“A mad man is punished by his madness alone” – A Defence of Insanity

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Introduction:

The defence of insanity is recognized across the globe as complete defence against the criminal liability. The general principle of criminal law imposes criminal responsibility upon an individual, for it is founded on the conviction that an individual who performs criminal act/omissions is personally responsible for them and its ensuing consequences. The law presumes that an individual is capable of mending his deeds within the limits prescribed under the criminal statutes. Contrary to this general presumption of law, the defence of insanity holds as an exception to an insane person. In order to hold a person criminally responsible, guilty intention is a necessary facto and as such the capacity of the wrongdoer to form such guilty intention is a relevant consideration in determining the criminal liability of that person. The lack of consequential understanding capability provides an insane person exemption under the criminal charge.

Stephen in his Digest of criminal law 1 states: “No act is a crime if the person who does it, is at the same time when it is done prevented either by defective mental power or by any disease affecting his mind (a) from knowing the nature and quality of the act, or (b) from knowing that the act is wrong”. Thus an insane person is not held criminally liable because he is not considered to be able to recognize the very character of his acts/omissions or does not know that such acts/omissions as wrong or contrary to the law. Insanity is a sufficient defence to a criminal charge as it is based on the assumption that one who is insane has no capacity to think and therefore cannot have a necessary guilty intention or mens rea to commit a crime. The legal acceptance of insanity as a defence to criminal liability poses a challenge as to what constitutes insanity. It is not that every person who is mentally unstable or every kind of medically recognized insanity is given immunity from criminal liability. Legal conception of insanity is different from medical conception of the insanity.

The article studies some of the glaring differences between the medical and legal understanding of the term Insanity. With this understanding of insanity, the article traces the roots of insanity defense and discusses the much famous Mc Naughten Rule recognized world over as the mother of insanity laws in modern times. Subsequently, the article takes up the comparative study of penal laws across the major countries concerning the defence of insanity. Further the Indian position regarding insanity defence is analyzed in the light of Indian Penal Code along with case studies. Finally the article concludes with an assertion that Indian penal law relating to insanity defence needs no revisit.

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Understanding Insanity: Medical and Legal Grapple:-

Medically, insanity has not been comprehended to the general acceptance level. It is aptly put that insanity can best be explained by an insane person only, but he is not in a position to explain it. And the person who attempts to explain insanity fails in his task as he is not an insane person. Unsoundness of mind is the current and accepted notion of insanity by the medical experts. “Doctors with experience of mental disease contended that insanity does not only, or primarily affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and emotions. An insane person may therefore often know the nature and quality of his act and that it is wrong and forbidden by law but yet commit it as a result of the mental disease. He may, for example be overwhelmed by a sudden irresistible impulse, or he may regard his motives as standing higher than the sanctions of the law; or it may be that, in the distorted world in which he lives, normal considerations have little meaning or little value.”

Medical conception of insanity can be defined as a mental abnormality due to various factors existing in varying degrees. In wider connotation, it includes idiocy, madness, lunacy, mental derangement, mental disorder and every other possible form of mental abnormality known to medical science. It recognizes sudden and uncontrollable impulse driving a man to kill or to cause injury within the scope of insanity. However the legal concept of insanity widely differs from that of the medical concept.

In law, insanity means a disease of mind which impairs the cognitive faculty i.e., the reasoning capacity of a man to such an extent so as to render him incapable of understanding the nature and consequence of his act. Emotional and volitional factors are excluded from the purview of legal concept of insanity. Law has not created any hard and fast rule in respect of various kinds of insanity which are to be recognized by courts as “legal insanity”. The courts are influenced more by the facts of the case and the nature of the crime rather than inquiry as to the kind of insanity. However law generally classifies insanity into two broad heads namely, “Dementia naturalis” means individuals who are insane from birth and “Dementia adventitia or accidentalis” means an individual who becomes insane after his birth. In the former case of insanity where the person is insane since his birth, courts generally accept the defence of insanity as a genuine ground and require no further proof: While in the later case where the person becomes insane due to several attending accidental circumstances, court approach cautiously and are concerned with the insanity or unsoundness of mind during and at the point of time when the offence was committed. At the time of trial the defence lawyer has to establish the legal insanity and not medical insanity. The courts have clearly demarcated the legal and medical insanity in their interpretation of the law concerning the defence of insanity.

