

“INSANITY AS A DEFENCE –SEC 84” *

INTRODUCTION:

Insanity or mental abnormality is one of the greatest exceptions to criminal liability recognized by the IPC. This is based on the principle of mens rea (criminal intention). By virtue of the maxim “**actus non facit reum nisi mens sit rea**”, an act forbidden by penal law is not punishable if it is unaccompanied by a guilty mind. The justification for providing unsoundness of mind as a complete defence is that an insane person is incapable of forming criminal intent. Further, a mad man has no will (**furiosus nulla voluntas est**) and he is like one who is absent (**furiosus furore sui puniter**)¹.

The foundation for the law of insanity was laid down by the House of Lords in 1843, which is popularly known as the M’Naghten case. The accused by the name of Daniel M’Naghten suffered from a delusion that Sir Robert Peel, the then Prime Minister of Britain had injured him. He mistook Edward Drummond, Secretary to the Prime Minister for Sir Robert Peel. He shot and killed him. The accused took the plea of insanity. The medical evidence showed that M’Naghten was laboring under a morbid delusion which carried him away beyond the power of his own control. He was held to be ‘not guilty by reason of insanity’ by the jury. However he made a subject of debate in the House Of Lords. There were certain questions framed and answers were given for certain questions which are referred to as “M’ Naghten Rules”. Following are the main principles of these rules:²

- (1) Every person is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is established.
- (2) To establish the defence of insanity, it must be clearly proved that at the time of committing the crime, the person was so insane as not to know the nature and quality of the act he was doing, or if he did know it, he did not know that what he was doing was wrong.
- (3) The test of wrongfulness of the act is in the power to distinguish between right and wrong, not in the abstract or in general, but in regard to the particular act committed.
- (4) A medical witness who has not seen the accused previous to the trial should not be asked his opinion whether the evidence he thinks that the accused was insane.
- (5) 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.

INTRODUCTION OF SECTION

* Mr. Kumar Ankit & Ms. Anjali, Damodaram Sanjivayya National Law University, Visakhapatnam, Andhra Pradesh.

¹ Sir Williams Blackstone, book “Commentaries on the law of England”, vol. 4, 17th edition, 1834 page 304.

² RC Nigam, “Law of crimes in India”, Asia, London, 1965, page 255.

Section 84 of Indian Penal Code defines the “act of a person of unsound mind”. According to this section, 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, more or less, embodies the principles laid down in the M’Naghten Rules. However the word ‘insanity’ is not used in this section. It uses the expressions ‘unsoundness of mind’, which is not defined in this code. The courts in India have treated the expression ‘unsoundness of mind’ as equivalent to ‘insanity’. According to this section, the onus of providing unsoundness of mind is on the accused, it has also been held that where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.³ This onus may, however, be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time, or immediately afterwards, also by evidence of his mental condition, his family history and hence so forth. Every person is presumed to know the natural consequences of his act. Similarly, every person is also presumed to know the law. There are four kinds of persons who may be said to be non compos mentis (not of unsound mind):

1. An idiot- an idiot is one is of non- sane memory from his birth, by a perpetual infirmity without lucid intervals:
2. one made non compus by illness- a person made non compus mentis by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder.
3. a lunatic or a madman- a lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals or reason. Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.
4. one who is drunk

ESSENTIAL INGREDIENTS OF SECTION 84

Main ingredients of section 84 is “unsoundness of mind”, “incapable of knowing the nature of the act” and “the act was wrong”. The crucial point of time of such incapability due to unsoundness of mind is the time when he committed the offence. His insanity prior or subsequent to the commission of the offence is not in itself adequate to absolve him from the criminal liability.⁴

1. **Unsoundness of mind:** It means a state in which an accused is incapable of knowing the nature of the act or that he is incapable of knowing that he is doing wrong or contrary to law. The insanity, for sec 84 should be of such a nature that it completely impairs the cognitive faculty of the mind, to such an extent that he is incapable of knowing the nature of his act or what he is doing is wrong or contrary to law. The nature and extent of the unsoundness of the mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.⁵
2. **Incapable of knowing the nature of the act:** A person can be said incapable of knowing the nature of the act if he, at the time of doing it, was ignorant of the physical characters of the act. It must be clearly proved that at the time of committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature of the act he was doing, or, if he did know it, that he did not know he was doing

³ "Indian Penal Code", from " Prof N Parajape", Central law Publications, 1st edition, 2010, page 329.

