responsible for their care, custody and treatment are properly managed and reoriented to serve the declared objectives. Law needs substantial reform.

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CHAPTER XVI

CONCLUSIONS AND SUGGESTIONS

Guilt is the basis of criminal responsibility. Community response and social policy condition limitation of this basis. Punishing the mentally abnormal may not find a favourable community response. Nor is it a sound social policy. This is the broad premise on which exemption from punishment of the mentally deranged person could be based.

The reasons for such a social response are clear. None of the avowed purposes of punishment, viz. reformation, deterrence or preservation, is served when the insane is punished. The insane has no sound mind. He is abnormal. He is a wobbling. He is incapable to exercise a free will. He cannot control his actions. Nor can he have a free choice between good and evil. He does not understand the demands of social behaviour. He cannot conform his behaviour to any required standards nor is he able to learn from past experiences and regulate his behaviour accordingly. It is nothing but a travesty of justice if such a person is held responsible for his acts. Punishment can never change him. No sanction against his deviant conduct is possible except curative therapy whenever possible and protective custody whenever necessary.

Law demands certainty and definiteness. It has evolved its own definition and test of legal responsibility. Psychiatry and psychology can help to a large extent in determining the degree of responsibility of the mentally abnormal. Psychiatry and psychology have advanced in recent years. By its association with these two disciplines, law has to be benefited in many respects.

In the different stages of development of the defence of insanity in English criminal law the emergence of M'Naghten Rules was a significant landmark heralding an improvement in the erstwhile law. Those were days when psychiatry as a science was in infancy. The M'Naghten Rules were found to be inadequate when time passed as they failed to respond to the various complicated cases of mental diseases. The test of criminal responsibility ought to be whether or not the person is fit to be subjected to criminal process and punishment. The problem then is how to measure and assess the extent of the mental normalcy of a person, to which M'Naghten Rules fail to afford a satisfactory solution. Obviously the Rules did not protect those who were not completely insane but were at the same time not quite normal. They attempted to define blameworthiness and guilt in terms of free will, intent and foresight. This approach is inconsistent with psychological realities. Mental abnormality affects the whole personality of the individual. Will is

not the only factor that constitutes the personality; emotions form a major factor. When one is emotionally disturbed one's total personality is affected. Adherence to M'Naghten rules for the reason that they are simple and precise is unwarranted. Such a position is a road block to progressive changes in law.

The M'Naghten rules have been suitably amended or supplemented with various other tests in the United States, England and other common law countries. The 'irresistible impulse' test when used as a supplement to the 'right and wrong' test facilitates consideration of impulsive and emotional cases of insanity which are not covered by the latter test. The doctrine of diminished responsibility provided in the British law of Homicide in 1957 and in the American Model Penal Code is meant to cover those cases of emotional and impulsive insanity situations not covered by the legal test under the M'Naghten Rules. The concept empowers courts to avoid extreme penalty. It enables them to award life imprisonment or even lesser terms of imprisonment along with an order for hospital treatment in deserving cases. This is a recognition, an obvious recognition, of mental disturbance short of raving insanity as an extenuating circumstance for lesser punishment. This concept lays due emphasis on psychiatric evidence both in finding of guilt and in deciding whether and what treatment

is necessary. M'Naughten and Durham Rules also give some scope for psychiatric testimony. The formulae evolved in the Model Penal Code of the American Law Institute and in the German Penal Code provide, in the place of insanity in block or whole terms, the criterion of substantial impairment of the capacity to appreciate the criminality or unlawfulness and thus fall in line with the developments in the field of psychiatry. In spite of these steps ahead in other countries, the Indian law on the subject remains still at the old moorings of the M'Naughten rules.

Certain enlightened opinions of the Indian Judiciary have taken note of this progressive march of law in the west and made an attempt to follow its footprints. One highlight example is that the judges strongly recommended for favourable and sympathetic indulgence from the executive to exempt persons from punishment and to apply preventive custody and treatment in proper cases. Courts have also pondered life imprisonment, and even lesser terms of imprisonment, to death sentence for the offences of murder on the ground that the possibility for mental disorder could not be ruled out although their conduct did not come within the legal test of exemption. These sporadic pronouncements notwithstanding, instances of judicial neglect resulting in injustice are not uncommon. However, substitution of death sentence to life imprisonment is no real substitute for such offenders who deserve treatment in mental hospital.

