



Concept of Insanity

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Introduction

In the present-day field of mental health, law is concerned with the disturbed behaviour where the cognitive faculties of a person are badly affected so that he fails to recognize the difference between right and wrong. But the doctors are concerned with disturbed behavior of all sorts, their severity and duration. On one side we take deranged people who are called insane, mad, or lunatic diagnosed as mentally abnormal, on the other hand there are unhappy people who are unable to cope effectively with demands of their life, work and do not find meaning in their lives.¹

Many events occur in the course of daily life which strain our physical and psychological resources resulting in increased risk for both physical and mental illness.² Health is an important sector of development. It is well known that no nation can make progress and achieve full development until the health of its people is taken care of. During the Middle Ages illness came to be regarded as a punishment for sins and care of the sick as religious charity. Mentally ill person is exempted from the normal social roles depending upon the nature and severity of illness and is not responsible for his condition.³ It is in fact a mentally unhealthy person may perform such acts which defy normal logic of life and these acts may be dangerous or harmful to such person himself as well as the society. Thus, society as well as mentally unhealthy person both need protection. In the most primitive cultures, the insane were often under the protection of same form of religious taboo and were allowed to roam at will. Throughout the long development of mental illness from ancient customs, laws and administration have been profoundly affected by these influences.⁴ The concept of insanity consists its kinds, position in other countries, tests to judge the insanity. The words 'mentally unhealthy', 'insane' and 'unsound person' have been used interchangeably.

A. HISTORY

History is a screen through which the past lightens the present and present lightens the future. With its ability to deal with human thoughts and emotions, psychiatry provides a crucial substratum to help people maintain healthy minds, as well as an important platform for society at large to be mentally sound. Most of the history is described in chronological order, starting with the Pre-Vedic Era and ending with the post-independence era. This allows for a better comprehension of historical facts.⁵ In India's prehistoric past, animistic religion prevailed, and illnesses were attributed to supernatural causes or the anger of gods or spirits. Amulets, charms, magical ceremonies, sacrifices, and talismans were commonly used to alleviate these ailments.⁶

Insanity, lunacy, craziness, mental aberrations, mental derangement, and mental sickness are all terms used to describe a state of unsound mind. All of these phrases refer to a mental state of disarray in which a person loses the ability to control his behaviours and behaviour in accordance with the social rules through which he moves. By the ancient concept the "Buddhi Bhramsa" is called unmada and primarily it is known as 'mada' as in the later stage it is defined as 'unmada'.⁷

¹ Sheldon J. Korchin, *Modern Clinical Psychology, Principles of Intervention in the Clinic and Community*, 83 (1st ed.1986), See also N.L. Dosajh, *Psychotherapy; The Science of Mental Health*, 9 (1st ed.1971).

² Robert A. Baron, Donn Byrne, *Social Psychology, Understanding Human Interaction* 571, (6th ed.1991).

³ S.R. Mehta, *Society and Health*, 46, (1992).

⁴ Eliot Slater and Martin Roth, *Clinical Psychology*, 736, (3rd ed. 1986).

⁵ S. Sharma, *Psychiatry, Colonialism and Indian Civilization: A Historical Appraisal*, 48, *Indian Journal of Psychiatry*, 109-112, (2006).

⁶ *Supra* note 3 at 92.

⁷ Satya Pal Gupta, *Psychopathology in Indian Medicine (Ayurveda)*, 454, (1st ed. 1977).



a. Pre-Vedic Period

Mental illness was viewed as an act of demon or diving agent possession during this time period due to the prevalence of magico-religious ideas. For centuries, all illnesses were attributed to demonic energies acting on nature, objects, animals, and people. In the Stone Age, demonology was the most popular explanation for explaining sickness.⁸ It attributed bad behaviour to demon, devil, evil spirits.

b. Vedic Period

Invokes to the Gods for good health and recovery from illness were common during the Vedic Period. Ancient Indian texts describe a variety of mental diseases. The foundations of modern Indian medicine can be found in two well-known Ayurvedic manuscripts: Charaka Samhita by Charaka and Sushruta Samhita by Sushruta. According to the ancient Indian text Atharva Veda, mental illness can be the result of divine punishment. The Vedic text has descriptions of illnesses like schizophrenia. In the Atharva Veda, schizophrenia is described in detail.⁹