⁴ “ Indian penal code”, by “S N Mishra”, Central Law Publications, 18th edition, 2011,page 357.

⁵ www.lawyersclubindia.com last visited on 10.10.2015.

what was wrong. If he did know it, he is responsible. A plea of insanity at the time of trial will not avail the accused. The crucial point of time for deciding whether the benefit of this section should be given or not is the material time when the offence takes place. If at that moment a man is found to be laboring under such a defect of reason as not to know the nature of the act he was doing or that, even if he knew it, he did not know it was either wrong or contrary to law, then this section must be applied. In other words, to get the benefit of sec 84 of IPC, it must be shown that at the time of the commission of the act the accused by reason of unsoundness of mind was incapable of either knowing the nature of the act or that the act was either morally wrong or contrary to law for determining this his state of mind before and after the commission of the offence is more relevant.

A lucid interval⁶ of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or perfect restoration of the mental faculties to their original condition⁷. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; merely a cessation of the violent symptoms of the disorder is not sufficient.

- 3. Act was wrong:** If a person does an act at the time of doing it, by reason of insanity, does not know that the act is either wrong or contrary to law, he would be protected under sec84 even though he knew the nature of the act. The law recognizes nothing but the incapacity to realize the nature of the act and presumes that where 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 the act and presumes that where 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 the action he takes.

KINDS OF INSANITY

1. Insanity from birth (*DEMENTIA NATURALIS*)
2. Insanity after birth (*DEMENTIA ADVENTITIA*)

Difference between Medical and Legal insanity- Medical insanity and legal insanity are different from each other. Medical insanity is solely dependent on medical grounds while legal insanity depends on the factors required to be proved in a court of a law to enable the accused to be acquitted of the charge. In other words, legal insanity furnishes a good ground of defense from criminal liability while medical insanity does not. In order to establish the legal insanity the necessary elements as provided must be proved. If there are sufficient grounds to hold that a person is suffering from insanity, it is a case of medical insanity. It is to be proved with the help of medical evidence. Legal insanity, means that a person has to prove that at the time of commission of crime with which the accused is charged because of unsoundness of mind, he did not know the nature of his act or that he is doing what was either wrong or contrary to law. Medically, a person may be proved sane or insane, as the case may be, but for legal insanity he have to prove the requirements of the law under this section.⁸

INSANE STATE OF MINDS:

- 1. Hallucination-** It is a state of mind where a person may be perfectly sane in respect of everything, but may be under a delusion in respect of one particular idea. The Madras and

⁶ "The Indian Penal Code", by "K. D. Gaur", "universal publication", 4th edition, pg 115.

⁷ "Indian Penal Code", by "B M Gandhi", 3rd edition, "Eastern Book Company", pg 110.

⁸ "Criminal law", from "S N Mishra", Central Law Publication, 17th edition, pg 335.

the Bombay High Courts have held that a person who is not insane but is merely suffering from some kind of obsession or hallucination, cannot invoke sec 84 in his favor.

2. **Somnambulism-** It is the unconscious state known as walking in sleep and if proved, will constructive unsoundness of mind and the accused will get the benefit under sec 84 of IPC.
3. **Insanity as a result of smoking ganja or heavy intoxication-** When insanity is caused by excessive drinking even involuntary or by smoking ganja or other drugs, such insanity will also amount to unsoundness of mind, if it makes a person incapable of understanding what he is doing or that he is doing is something wrong or illegal.

PRESUMPTION OF SANITY

The plea of insanity is a defense against criminal responsibility. It must, therefore be established by the defense. The courts will presume that every person is sane and in full control of all his faculties, until the contrary is proved. As per the sec 115 of Indian Evidence Act 1872, “when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions 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.” For e.g.. ‘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’. This illustration clearly shows that if any accused puts forth a plea of insanity, then it is for him to establish the same in court. Until such proof, the court shall presume that the accused is sane.