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2 British Royal Commission Report, 1953, Para 227
3 Someswar Bora v. State of Assam 1981 Cr.L.J. (N.O.C.) 51 (Gau)
The dichotomy between the Medical and Legal community concerning the meaning and scope of the Insanity stands till date unresolved. While the medical experts treat every mental disorder as insanity, legal experts consistently uphold the validity of the statutory rules and refuse to approve their extension to cover the ‘irresistible’ or ‘uncontrollable’ impulse. The courts have also declined to enlarge their interpretation in other respects. Thus it has held that words ‘the nature and quality of the act’ must be taken to refer only to the physical character of the act and not to distinguish between its physical and moral aspects and that ‘wrong’ means in effect ‘punishable by law’.4

Tracing the roots of Insanity defence:

Insanity defense has been in existence since the twelfth century. However it has been recognized as an argument for pardon or a way to mitigate a sentence but not as legal defence claiming exemption from criminal liability. The history of the insanity defense in modern times is traced out from the 1843 case of Daniel Mc Naughten. Mc Naughten case laid the foundation for rules of insanity but precedent cases supplied the necessary ingredients to this famous decision. The tests under these prior cases laid basis for the rules of Mc Naughten, there are mainly three tests recognized by the House of Lords. They are

a) Wild Best Test
b) Insane Delusion Test
c) Test of capacity to distinguish between right and wrong.

a) Wild Best Test:

The *Wild Best Test* was recognized in *R. v. Arnold*5 where the defendant was tried for wounding and making an attempt on the life of Lord Onslow. There was enough evidence of the mental derangement of the accused. In this case Tracy, J. laid down the test as follows: - “if he was under the visitation of God, and could not distinguish between good and evil, and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever.” Under this test a person can claim exemption from liability if by reason of unsoundness of mind he was unable to distinguish between good and evil and also did not know what he did. This test of ability to distinguish between good and evil was approved in *Lord Ferrer’s case*6 wherein the defendant pleaded insanity in his defence for murdering his steward.

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4 The British Royal Commission Report, 1953 para.229
5 (1724) 16 St.Tr.695
6 (1760) 19 St.Tr.885
b) Insane Delusion Test:

The *Insane Delusion test* was the second test concerning the defence of insanity. It was laid down by the House of Lords in *Hadfield Case*\(^7\). In this case Hadfield was charged for high treason in attempting the assassination of King George III. The counsel for the accused Mr. Erskine was successful in proving that the accused was suffering under the insane delusion, a mental disease and thus obtained the verdict of not guilty. The counsel pleaded that insanity was to be determined by the fact of fixed insane delusions with which the accused was suffering and which were the direct cause of his crime.

c) Test of capacity to distinguish between right and wrong:

In *Bowler’s case*\(^8\) the House of Lords formulated the test of capacity to distinguish between right and wrong. In this case Le Blanc J. charged the jury that it was for them to determine whether the accused when he committed the offence was incapable of distinguishing right from wrong or under the influence of any illusion in respect of the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit. Ever since the decision in Bowler’s case the courts have laid more stress on the capacity of the accused to distinguish right from wrong, though they had not yet definitely formulated this test in very clear terms until the McNaughten case decided in 1843.

The above three tests laid buried foundation for the McNaughten rules. The rules framed under the M’Naghten decision are followed in almost all the countries as the principles for application of insanity defence.

**The Mother of Insanity laws in modern times: M’Naghten Rule**

The verdict of Daniel MC Naughten became a legendary precedent for the law concerning the defence of insanity since it laid down an assertive test for determining the defence of insanity. The facts of the case narrate that Daniel McNaughten was charged for the murder of Edmond Drummond, Private Secretary of Sir Robert Peel, the then Prime Minister. M’Naghten was suffering under an insane delusion that Prime Minister Sir Robert Peel was the only reason for all his problems. He mistook Drummond for Sir Robert and accordingly, shot and killed him. During the trial, the accused pleaded not guilty on the grounds of insanity. The court after conducting due trial and upon the jury’s report acquitted M’Naghten on the ground of insanity.

The test prescribed that “the accused in order to get exemption from criminal responsibility on the ground of insanity, must prove that, owing to a defect of reason due to a disease of mind, he did not know the nature and quality of his act, if he did know

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\(^7\) (1800) 27 St.Tr.128  
\(^8\) (1812) 1 Collinson Lunacy 673
this, that he did not know that he was doing wrong” 9. The public outrage after his acquittal prompted the creation of a strict definition of legal insanity which is known as the M’Naghten Rules. The wrath generated and criticism leveled against the judgment compelled for a debate in Parliament. Consequently it was decided to take the opinion of the judges of the House of Lords with a view of getting the law clarified on the point. Thus, accordingly on 19th June 1843 the judges were requested to give their opinion to the five questions put to them. The extraction of the five questions is briefed under:-

The first question was: What is the law respecting alleged crimes committed by person 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?

