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The Insanity Defence ~ An Analysis with Specific Reference to Section 84 of the Indian Penal Code, 1860.

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Abstract: *The M'Naghten Rules and the test suggested therein came to be known as the "Right – Wrong" test. Prior to this, a person who committed a crime and pleaded insanity was said to be possessed by evil sprits or "wild beasts". Confusion rules the roost when one attempts to analyse what exactly insanity is.*
What are its borders? When can a person be called insane? What degree of loss of sanity is required, what is the threshold between sanity and insanity are all questions that clamour for a clear answer which has been evasive for a few centuries now and this evasiveness, the lack of answers to these pivotal questions, for a judge or a jury, nay for the psychiatrist himself will remain.
A jury or a judge is called upon to declare guilt or pronounce innocence. A psychiatrist has a thankless job in this context, which is certainly not going to cause any inconvenience to the judge or jury – it is by what the psychiatrist says and how of it is comprehended in the correct sense by the jury and the judges – upon which the fate of the accused hangs. He has to, through the evidence of the expert, the psychiatrist, prove that he was insane or of unsound mind when the act in question was committed. An attempt is made here to understand the medical and the legal aspects of the insanity defence.

Key words*: Insanity defence, M'Naghten, Criminal Procedure Code, Section 84 of IPC.*

I. INTRODUCTION

THE INSANITY DEFENCE ~A CONTEMPORARY HISTORY

A few years before M'Naghten, Lord Macaulay, in his Draft Penal Code had excluded *idiots, the delirious and the mad* from criminal liability. It is still felt in many quarters that these provisions were clearer and caused lesser confusion than " a person of *unsound mind"*, a phrase clearly influenced by M'Naghten. An "*unsound mind"*, making the actor unaware of the "*nature and quality"* of his physical acts, sometimes (as one author cites as a gory example) "he must have thought, in striking his victim with an axe, he was chopping a piece of wood".(1)

M'Naghten was 1843, soundly criticised from all quarters since then; our own Penal Code, incorporating the present Section 84, voluntarily or involuntarily influenced by M'Naghten in 1860 and in 1872 the Indian Evidence Act, with Section 105 and Section 45, were promulgated. To administer these two laws, the Criminal Procedure Code was enacted in 1898. Before the enactment of the 1898(2) Criminal Procedure Code, there was no uniform law of procedure for the whole of India. There were separate Acts, mostly rudimentary in their character, to guide the procedure of the Courts in provinces and the presidency-towns.

The law relating to insanity in India is primarily based on the English M'Naghten rules, these rules have been criticised as being vague and obsolete and having its basis on misleading conceptions of insanity On the face of it, the traditional distinction between 'organic' illness and 'functional' illness' seems no longer tenable. The more exciting modern studies of the brain structure are undertaken at a sub-microscopic level. The nerve centre of all this, so to speak, of all this activity, is the simple neurone, or nerve cell that links in a network with other nerve cells.

Neurotransmission being modern talk, the conservative John Bull and his judiciary still did not take kindly to M'Naghten. In 1859, a judge ruled: "If an influence be so powerful as to be termed irresistible, so much more the reason why we should not withdraw any of the safeguards tending to counteract it. There are three powerful restraints existing, all tending to the assistance of the person who is suffering from such an influence – the restraint of religion, the restraint of conscience and the restraint of the law. But if the influence itself be held a legal excuse, rendering the crime un punishable, you at once withdraw a most powerful restraint – that forbidding and punishing its perpetration".

In spite of these developments in England, we cannot afford to lose sight of the provisions of Chapter XXXIV in our own Criminal Procedure Code, 1898, which in a sense governed the interpretation of M'Naghten or Section 84 or the lunatic or accused of unsound mind.

The 'Irresistible Impulse Test', which is also called the "policeman-at-the-elbow" law was formulated in 1922. This is a broadening of the test for insanity under the M'Naghten rules and stipulates that any act committed by the accused who harbours an irresistible impulse to do such an act due to a mental disease shall have the benefit of the defence of insanity. To psychiatrists, this interpretation is unsatisfactory as it covers only a small, special group who are mentally ill.

Mentally Abnormal Offenders committee which was headed by Lord Butler recommended that a trial of the incompetent be deferred for a maximum of six months (two periods of three months each, an interstitial further hearing on incompetence to justify further deferment of the trial being required after three months) and if the incompetence remains and the prosecution wishes to proceed, a trial should be conducted "to the fullest extent possible having regard to the medical condition of the defendant"(3).

The Royal Commission on Capital Punishment suggested that the jury must be satisfied that at the time of committing the act, the accused, as a result of the defect of the mind or mental deficiency,

i. did not know the nature and quality of the act, or,
ii. did not know that it is wrong, or,
iii. was incapable of preventing himself from committing the act.