LIST OF CASES

In *State of Madhya Pradesh v Ahmadulla*,⁹ the Supreme Court has held that the burden of proof is upon the accused to prove that he was suffering from unsoundness of mind at the time when he did the act. In this case, the accused had murdered his mother-in-law to whom he bore ill-will in connection with his divorce. It was proved that he did the act at night having got into house by scaling over a wall with the aid of a torch light and entered the room where the deceased was sleeping. All this showed, that the crime was committed not in a sudden mood of insanity, but one that was preceded by careful planning and exhibiting cool calculation in execution and directed against a person who is considered to be his enemy. In these circumstances, the Supreme Court, rejecting his plea of insanity and setting aside the acquittals of both the sessions court and the High Court, convicted the accused of the offence of murder, and sentenced him to rigorous imprisonment for life¹⁰.

In *Bhikari v State of Uttar Pradesh*,¹¹ the accused was working in the field. A few months before the occurrence, he has threatened to kill all the family members of the deceased. Further, on the date of the event, though there were other people around, he carefully chose only the children of the deceased’s family. All this indicated that his actions were deliberate, premeditated and not acts of an insane man.

In *SK Nair v State of Punjab*¹², the accused tried to assault a person with a dagger. The deceased caught hold of him and said that the matter will be reported to the superiors. The accused retorted to the deceased with the words ‘only if you were still alive’ and inflicted a blow with a khukri on the deceased and killed him. The defense of the accused was that he suffered from paranoia. A paranoid is not only a person of unsound mind, but also suffers

⁹ AIR 1961 SC 998, (1961) 2 Cr LJ 43 (sc).

¹⁰ "Criminal law", from R V Kelkar, 5th edition, Eastern Book Company Publication, pg 550.

¹¹ AIR 1970, UP 735

¹² AIR 1997 SC 1537 (1997) Cr LJ 772 (SC).

from special and peculiar ideas and visions, which are different from other persons of unsound mind. A paranoid within moments may behave wildly and then be normal again. The threat meted out by the accused to the deceased showed that at the time of the commission of crime, the accused did not lose his sense of understanding. He was, therefore, convicted under sec 302 and sentenced to life imprisonment.

In *Shrikant Anandrao Bhosale v State of Maharashtra*¹³, the accused killed his wife by hitting on her head with a grinding stone when she was washing clothes. He took the plea of insanity as a defense. The trial court and the Bombay High Court rejected it. He contended before the Supreme Court that he was entitled to the benefit of sec 84, as he, at the time of killing his wife, was insane.

In *Dayabhai Chhagabhai Thakkar case*¹⁴, the Supreme Court held that in determining whether the accused has established that his case comes within the purview of section 84, the court has to consider the circumstances which preceded, attended and followed the crime. This was the leading case of insanity. The accused was convicted for murder of his wife. One night while the two were sleeping in their room as usual, the neighbors were awakened on hearing her cries that she was being killed. They found the door of the room bolted from inside and called upon the accused to open it. When he opened the room, they found his wife dead with as many as 44 knife injuries on her body. At the trial the plea of insanity was rejected in view of the fact that in the statements made to the police immediately after the incident, there was no indication whatsoever that they had found his conduct on emerging from the room to be that of a person who had lost his sanity. The session judge accordingly convicted the accused and on appeal the High court confirmed the conviction. Rejecting the defense of insanity and dismissing the appeal, Supreme Court held that the evidence on record was not sufficient even to throw a reasonable doubt that the act might have been committed when the accused was under a fit of insanity. The court said it is that only that unsoundness of mind which materially impairs the cognitive faculty of the mind can constitute a ground for exemption from criminal liability.

In *Ashiruddin v The king*,¹⁵ the Calcutta High Court allowed the defence of insanity under sec 84 of IPC on the ground that the accused had sacrificed his son of five years while acting under the delusion of a dream, believing it to be right. The accused had dreamt that he was commanded by someone in paradise to sacrifice his son of five years. The next morning the accused took his son to a mosque and killed him by thrusting a knife in his throat. He then went straight to his uncle to a tank some distances away and slowly related the story. It was held that the accused did not know that the act was wrong.