The second question was: What are the proper question to be submitted to the jury, where a person alleged to be afflicted with insane delusion respecting one or more particular subjects or person is charged with the commission of a crime, and insanity is set up as a defence?

The third question was: In 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?

The fourth question is: If a person under an insane delusion as to existing facts commits an offence inconsequence thereof, is he thereby excused?

The fifth question was: 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 the prisoner’s 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 labouring under any and what delusion at the time?

In the opinion of Huda the answers, although they do not amount to judicial decisions, have been and are still regarded as authoritative exposition of the law relating to insanity.10

The following proposition may be drawn from the answers given by the judges:-

(i) Every man is presumed to be sane and to possess sufficient degree of reason to be responsible for his crimes, until contrary be proved to the satisfaction of the jury or the court.

(ii) To establish defence on ground of insanity it must be clearly shown that at the time of committing the act, the accused was labouring under such a defect of

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9 R v Daniel M’Naughten (1843) Revised Reports Vol 59:8ER 718 (HL)
10 S. Huda; The Principles of the Law of Crimes in British India. P.286
reason from disease of mind that he did not know the nature and quality of the act he was doing was wrong.

(iii) 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, he would be punishable.

(iv) A medical witness who has not seen the accused previous to the trial should not be asked his opinion whether on evidence he thinks that the accused was insane.

(v) Where the criminal act is committed by a man under some insane delusion as to the surrounding facts, which conceals from him the true nature of the act he is doing, he will be under the same degree of responsibility as he would have been on the facts as he imagined them to be.

The famous Mc Naughten rule, which formulates the law of insanity, is based on the answers to the second and third question. The M'Naghten rules states: "Every man is to be presumed to be sane, and . . . that to establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing of the act, the accused was laboring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong. " The test to determine whether defendants can distinguish right from wrong is based on the idea that they must know the difference in order to be convicted of a crime. Determining defendants' ability to do so may seem straightforward enough, but in practice in cases in which the Mc Naughten standard is used dilemmas often arise. One of these is what constitutes the defendants' "knowledge." Some questions concern defendants' knowledge that their criminal acts are wrong and their knowledge that laws exist which prohibit these acts.

M'Naghten Rule was criticised on the basis of the test it prescribes for judging the defence of insanity. It focused on accused’s cognitive abilities. The questions occur about how to treat the accused who know that their acts are against the law but who cannot control their impulses to commit them. Similarly, the courts need to determine how to evaluate and assign responsibility for emotional factors and compulsion. Finally, because of the rule's inflexible cognitive standard, it tends to be very difficult for defendants to be found not guilty by reason of insanity. Despite these complications, Mc Naughten survives and is currently the rule in a majority of countries in regard to the insanity defense.

**Comparative Study: Defence of Insanity in Major Countries**

In the United States of America *Durham Rule*\(^\text{11}\) asserts that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. The word ‘disease’ is used in the sense of a condition which is considered capable of either improving or deteriorating. Whereas the term ‘defect’ is used in the sense of a condition not considered capable 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.

\(^{11}\) Durham v. United States 214 F.2d.862
The American law Institute has suggested\(^\text{12}\) the following test:-

- 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.
- As used in this article, the term “mental disease or defect” does not include an abnormality manifested only by repeated criminal or other anti-social conduct.

In Australia, the Criminal codes of some of the provinces like Queensland and West Australia provide for the plea of “irresistible impulse”. The Tasmanian Criminal Code under section 16 states:-

(1) A person is not criminally responsible for an act done, or for an omission made, by him-
   (a) when afflicted with mental disease to such an extent as to render him incapable of:
      (i) understanding the physical character of such act or omission; or
      (ii) knowing that such act or omission was one which he ought not to do or make; or
   (b) When such act or omission was done or made under an impulse which by reason of mental disease, he was in substance deprived of any power to resist.

(2) The fact that a person was, at the time at which he is alleged to have done an act or made an omission, incapable of controlling his conduct generally, is relevant to the question whether he did such “act or made such omission under an impulse which by reason of mental disease he was in substance deprived of any power to resist.”