Strict interpretation of the legal test based on the M'Naghten Rules prevents courts from granting total or partial exemption based on the principles of diminished responsibility. Instances of injustice resulting from the failure of proper appreciation of the evidence of mental disturbances indicate that certainty is to be achieved through legislative intervention. The distinction made by courts between 'legal insanity' and 'medical insanity' is not quite satisfactory. The wide gap between medically recognised mental disorders and the legally recognised ones has to be bridged. Substantive law has to be amended for this purpose.

There is an urgent need in India to recognise the emotional and impulsive forms of mental abnormality. Irresistible impulse and other forms of mental affections which are not attracted by the 'right and wrong' test of responsibility but which at the same time 'substantially impair mental responsibility'. The need is urgent because with the introduction of Section 433-A of the Code of Criminal Procedure the power of the Executive to commute life sentences to lesser terms of imprisonment stands restricted. A new category of offence has to be recognised whereby murder is reduced to culpable homicide not amounting to murder because of mental disease substantially impairing mental normalcy. This is necessary to give sympathetic treatment in deserving cases. In other words substantial

fact that irresponsibility is not a question of mental illness alone but is also a question of legal imputation. Since mens rea is an essential element of crime, and mental abnormality a substantial factor affecting mind, the law on criminal responsibility cannot disregard the mental element. However, a definition of the concept of irresponsibility will not solve the problem. The solution lies in combining to the maximum possible extent the criterion of irresponsibility with the philosophic notions and psychological realities of the present day.

Injustice has to be avoided by properly detecting those persons who deserve punishment and those persons who deserve treatment. Legal test of responsibility is therefore definitely important. This needs attention in countries such as India, where reforms are still to be initiated for taking into account mental disturbances which fall short of clear insanity. The traditional procedure for trying these cases has been subject to severe criticism from men both of law and of medicine. Medical and psychiatric experts have pointed out that while some criminals escape conviction by false plea of insanity, many insane men are convicted, imprisoned and discharged afterwards without their mental condition ever being discovered. Law, psychiatry and medicine have to play a combined role to remedy the unhappy situation. Psychiatric testimony deserves more acceptance

and rules of relevancy and admissibility demand modification. Although they may not be allowed to rob the role of the courts, the competency of the psychiatrists in testifying the symptoms of a particular mental illness and the reasons for the particular mental illness and the reasons for the particular behaviour of an accused is beyond challenge. Their opinions have to receive due weight though ultimately the evaluation and decision will have to be left to the court.

A survey of cases reveal that the Indian courts, not consistent either in appreciating evidence or in rendering decisions, have kept no uniform standards in the quantum of proof required for conviction or acquittal. The objective criteria for deciding the degree of insanity sufficient for exemption, such as the manner of commission of the offence, previous and subsequent conduct of the accused, previous and subsequent insanity, are weighed by the courts differently from case to case. Even the highest court in India seems to have held conflicting views on these questions. This leaves the standard of proof in mental cases as imprecise and elusive as the concept of insanity itself. The evidentiary rule in Section 105 of the Evidence Act in respect of mentally affected offenders requires amendment reducing the burden on the mentally abnormal accused.

Inconsistency perpetuates in the judicial approach towards admitting psychiatric evidence and medical evidence.

The 'right and wrong' test of responsibility has been mainly responsible in India for the limited role of such evidence. Indian law has to adopt the change in attitude of the other common law countries and must provide for making expert psychiatric and medical knowledge available and acceptable for determining responsibility of mentally affected offenders. Proper utilisation of medical evidence in detecting mental disease may partially remove the injustice which the mentally abnormal are being subjected to.

Nobody knows what happens to the mentally affected persons after sentencing them to prison or sending them to mental asylums for protective custody. No proper attention is being paid to see that conditions in prison are made congenial for their personality development and reform. The result is that a person sent to prison with mental abnormality of a lesser degree becomes a person more deteriorated in mind and body. In many cases, persons sent to asylums are released only after much longer period than what is really necessary for improvement. This is disappointing. It may be due to the callous attitude of the mental hospital authorities. In some cases it is due to the lack of proper facilities for medical treatment with the result that treatment in such institutions will take more time. Lack of finance may be pointed out as a real impediment in progress. It is felt that courts have a salient duty. They should keep

a close watch on those admitted to hospitals on their orders. If they do so, maladministration can be checked to a substantial level. It is a matter of relief that the Supreme Court has given some directives in this respect recently to the State Governments and jail and hospital authorities.