Factors relevant for the purpose of ascertaining insanity:

- 1) Behavior of the accused before and after commission of an offence
- 2) The motive for the crime
- 3) The previous history of the mental condition of the accused
- 4) The state of mind at the time of the offence
- 5) The events that happened immediately prior to and after the offence
- 6) Conduct of the accused immediately after the offence

Burden of Proof¹⁶

When the plea of insanity is raised by the accused, it is not the duty of the prosecution to establish affirmatively that the accused was capable of knowing the nature of the act or of

¹³ (2003) 7 SCC 748

¹⁴ AIR 1563, 1964 SCR (7) 361.

¹⁵ AIR 1949 Cal 182.

¹⁶ "The Indian Penal Code", from "Ratanlal and Dhirajlal", "lexis nexis", 33rd edition, page 528.

knowing that what he was doing was either wrong or contrary to law. Every person is presumed to know the law and the natural consequence of his act. The prosecution, in discharging its burden in the face of a plea of insanity, has merely to prove the basic fact and to rely upon the normal presumption aforesaid. It is then the accused who is called upon to rebut these presumptions and the interface in such manner as would go to establish his plea. The burden of proving the existence of circumstances bringing the case within the purview of sec 84, therefore, lies upon the accused. However, as in cases of proof of all General Exceptions, the accused need not prove the existence of insanity beyond reasonable doubt. All that he has to establish is the probability of the existence of insanity at the time of commission of the offence. The Supreme Court has outlined the burden of proof in the context of the plea of insanity in the following propositions:

1. 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 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 sec 84 of the Penal Code: the accused may rebut it by placing before the court all the relevant evidence- oral, documentary or circumstantial, but the burden of proof upon him is no higher than that which 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 placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards, one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged. An accused succeeds not because that he proves his case to the hilt but because the version given by him causes a doubt on the prosecution case.¹⁷

Procedure for trial of persons of unsound mind:

Special procedure is prescribed for the conduct of trial of accused who is of unsound mind or insane. During a trial, if it appears to the judge that the accused is of unsound mind, then at the first instance, the trial court is required to conduct an enquiry and try the fact of unsoundness and incapacity. This is to ascertain whether the accused is capable of making his defence or not. Failure on the part of the court to do so vitiates the trial. If the court comes to a conclusion that the accused is of unsound mind, then the trial will be postponed, until such time the accused is treated and is in a position to understand the court proceedings and to defend himself.

If the accused is acquitted on the ground that he, by reason of unsoundness of mind, was incapable of knowing the nature of the act, the magistrate or court is required to order that he be either detained in safe custody in a lunatic asylum or be delivered to a relative or a friend.

Proposals for reform:

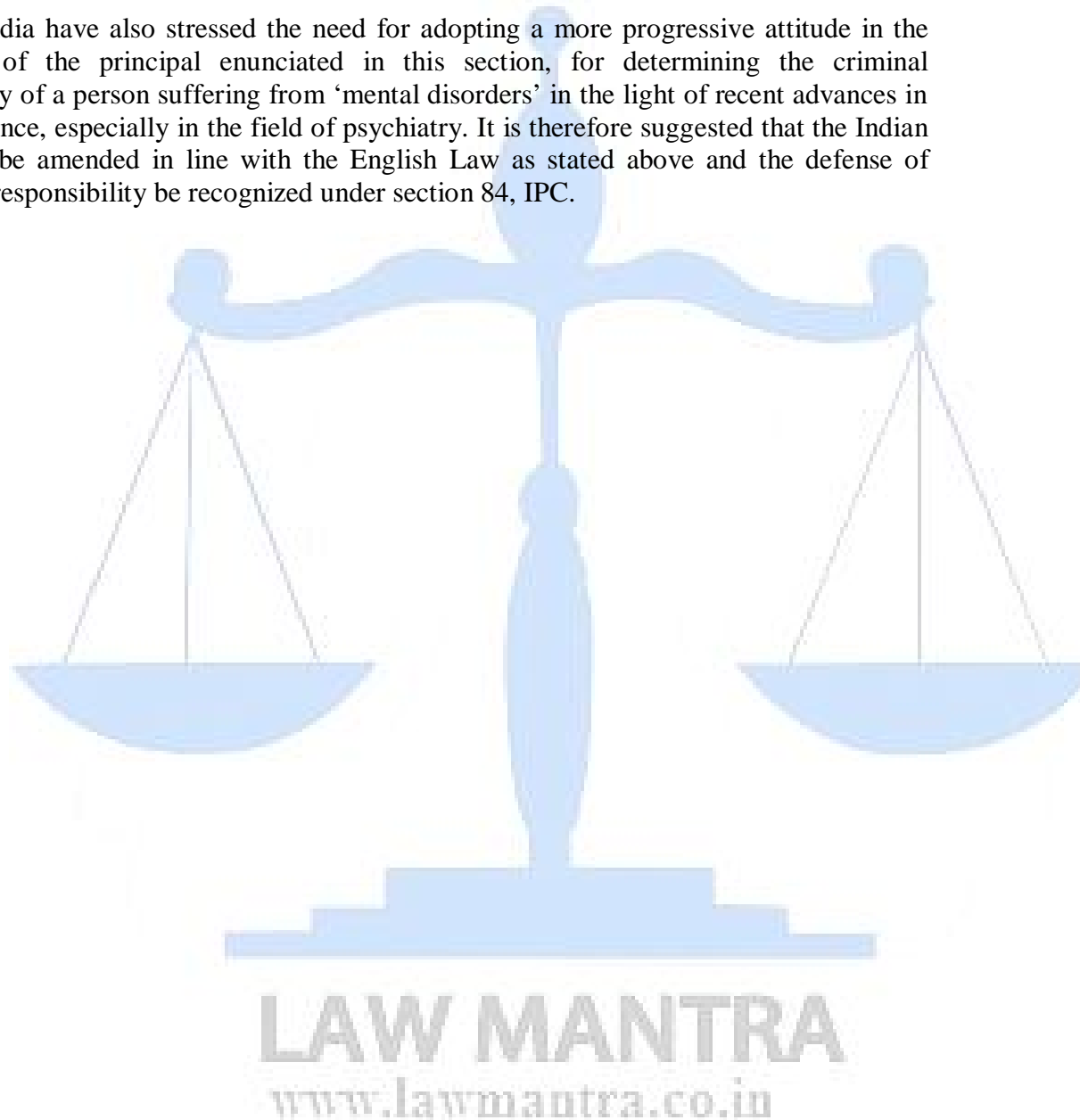
During the last about 150 yrs, the law relating to insanity as incorporated in sec 84 as an extenuating factor has remained static. Legislature as well as courts in India, in spite of a number of indicia provided by modern medical science and psychiatry for ascertaining the state of mind of the accused pleading insanity and of some progressive statutory and judicial inroads made in the overseas jurisdictions, including in the country of its origin, have not been able to bring any reforms in the law of insanity. As a result the existence of mental derangement not falling within the ambit of sec 84 has merely been pleaded as an extenuating circumstances. The Law Commission of India even admitting the fact that the expression 'unsoundness of mind', compared to the expressions 'disease of the mind' and

¹⁷ "Criminal law" from "R N Saxena", Central law publication, 5th edition, pg 120.

‘mental deficiency’ used in M’Naghten rule¹⁸, is somewhat vague and imprecise, failed to see any worth in proposing changes in sec 84 of the IPC. Apprehending the complicated medico- legal issue associated with the defence of ‘diminished responsibility’ and recalling the judicial discretion in sentencing under the IPC, allowing courts to take into account any extenuating circumstances including mental abnormality, it also declined the idea of incorporating the doctrine of ‘diminished responsibility’ in the Indian Penal Code.

CONCLUSION

Courts in India have also stressed the need for adopting a more progressive attitude in the application of the principal enunciated in this section, for determining the criminal responsibility of a person suffering from ‘mental disorders’ in the light of recent advances in medical science, especially in the field of psychiatry. It is therefore suggested that the Indian law should be amended in line with the English Law as stated above and the defense of diminished responsibility be recognized under section 84, IPC.



¹⁸ “Criminal Law”, PSA Pillai, “Butterworths Wadhwa” publications, tenth edition, page 283.