In France, article 64 of the Penal Code provides that “there is no crime or offence when the accused was in a state of madness at the time of the act or in the event of his having been compelled by a force which he was unable to resist.”

In Switzerland, article 10 of the Swiss Penal Code is to the effect that “any person suffering from a mental disease, idiocy or serious impairment of his mental faculties who, at the time of committing the act, is incapable of appreciating the unlawful nature of his act or of acting in accordance with this appreciation cannot be punished.”

The statutory rules concerning the defence of insanity across the major countries show that even “irresistible impulse” is considered as insanity as observed in the American and Australian penal laws. “The accepted rule in this day and age, with the great advancement in medical science as an enlightening influence on this subject, is that the accused must be capable, not only of distinguishing between right and wrong, but that he was not impelled to do the act by an irresistible impulse, which means before it will justify a verdict of acquittal that his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse.

\(^\text{12}\) A.L.I. Model Penal Code, proposed Official Draft 1962 – Section 4.01
to perpetrate the deed, though knowing it to be wrong”¹³. The right-wrong act is inadequate because it does not take sufficient account of psychic realities and scientific knowledge. And moreover it is based upon one symptom i.e., knowledge or reason only and so cannot validly be applied in all circumstances. The mere ability to distinguish right from wrong is no longer considered as correct test when defence of insanity is interposed.

**Defence of Insanity under Indian law:**

The defence of Insanity under Indian Penal Code (IPC) is provided under Section 84 which states:-“Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.” This Section is distillation of the principles explained by the House of Lords in McNaughten’s Case.

Section 84 of Indian Penal Code exempts punishment for an insane person who is incapable of knowing what he is doing or that he is doing what is wrong or contrary to law, cannot be said to have a guilty intention. The essential elements of the section assert that:-

- An act must be done by an insane person resulting in harm.
- The person doing that act at that time must be suffering from insanity or mental abnormality or unsoundness of mind.
- The accused person should be incapable of knowing the nature of the act committed by him because of insanity or.
- The accused person should be incapable of knowing his act to be wrong or contrary to law because of insanity.

The drafting of section 84 of the IPC has been made in the light of the replies to the second and the third question, which is generally known as Mc Naghten Rule. However, Section 84 uses a more comprehensive term ‘unsoundness of mind’ instead of ‘insanity’. As stated by S S Huda¹⁴ “The use of term ‘unsoundness of mind’ has the advantage of doing away with the necessity of defining insanity and of artificially bringing within its scope various conditions and affections of the mind which ordinarily do not come within its meaning, but which none the less stand on the same footing in regard to exemption from criminal liability”. Section 84 embodies two different mental conditions to claim exemption from criminal liability, namely: (i) that the accused was incapable of knowing the nature of act, owing to unsoundness of mind, or (ii) that the accused was precluded by reason of unsoundness of mind from understanding that what he was doing was either wrong or contrary to law.¹⁵

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¹³ Smith v United States 36 F2d 548, (1929)70 ALR 654
This section does not confer immunity from criminal liability in every case of insanity of the accused. Coupled with the insanity of the accused there must be the additional fact that at the time of the commission of the act, he is in consequence of the insanity, incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.\textsuperscript{16} The accused is not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law or the vice versa. The unsoundness of mind must exist at the time of commission of the offence and the onus of proving unsoundness of mind is on the accused.\textsuperscript{17} Thus the section not only recognizes the unsoundness of mind that makes the person incapable of knowing the nature of the act, or that the act was contrary to law or that the act was wrong but emphasis is laid on the fact that such incapacity must exist at the point of time when the alleged act was committed. Previous conduct and conduct at the time of committing the offence and subsequent conduct are relevant under section 84. But first the conduct of the accused at the time of committing the offence has to be established\textsuperscript{18}. Thus prior and subsequent incapacity will not be taken into consideration while judging the defence of insanity but however such prior and subsequent incapacity would form part of relevant facts in recording of evidence.