The Rigveda, Yajurveda, and Samaveda Vedas all believe that mental disease is caused by demons and ghosts. The sovereign remedies included magic, witchcraft, and amulets. It was the Atharva Veda that had made the most advancements in psychiatry. It labelled mental illness as coming from supernatural sources, and the only way to treat it was through the use of charms. According to the Atharva Veda, there was a difference between the mind and the soul. An empirico-rational approach replaced the magico-religious ideas in this period of Indian history.¹⁰

c. Post-Vedic Period

This period shows the emergence of various schools of philosophy that reached their eminence in India. The Era had a philosophical approach departing from the early concept of magic and demonology. Psychotherapy, physical shock, medication treatment, hypnosis, and religious speeches by sages were the primary methods of treating mental illness. Historically, psychotherapy took the shape of talismans, charms, prayers, and overnight stays at temples with rituals. The indigenous ways of shocking the sick involved snakes, lions, and elephants scaring them.¹¹

d. Medieval Period

Insanity was taken care of subsequently by collateral system also

i. Unani System

An Indian Physician, Naja-buddhin unhammad classified mental illness into seven types, viz: Sauda-a Tabee is represented by schizophrenia; Muree Sauda is represented by sadness; Ishk is represented by delusion of love; Nisyan is represented by mental disorder; Haziyan is represented by paranoid state; and Malik-hola-a-maraki is represented by delirium. In Unani medicine, psychotherapy was referred to as Ilaj-i-nufsani (Ilaj of the Nufsani). His treatment consisted of bleeding and purging at the early stage. He also prescribed drugs and recommended massage with milk on the head and body, and emphasized on climate change. Unani hospitals were also established during the period of Akbar and Jahangir.¹²

ii. Siddha System

Siddha system also took note of mental health. "Siddhi" means achievement and Siddha was man who had achieved result in medicine as well as Yoga and Tapas. The great sage 'Agastys' who was one of the Siddhas had contributed greatly to the Siddha system. He wrote a treatise titled 'Agastiyar Kirigai Nool' on mental illnesses.¹³

As a result, many mental health facilities sprang up during the reign of King Ashoka. During those times, hospitals were built with separate enclosures for different parts, such as detaining patients and dispensing treatment. There are traces of alienation of mentally ill persons dating back thousands of years in antiquity. In Madhya Pradesh, a mental hospital was originally built in

⁸ Ephraim Rosen, E. Ronald Fox, Ian Gregory, *Abnormal Psychology*, 18 (2nd ed. 1972); See also P. Chauhan, *Eternal Health: The Essence of Ayurveda*, (2000).

⁹ S. Haque Nizamie and Nishant Goyal, *History of Psychiatry in India*, 52, IJP, 7-12, 2010, accessed from www.ncbi.nlm.nih.gov/pmc/articles.

¹⁰ S.H. Nizamie, *History of Indian Psychiatry*. accessed from www.teleline.org/image/hip.pdf.

¹¹ S.R. Parkar, V.S. Dawani, J.S. Apte, *History of Psychiatry in India*, Vol. 47, 73-76, (2001) available at www.ipgmonline.com.

¹² J.N. Vyas and Niraj Ahuja, *Postgraduate Psychiatry : History of Psychiatry*, 679, (1992).

¹³ Supra note 11 at 74.



the town of Dhar near Mandu. An Indian physician named Fa-Zulur-Lah Hakim was in charge of the country's first mental asylum.¹⁴

e. Modern Period

There is some historical evidence from pre-colonial literature that modern medicine and the modern hospital were introduced to India for the first time by Portuguese explorers and colonisers. In Goa, the Portuguese were the first to introduce modern medicine and hospitals to India. However, the history of contemporary psychiatry began with the invasion of the British, who had a vital influence in the development of mental health care in India through the building of asylums and other institutions. The history of modern mental health care in the Indian subcontinent started with the establishment of mental hospital by the British East India Company in 1600. The Prime object of establishing mental hospitals was to protect the community and not the mentally ill persons. The concept of segregating the mentally ill in mental hospital and their supervision were entirely of British origin. The first hospital was established in Bombay in 1745 and the second at Calcutta in 1784. There was no growth of any mental hospital in India except in major cities of Calcutta, Bombay, and Madras.¹⁵ By establishing legal framework Britishers felt the need to segregate the Indian patient. The Lunatic asylums were established for them. Music therapy was first tried to calm down excited patients at the Lunatic asylum which later on were renamed as mental hospitals.¹⁶ Before that the mentally ill persons had been indiscriminately incarcerated in filthy jails and correctional institutions with criminals and diseased persons.¹⁷

As a result, mental illness was regarded as a misfortune in India, and the only acceptable form of treatment was institutionalization in a lunatic asylum. It resulted in the inhumane treatment of patients by society, as well as the neglect of patients by mental health care facilities and professionals.¹⁸ The "Bhore committee" conducted a survey of mental hospitals in 1946 as part of a health survey and development committee. The committee recognised the numerical and professional insufficiency and proposed that personal and student training in psychiatry be prioritised, as well as the promotion of occupational therapy. The committee recommended innovation as well as upgrading of existing mental health facilities to meet the needs of the patients. According to the Bhore committee's recommendations, in 1954, the All India Institute of Mental Health was established in Bangalore, later becoming the National Institute of Mental Health and Neurosciences (NIMHANS)¹⁹

Till the 1960s mental health services in India were centered in the mental hospitals. During the mid of 1970's two centres in the country were established for community based mental health care i.e. Department of Psychiatry at the Postgraduate Institute of Medical Education and Research at Chandigarh and the National Institute of Mental health and Neuroscience Bangalore.²⁰

Mental illness refers to abnormality of mind whether permanent or temporary arising out of mental disease, disorder, mental condition or otherwise. A person is mentally ill when his mind does not work properly. Such a person may imagine that things are so when they are not and he cannot control himself. It causes him to do unnatural things.²¹ Mental abnormality may exist since birth or it may develop subsequently.

i. Meaning

Mental illness is defined as:²²

'It is defined as 'a state of impaired psychiatric functioning of the individual that is institutionally characterized as not the individual's fault or responsibility, and that exempts him from numerous conventional obligations while also being institutionally designated as an undesirable state.'