The problem of insanity, mental disorder, illness or abnormality cannot be solved from the narrow angle of the defence of insanity in a criminal process. The experience in England and United States has been so. The problem of crime and deviant behaviour has to be viewed in its totality. There should be a marriage between psychiatry and law. Psycho-analytic approach may be adopted wherever necessary. While in the West some attempts are made to match towards progressive measures, the criminal justice system in India remains static. Though we need not equate crime with mental disease a fair and open approach to deal with crime through a psycho-therapeutic method should be evolved.

The responsibility of the mentally ill for the crime and treatment he gets after conviction or acquittal on the ground of mental affection are co-related. Criminal responsibility is a matter of social policy and any definition of it will be futile unless it is co-related with a sound policy of social defence and individual protection. That policy should be one of an integrated approach segregating

genuinely dangerous persons from other members of the public and providing for curative therapy to those attempted to improvement. Curiously enough, the Indian Law Commission in its Forty second Report recommended not to make any change in Section 84 of the Indian Penal Code. The new Code of Criminal Procedure 1973 too did not incorporate sufficient procedural safeguards to deal with mentally affected offenders. Evidentiary rules also remain for many years without any change. A fresh look at the matter is an imperative need.

Recommendations

1. Irresistible impulse and other forms of impulsive and emotional insanity should be recognised in Indian law by adopting the concept of diminished responsibility. This can be provided as a supplementary test of responsibility on the lines of the British law on Homicide. Such a measure is immediately necessary because of the restriction on the power of the executive to commute life sentence. Section 84 of the Indian Penal Code should be suitably amended.

2. Even before effecting amendment, capital punishment may not be resorted to in cases where there is reasonable doubt that the accused is insane or mentally abnormal.

3. Law of alcoholic insanities should be modified. The defence of voluntary intoxication should be extended to persons who had no previous experience of having the

[illegible] of drinking or drug intake. recognition of diminished responsibility in such circumstances may be justified.

4. The burden of proof in insanity cases should be clarified by amending section 105 of the Indian Evidence Act. The initial burden may lie on the alleged insane person. But this burden should only be to introduce prima facie evidence of mental abnormality. The burden of proving the guilt should then be shifted to the prosecution.

5. Procedural law should provide that after every commission of murder or other serious offence involving violence the accused should be subjected to immediate medical and psychiatric examination so that the state of mind of the accused immediately after the offence can be scientifically ascertained. The examination should be done by a recognised medical officer and a psychiatrist. Though this need not be conclusive proof of insanity and mental abnormality at the time of commission of the offence, due weight should be given to such evidence.

6. Psychiatric evidence should be given more recognition. It helps to give a true picture of the total personality of the accused. This is conducive to proper assessment of the subjective guilt of the accused.

7. Bifurcation of trials at the discretion of courts

can be allowed if the accused takes alternative pleas - denial of commission of the offence and defence of insanity. Bifurcation will dispel the fear of the lawyers that the plea of insanity will amount to admission of guilt. Psychiatric and other medical evidence should be made admissible in both phases of the trial. Section 329 of the Code of Criminal Procedure should be amended for this purpose.

8. Mentally abnormal offenders are to be subjected to psycho-therapeutic treatment wherever possible. Conditions of mental hospitals are to be improved in order to make such treatment possible and meaningful. Psychiatric units should be experimented in the prison itself in order to treat those who cannot be given the benefit of hospital orders.

9. The Indian Lunacy Act which is, more than seven decades old needs immediate amendment.

10. Insanity or lunacy shall be clearly defined embracing 'mental disorder', 'mental illness' and 'impairment of cognitive faculties'.

11. The right of the cured mental patients to associate themselves with others should be recognised.

12. In cases where the board of Visitors to the mental hospital certify that an acquitted criminal lunatic is fit to be released, the release should never be delayed on

any technical ground. Technical hazards on his release like lack of legal guardian to take his case and custody may be got over by appointing government officials, like probation or social welfare officers, as their guardians.

13. Magistrates and convicting courts should make periodic visits to mental asylum and ascertain whether any person is unnecessarily kept there even after his disease is reasonably cured.

14. Sanity hearings should be allowed in which advocates and medical men can help the alleged lunatic.

15. During sanity hearings it should be enquired whether relatives attempted to involve the lunatic in criminal complaints and to keep him in prolonged stay in the asylum with a view to depriving him of his property and civil capacity. Such dishonest attempts, if proved, should render the relatives ineligible to inherit his property.