Drunkenness is not an excuse but \textit{Delirium Tremens} caused by excessive drinking if it produces severe madness so as to render a person incapable of distinguishing right from wrong; he is afforded a ground of excuse from criminal responsibility.\textsuperscript{19} To claim exception of insanity under section 84 of IPC, the accused must prove that at the time of doing the offensive act, he did not know the nature of it or the act to be wrong or contrary to law. Sudden impulsive fits of passion is not insanity.\textsuperscript{20} The defence of insanity is available only in case of unsoundness of mind resulting in harm to other but sudden impulsive act though may be result of unstable mind is not exempted under the law. Irresistible impulse is not a defence under section 84. The test to invoke the defence of ‘unsoundness of mind’ has been explained in \textit{Lakshmi v State}\textsuperscript{21} where motive and the conduct of the accused prior to as well as at the time of the incident is considered to be material to determine the question of insanity. 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 section 84 IPC can only be established from the circumstances which preceded, attended and followed the crime.\textsuperscript{22} In \textit{Sheralli Wali Mohammed v State of Maharastra}\textsuperscript{23} the Supreme Court held that the law presumes every person of the age of discretion to be sane unless the contrary is proved. The mere fact that no motive has been proved why the accused committed an offence, would not indicate that he was insane, or that he did not have the necessary mens rea for the commission of the offence. The Supreme Court in \textit{State of Madhya Pradesh v

\textsuperscript{16} 1976 Cri LJ (1418) (DB)
\textsuperscript{17} Geron Ali (1940)2 Cal.329
\textsuperscript{18} Prakesh v. State of Maharastra 1985 Cr.L.J.196 (Bom)
\textsuperscript{19} Davis’s Case (1881) 14 Cox 563
\textsuperscript{20} S.K. Nayar v. State of Punjab 1997 Cr.L.J 772 SC
\textsuperscript{21} AIR 1963 All534
\textsuperscript{22} Dayabhai Chhaganbhai Thakkar v State of Gujarat AIR 1964 SC1563
\textsuperscript{23} AIR 1972 Sc 2443
Ahmadulla\(^{24}\) held that the burden of proof that the mental condition of the accused at the crucial point of time, when the offence was committed was of such a degree as it described in Section 84 of the IPC lies on the person who claims the benefit of this exception. The plea of insanity under an epileptic fit can succeed only if it is established that at the very time when the offence was committed, the accused was under the epileptic seizure which rendered him incapable of knowing the nature of the act.

Law Commission of India in its 42\(^{nd}\) Report\(^{25}\) revisited Section 84 of the Indian Penal Code. The Law Commission took the issue of amending Section 84 in view of the strong criticism to which the M’Naghten Rules have been subject in Britain by the various legal scholars and mental health experts. Further the Law Commission examined the issue in view of the recognition given to the plea of ‘irresistible impulse’ in the penal laws of some of the major countries. There were altogether three questions that were answered in the Law Commission Report, the questions were:

(1) Should the existing provision (Section 84) relating to the defence of insanity be modified or expanded in any way?

(2) 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?

(3) 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?

The first question concerning modification or expansion of insanity defence under Section 84 of IPC found strong opposition. The opinion asserted that even theoretically the present provision is adequate. The modification or expansion would result in a number of practical difficulties if the provision is made liberal as the decision would largely depend on the medical opinion than it is at present. Considering the Indian position, serious doubts were expressed as to whether medical experts of the requisite quality would be available all over India particularly in the rural areas. Further there is no need for any modification as the present provision caused no practical difficulty as applicable to the Indian circumstances. Regarding the second question, the opinion differed; some expressed the view that the test should be knowledge of what is “wrong” and while others opined that it should be knowledge of what is punishable by law. The last question as to include “irresistible impulse” under Section 84 found little support as some of the opinions considered that “irresistible impulse” was not strictly insanity. However the main objection was that inclusion of “irresistible impulse” under Section 84 would make the trial of the issue more difficult for the judges than the present provision.

\(^{24}\) AIR 1961 SC998
\(^{25}\) June, 1971
Conclusion

The drafting of Indian Penal Code by Lord Macaulay was impeccable. The Indian penal code under Section 84 uses the expression “unsoundness of mind”. It must be noticed that the Mc Naughten Rule refers to insanity as “disease of mind” which was the major cause for the rift of opinions and criticism of the rule. However under Section 84 of IPC, the expression “unsoundness of mind” is used that covers not only any form of insanity or mental disease, but also any form of mental deficiency, like idiocy, imbecility and even feeble-mindedness. Therefore the Law Commission was right in not suggesting for any alteration to the existing Section 84 of the IPC as it is felt that the existing provision cause no practical difficulties in conducting trial. Any changes that are suggested by the critics observing and aping the western legal system would lead to major medico-legal issues in conducting the trial. Thus the law of insanity under Section 84 of the IPC needs no modification or expansion so far the Indian circumstances are concerned.