The fallout of this report was not a complete departure from the M'Naghten Rules as far as the English Courts were concerned but it had the effect of introducing a new defence, that of "Diminished Responsibility", vide the Homicide Act, 1957(20).

GETTING '*CONVERSANT*' WITH INSANITY

A. The Interaction between Criminal Behaviour and Mental Illness,
B. Some Medical / Psychiatric Conditions which qualify for establishing a successful insanity defence and those that do not;
C. Provisions regarding evidence and burden of proving insanity,
D. Procedural aspects and safeguards under the Criminal Procedure Code, 1973 and the Mental Health Act, 1987, and dealing with feigned mental illness

Most people outside the world of forensic psychiatry steadfastly maintain that this topic is esoteric. We tend to agree with the opinion of the majority and in turn, decided to rely on Ralph Solvenko's extremely illuminative and illustrative essay, causation in law and psychiatry(23) , he opines as follows;

1. Mental illness may simply coexist with criminality, without having any causal significance;
2. Mental illness may predispose towards criminality [Example – PTSDs]
3. Mental illness may inhibit criminal behaviour [Example – Catatonia may inhibit a person who might otherwise commit a rape]

It must also be noted that the commission of a crime may cause mental illness rather than mental illness being the cause of the crime; facing prosecution or punishment is a significant stressor and potentially pathogenic.(4)

Current research points to a high incidence of mental disorder among individuals who have committed violent crimes. Although there is general agreement that individuals with certain characteristics of mental disorder are more prone to violence than other individuals, there is still debate concerning the prevalence of violent behaviour among various diagnostic groups. Current data suggest that schizo-affective diagnosis, paranoid features, psychotic symptoms and substance abuse may all be associated with greater risk of serious violence.

Some Medical / Psychiatric Conditions which qualify for establishing a successful insanity defence and those that do not

SCHIZOPHRENIA

The Supreme Court in Mohinder Singh v. State has held that a person suffering from schizophrenia at the time of the incident is entitled to successfully claim the plea of insanity as has been ruled by the Bombay and Rajasthan High Courts also. (5)

II. SUBSTANCE USE DISORDERS:

(a) Alcohol use: In Director of Public Prosecutions v. Beard it has been held that evidence of alcohol use which renders the accused incapable of forming a specific intent to constitute a particular crime should be taken into consideration with other facts proved in order to determine whether or not he had this (requisite and specific) intent, but evidence of alcohol use 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 actions. (6)

(b) Cannabis , Opioids, Cocaine, hypnotics and use of hallucinogens Related Disorders

Cannabiniod Metabolites are present and can be detected in urine samples and these metabolites can persist in the urine of heavy users for up to a month. (7)

A heavy and habitual *ganja* smoker killed his wife and children because she prevented him from going to a particular village. It was held that until the accused habit of smoking *ganja* had induced him to such a state of mind as to make him incapable of knowing the nature of his act or criminality, he could not get the benefit of this section(6).

III. DELUSIONAL DISORDERS

In both Public Prosecutor v. Shibo Koeri and Karma Urang v. State the court has recognised what leading authorities call 'melancholic homicidal mania' and held the accused not guilty of murder, having given them the benefit of Section 84. The accused did not, by reason of unsoundness of mind, know that what he was doing was wrong or contrary to law. Mere "morbid feelings" leading to murder does not attract the insanity defence, the authorities opined.(6)

IV. SOMNAMBULISM [SLEEPWALKING]

If proved, it would constitute unsoundness of mind which attracts Section 84. In Papthi Ammal v. State of Madras, the accused who had recently given birth to a child, had jumped into a well at night along with the newborn. She was rescued but the baby died. Charges of attempt to commit suicide and murder were framed and the insanity defence was raised on the ground of somnambulism but failed for lack of proof and adequate evidence.(9)

EPILEPSY The accused murdered his mother and wounded his step- father without any apparent cause. After the murder accused hid in a ravine. The medical evidence showed that the accused was subject to epileptic fits. It was held that the accused was guilty of the acts charged but not so as to be responsible in law for action. Where the appellant had produced at the trial a discharge certificate from the army showing that he was released on account of his suffering from epilepsy about fifteen years prior to the occurrence and it was clear from the prosecution evidence that the conduct of the appellant shortly prior to the, at the time of, and after the commission of the offence by him as well as his mental condition as subsequently found by medical examination were of such a nature that the appellant was of unsound mind on account of his having fit of epilepsy at the time of occurrence, his conviction and sentence were set aside. (17)

