L.4. SADASIVAN NAIR, G–Mental Abnormality and Criminal Responsibility–1984–Dr. P. Leelakrishnan

The study is on the relationship between psychology and criminal law. The introductory part examines the basis of criminal responsibility dealing with guilty mind and purposes of punishment showing that how guilt is absent in, the cases of mentally ill persons. Defence of insanity in common law under the M'Naghten Rules and other alternative tests of criminal responsibility like irresistible impulse test, doctrine of diminished responsibility, New-Hamphire rule, Durham rule, American Model Penal Code test and the German rule are critically evaluated in Part II.

Judicial exposition of the concept of insanity in Indian law is the theme of Part III. The theories of insanity under section 84 of the Indian Penal Code, the required nature of unsoundness of mind and degree of insanity for exemption from responsibility and the distinction between medical and legal insanity are discussed. Various types of mental illnesses like delusions, epilepsy and automatism, hebiphrenia, homicidal mania and irresistible impulse, insomnia, puerperal insanity, pyromania, schisophrenia, somnabulism and insanity due to

intoxication are examined as to how far they are sufficient grounds for exemption from responsibility from the point of view of judicial opinion.

Burden of proof of insanity is highlighted in Part IV. The different views taken by the High Courts like the heavy burden rule, ,the liberal view and the more rational and balanced view and the authoritative rule laid down by the Supreme Court are discussed. On a critical analysis of the case law, lack of a definite standard of proof in insanity cases is experienced though the burden of proof is liberalised by the Supreme Court. A new approach is suggested making insanity defence a matter of evidence whereby benefit of exemption is to be given to the accused where insanity is apparent on evidence on the basis of preponderence of probability. This will minimise the hardship created out of lack of reform in substantive law of insanity in India. Objective criteria of proof like atrocious nature of the crime, previous and subsequent conduct of the accused, previous and subsequent insanity, role of witnesses, expert and nonexpert, and the greater role of psychiatric evidence in England are all explained.

Developments in psychiatry and the relationship between law and psychiatry are the themes of Part V. Mental abnormality, mental illness and crime are examined from the view of free will theory and basic concepts of psychiatry. Psychological analysis and classification of criminal behaviour and psycho-analytic approach to crime is surveyed. Developments in England and United States in the matter of substantive law, procedure, evidence and treatment of mentally abnormal offenders are also surveyed. Concept of 'guilty but mentally ill", bifurcated trials and sanity hearings in the mental asylums in U.S.A. and the concept of 'not guilty on evidence of insanity' as suggested by the Butler Committee Report in England are of matters of great interest in this context. The inadequacies of Indian law in this background and the role played by the Indian Law Commission in law reform in substantive and procedural aspects is also analysed in this part. It is gratifying to note that long pending Mental Health Bill on the lines of the English legislation has been enacted into law with some modifications in the form of Mental Health Act, 1987. The problem of mentally abnormal offenders has to be rightly in the light of total mental health problem and not simply as a problem of criminal responsibility.

In the concluding part a spot light on the inadequacies of law and practice in this area is taken from the perspectives of lawyers, authorities and inmates of prison and lunatic asylums by way of an empirical survey. Reforms in the field of substantive, procedural, evidentiary aspects of law and in the treatment of mentally abnormal offenders are suggested. The most important among the suggestions are: (1) Reform of substantive law of criminal responsibility under section 84 of the Penal Code by introducing either the concept of diminished responsibility available in British Homicide Act 1957 or the substantial impairment of the cognitive faculties test of the U.S. Model Penal Code.

(2) Examination by a psychiatric expert of every suspected mentally ill offender immediately after the commission of a serious offence of violence.
(3) Psychiatric evidence should receive more recognition in criminal trials.
(4) Mentally abnormal offenders are to be subjected to psycho-therapeutic treatment wherever possible.
(5) The Indian Lunacy Act is to be amended (The suggestion has already been carried out by passing of the Mental Health Act, 1987.)
(6) Magistrates and convicting courts and the visitorial committes should periodically visit the prison and lunatics asylums more effectively to secure

the rights of the mentally abnormal offenders and in securing their acquital at the appropriate time.

(7) Sanity hearing should be allowed in the lunatic asylums in determining their recovery in which advocates and medical men should help the lunatics.

(8) Mental health tribunals, similar to those under the British law should be established.