16. Mental Health Tribunals, similar to those under the British law, should be established.

17. Welfare and medical officers shall be independent of control by the superintendent of prison.

18. Except in cases where he is extraordinarily dangerous, no mentally affected offender should be kept in prison or mental asylum for more duration of time than that for which he could have been confined had he been duly punished.

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APPENDIX

ANNEXURE

Given below is a statistics in relation to Mental Hospital, Trivandrum for the year 1979.

F.No.F.14014/1/80/CMHI.

Mental Hospital Statistics in India For 1979.

Name of Hospital/Institution and Controlling Authority.	Hospital for Mental Diseases, Trivandrum - 695035. Director of Health Services and Principal, Medical College Trivandrum.

1.2 Facilities available

A.1	Sanctioned bed strength as on 31.12.1979.	501 + 6 pay wards Total 507.
A1	Total beds available	: 507
	Has the hospital a psychiatric out-patients unit.	Yes
	Has the hospital a child guidance clinic	No

Out door patients treated during 1979

Type of cases group and No.of Total patients of I. C. D. codes.		Male	Female	Total
(A) (i)	Psychoses (Fun Fns) ((290-299)	516	397	913
(ii)	Neurosis personality dis-orders etc. (300-316)	295	141	436
(iii)	Mental retardation (317-319)	404	251	655
T o t a l A		1295	909	2004

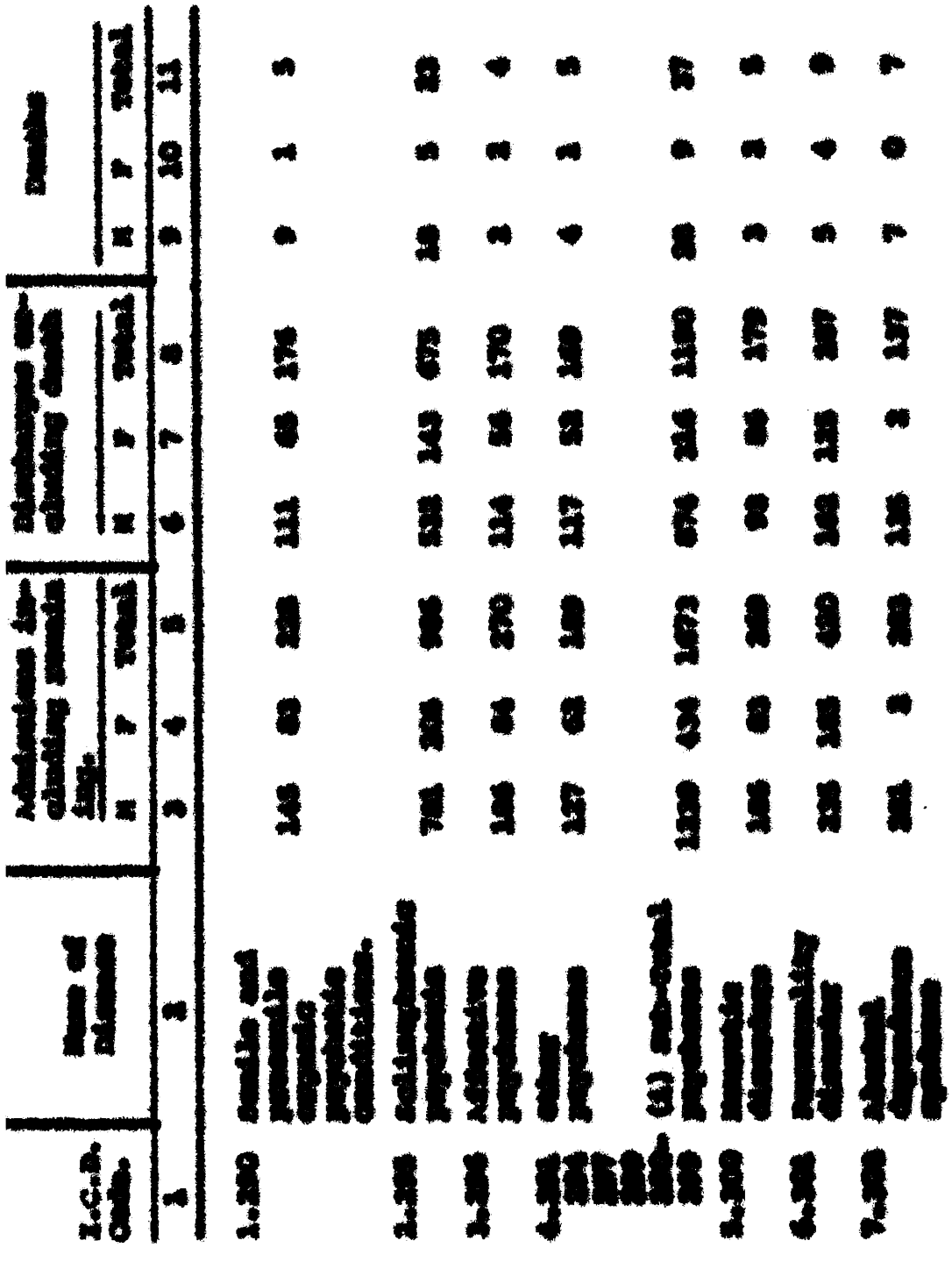
(B) (i)	Psychosis (290-299) (Old Fun)	2256	2004	4260
(ii)	Neurotic personality disorders etc.(300-316)	1108	1466	2650
(iii)	Mental retardation (317-319)	1008	1072	2074
	T o t a l (B)	3360	6804	11404