Provisions regarding evidence and burden of proving insanity

With respect to a psychiatrist's evidence on insanity of the respondent, it is clear that the psychiatrist is treated as an expert witness. Section 45 of the Indian Evidence Act, 1872 clearly applies to any evidence given by a psychiatrist. Illustration (b) to Section 45 of the Act makes the position crystal clear as to evidence given by a psychiatrist. And, for once, M'Naghten's Rules come to the aid of the "medical man conversant in the disease of insanity". Lord Chief Justice Tindall has clearly marked the boundaries of a psychiatrist's testimony and evidence that can be given by the medical man, in his clear answer to the fifth query in the M'Naghten Case(9)

In India, it is upon the prosecution to prove beyond all reasonable doubt, both the *mens rea* and the *actus reus* constituting the normal crime(20). However, since Section 84 of the Indian Penal Code, 1860 falls under Chapter IV of the Code comprising of General Exceptions, we can here usefully refer to the authoritative statement of law regarding the burden of proof in an insanity defence in Dayabhai Chhaganbhai Thakkar v. State of Gujarat where it was held as follows(21):

"It is a fundamental principle of criminal jurisprudence that the accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide, shall prove beyond reasonable doubt that the accused caused the death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and always rests on the prosecution. But Section 84 of the Indian Penal Code provides that "Nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of the act or that it was wrong or contrary to law.

The doctrine of burden of proof in the context of insanity may be stated in the following propositions(18):

a) the prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite *mens rea*; and the burden of proving that always lies on the prosecution from the beginning to the end of the trial;
b) there is a rebuttable presumption that the accused was not insane when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing by placing

before the court the relevant evidence – oral, documentary or circumstantial, but the burden of proof that rests on him is no higher than that rests upon a party to civil proceedings;

c) even if the accused is not able to establish conclusively that he was insane at the time of committing the offence, the evidence placed by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more ingredients of the offence, including *mens rea* of the accused and in that case, the court would be entitled to acquit the accused on the ground that the general burden that rests on the prosecution was not discharged.

However, at the functional level, the burden is still heavy and "proves a hard nut to crack" for the mentally disabled or disordered.(10)

Procedural aspects and safeguards under the Criminal Procedure Code, 1973 and the Mental Health Act, 1987 (11)

In Amrit Bhushan Gupta v. Union of India, a Bench of three judges of the Apex Court has held that "our statute law on the subject is based entirely on secular considerations which place the protection and welfare of society in the forefront (9). What the statute law does not prohibit or enjoin cannot be enforced. The question whether, on the facts and circumstances of a particular case, a convict, alleged to have become insane, appears to be so dangerous that he must not be let loose on society, lest he commits similar crimes against other persons when released, or, because of his antecedents and character or for some other reason, he deserves a different treatment, are matters for other authorities to consider after a court has duly passed its sentence.

Similarly, one of the objects and reasons of the Mental Health Act, 1987 lays down the following:

The attitude of society towards persons afflicted with mental illness has changed considerably and it is now realised that no stigma should be attached to such illness as it is curable, particularly when diagnosed at an early stage. Thus, the mentally ill persons are to be treated like any other sick person and the environment around them should be made as normal as possible. The experience of the working of the Indian Lunacy Act, 1912, has revealed that it has become outmoded. With the rapid advancement of medical science and the understanding of the nature of the malady, it has become necessary to have a fresh legislation with provisions for the treatment of mentally ill persons in accordance with the new approach.

In Jaishankar v. State, reported in AIR 1972 SC 2267, it has been held that the Court is bound to enquire and determine if the accused is of unsound mind and if so, can he make his defence. This provision will come into play if the Magistrate has reason to believe, as a reasonable person, that the accused may be of unsound mind. This procedure and enquiry are mandatory and should be completed at the preliminary stage of the trial. Failure to do so will vitiate the entire proceedings. Chapter XXV of the Code of Criminal Procedure governs the procedure where the accused is insane(12).

Section 335 of the Criminal Procedure Code is a mandatory provision and is a safety valve for the society at large and the accused himself(13).

Section 27 of the Mental Health Act, 1987 deals with mentally ill prisoners and is the corresponding provision to Section 3(4) of the Indian Lunacy Act, 1912 which defined criminal lunatic and applies to proceedings under Section 335 of the Criminal Procedure Code (14).

For example, in Krishnan Dutt v. State of Uttar Pradesh, the Court held that the act of the accused was sudden and medical evidence proved that he suffered from chronic schizophrenia, it was held that he was eligible to the benefit of Section 84 of the Indian Penal Code. The Division Bench set aside the conviction but ruled that keeping in view his conduct, behaviour and medical records, he could not be set free as he would pose a danger to the public. Directions were passed to shift the accused to a mental hospital(5).