Indoor patients treated during 1978

	Items	Male	Female	Total
3.1.	No.of old patients remaining on on 1st January 1979	805	346	1151
3.2.	No.of new patients admitted during 1978.			
	(i) Criminal	203	116	319
	(ii) Non-criminal	1842	698	2540
	Total (i) + (ii)	2145	814	2959
3.3.	Total No.of patients treated in 1978 (Old and New)	2950	1160	4110
3.4.	No.of patients discharged (Old and New) excluding deaths during 1978.	2098	705	2803
	(i) Cured	162	121	283
	(ii) Improved	1421	585	2006
	(iii) Non-improved	Nil	Nil	Nil
	(iv) Left hospital against medical advice	257	40	297
	(v) Otherwise discharged	138	59	199
T o t a l	(i) - (v)	2098	705	2803
3.5.	No.of patients died during 1978 (Old and New)	56	20	76
3.6.	No.of patients remained in the hospital on on 31.12.'78	797	335	1132
3.7.	No.of inpatients days during 1978.	30.5 days		

.B. No.of daily resident patients average remained in the hospital during the year 1879. | 995 yrs.

.C. Indoor patients admitted, discharged and died during '79 according to various psychiatric diseases as per I.C.D.



1		2	3	4	5	6	7	8	9	10
8.	Drug dependence	219	18	237	163	15	175	00	00	00
9.305	Physiological mal-function arising from mental factors	24	15	39	31	7	28	00	00	00
10.302, 305, 307-316	Other neuroses	99	77	176	56	46	106	3	2	5
	300-316 (ii) sub-total personality disorders	1044	380	1426	632	383	915	13	6	26
11.317	Mild mental retardation	185	135	320	161	49	210	2	2	4
12.318	Other specified mental retardation	253	89	352	263	97	360	4	1	5
13.319	Unspecified mental retardation.	189	122	311	169	40	280	3	0	3
	(317-319)(iii) sub-Total Mental retardation.	667	346	1013	592	186	778	9	3	12
	Grand Total	2959	1169	4110	2096	786	2883	55	20	75

Sd/-
Superintendent
Mental Hospital
Trivandrum

Trivandrum
[illegible]

Specialists and staff in the hospital as on 1981.

Medical superintendent	1
Psychiatrists	7
Psychologists	1
Psychotherapists	7
Other doctors	9
Dietician	1
Matron	2
Psychiatric nurses	5
Other nurses	41
Social worker	1
Lab-Technicians	1
Other administrative (clerical)	8
Other staff	104
Total	188

Admissions and improvement of patients for the year 1979, 1980, 1981 from the statistics of the corresponding years.

Year	Total Admissions			Discharged	Improved	Not Improved
	Criminal	Non-criminal	Total			
1979	109	2260	2369	253	2046	nil
1980	408	2636	3044	339	2956	nil
1981	117	2047	3164	558	2925	108

Sanctioned beds remaining the same for the year 1982.	Male	241
	Female	160
	Paymate	4
	Total	407
Total number of admissions as on 14.4.1982.	Male	704
	Female	358
	Total	1062

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TABLE OF CASES

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