Feigned Mental Illness

It is a matter of concern that as far as the judiciary has on the one hand held that "It would be most dangerous to admit a defence of insanity based merely on the character of the crime or behaviour of the accused. These factors alone are not enough to adjudge the accused *non compos mentis*", the benefit of the section has been given in cases where although they "did not find much antecedent material about the accused's behavioural pattern"(3,4).

It is however, difficult to dupe a trained and sharp psychiatrist and ***Modi's Medical Jurisprudence and Toxicology*** **(3,4)**has given the following distinguishing features between true insanity and feigned mental ill health:

1. Feigned mental ill-health always comes on suddenly, and not without some motive. True mental ill-health may rarely develop all of a sudden, but in that case, some predisposing or existing cause will be evident if a careful history is taken.

2. In feigned mental ill-health, the individual tries to pass off as mentally ill by putting forward incoherent, maniacal symptoms, especially when he knows he is under observation. There is a termination of all the symptoms when he thinks he is alone or unobserved (16).

3. In feigned mental ill-health, the symptoms are not uniform, indicating a particular form of mental ill-health. Malingers usually mix up the symptoms of one or two distinct types of mental ill-health. **[as contradistinguished from mixed symptoms which may show up in real cases also]**
4. In feigned mental ill-health, violent exertion occasioned by imitating maniacal frenzy (which is generally imitated by impostors) will bring on exhaustion, perspiration and sleep, but a really mentally-ill person can stand such exertion for many days without fatigue and sleep.
5. A malinger, is not as a rule, dirty and filthy in his habits. He may smear his room with faeces and other filth, if he has seen a truly mentally ill person doing so. In cases where the personality is well preserved as in paranoid schizophrenia, the patient will remain tidy and clean.
6. A malinger resents frequent examinations for fear of detection unlike a neurotic or a psychotic who does not mind being examined frequently.
7. It is almost impossible to feign sleeplessness for a long time(3,4).

At this juncture, we have take a look at one of the extreme criticisms of the Insanity Defence coming from an American author. Christopher Slobgin in ***An End to Insanity: Recasting the Role of Mental Illness in Criminal Cases*** (22)argues:

"At least in its modern guises, the insanity defence is overboard. Instead, mental disorder should be relevant to criminal culpability only if it supports an excusing condition that, under the subjective approach to criminal liability increasingly accepted today, would be available to a person who is ***not*** mentally ill. Such conditions would be:

1. A mistaken belief that under the circumstances that, had they occurred, as the person believed, would amount to a legal justification;
2. A mistaken belief that conditions exist that amount to legally recognized duress;
   The absence of intent to commit crime (that is, the lack of *mens rea*, defined subjectively in terms of what the defendant actually knew or was aware of.

At this juncture, we would like to draw the attention to provisions in our Criminal Procedure Code, which are far more conducive and at least appear progressive on paper. Sections 334, 335, 338 and 339 in Chapter XXV of the 1973 Criminal Procedure Code, being substantially similar to Sections 469, 470, 474 and 475 of Chapter XXXIV of the 1898 Code respectively (12), the difference being primarily the change of nomenclature from "lunatic" to "unsound mind" appear more beneficial to the mentally unsound accused offenders.

Two other points we would like to leave with, as food for thought are the *Mad versus Bad Debate*, put succinctly by Norval Morris (24)in the following manner:

> "Double stigmatisation of our subjects of our inquiry can be seen by anyone who visits a prison containing mentally ill prisoners or a mental hospital holding the unfit to plead or those found not guilty by reason of insanity. Prison authorities regard their inmates in the facilities for the psychologically disturbed, no matter how they got there, as both criminal and insane, as bad and mad; mental hospital authorities regard their patients who have been arrested and charged with a crime as both insane and criminal, mad and bad.

A mental health professional, given this scenario, is duty-bound to sincerely promise all assistance to the courts in the implementation of these provisions (15), which are beyond belief, far more progressive that those proposed by American Law Institute or Lord Butler.

V. CONCLUSION

In conclusion, we would like to rewind thirteen years (not one hundred and seventy one), to 2002, when it was pointed out that "experts nowadays frequently argue a neurological defence, even in cases of seemingly calculated violence. They argue that the violence was an uncontrollable by-product of damage to a specific region of the brain, caused genetically or by years of physical abuse during childhood, but neurologists are yet to demonstrate a necessary correlation between a non-limbic (frontal lobe) abnormality in the brain and violent behaviour. Individuals convicted of violent crimes do show a higher incidence of certain factors associated with brain damage – abuse, head injuries, malnutrition, lower IQ or mental retardation, seizures and subtle neuropsychological deficits than do people in control groups, but most people thus afflicted do not commit violent crimes."(19)

With all due respect to the late Lord Chief Justice Tindal and his brother judges and as an entreaty to our present judges, can we bid adieu to M'Naghten at least now?

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