It encompasses emotional, behavioural, and cognitive abnormalities as well as personality disorders. Patients have traditionally received special treatment in our culture, including exemption from normal tasks, and this has continued to this day. A distinction between mental illness and insanity is that insanity is a legal term rather than a medical one. It is not limited to a single disease but encompasses a multitude of conditions.²³

¹⁴ Dr. Gautam Sharma, History of Indian Psychiatry, 1, available at <http://www.talelive.org/image/hip.pdf>.

¹⁵ Ibid.

¹⁶ Id at 3.

¹⁷ Edwin R.A. Saligman, Alvin Johnsaon, Encyclopedia of the Social Sciences, Vol. 9, 319, (1957).

¹⁸ Alok Mukhopadhyay, State of India's Health. Voluntary Health Association of India, 407 (1992)

¹⁹ Supra note 10.

²⁰ Supra note 18 at 407.

²¹ 1, Illustrated World Encyclopedia, 1062, (1966).

²² Brij Mohan, Social Psychiatry in India, 17, (1992).

²³ 9, New Standards Encyclopedia, 271.



Mental illness is classified as a 'problematic condition' since it is fundamentally distressing, impairs the proper execution of social roles, regardless of whether the afflicted individual interacts or has other effects deemed dysfunctional for the social system.²⁴ Mental illness was thought of as being caused by hereditary or acquired organic impairment.²⁵

B. Concept of Insanity

The term "insanity" has no technical definition in either the legal or medical fields. The term 'insanity' does not refer to any specific medical condition or diagnosis. Those members of society who are unable, due to a mental illness, to adjust themselves to regular social norms such that the society compulsorily segregates them and denies them their civil and political rights are referred to as "mentally ill." As a result, insanity is regarded as a societal shortcoming, and it is treated as a mental illness by medical professionals. In other words, insanity denotes a level of mental disturbance that is so dangerous and incapacitating that the person may be considered immune from certain responsibilities and may be denied certain privileges that may require a degree of competence, such as the decision to marry, make business contracts, or manage property, but may be sufficient criteria for compulsory hospitalisation.²⁶

The concept of insanity is one of the most difficult concepts to grasp in the entire field of criminal law, and it has sparked countless debates and disputes. An examination of the inner working of that complicated machinery called the human mind is greatly enhanced when the mind is not normal. A person suffering from a mental disease is not entitled to exemption from liability by the mere fact of the disease that a person was suffering from fever or any other ailment.²⁷ A person who is charged with a crime shall defend himself in court by showing that he was insane at the time of the act occurred. This means that one who is insane at the time he kills another has committed no crime he is committed to a hospital for treatment rather than to a prison for punishment.²⁸ It further implies that the mentally abnormal person fails to know the true nature of the transaction at the time of occurrence.

In its most fundamental form, law was primarily concerned with external behaviour, with no consideration given to the mental state of the person who broke the law. Until the point is reached far later in the criminal process when mens rea becomes an essential part of crime, the position of an insane lawbreaker was significantly worse.²⁹ Insanity is now recognised as a valid defence to absolve a person of responsibility for his actions. It is only natural that insanity should be recognised as a valid defence in criminal law, where the element of mens rea is one of the constituent elements of crime. In such cases, insane people should be treated as patients, with proper care provided in mental hospitals rather than prisons.³⁰

Generally speaking, the term "insanity" is used to characterise legally injurious behaviour committed under conditions in which the actor was unaware of the type or quality of the act or was unable to distinguish between right and improper behaviour.³¹

Insanity is a legal concept referring to diminished mental ability at the time of a crime that precludes criminal responsibility.³²

The term 'insanity' has variable content and not fixed meaning. Hence, legal insanity does not possess definite meaning except that as determined by the law for the time being in force. It is more or less concerned with the legal conditions subject to which a person unsoundmind will not be liable, civil or criminally as the case may be. There is marked distinction between legal insanity and medical insanity. The terms 'sane' and 'mentally competent' are synonymous and insanity is commonly understood to refer to one who is unsound in mind, or, deranged, disordered or in diseased state of mind. The word 'insane' ordinarily implies every degree of unsoundness of the mind or of mental derangement from temporary nervous excitement to acute insanity.³³

²⁴ George Ritzer, *Handbook of Social Problems, A Comparative International Perspective*, 561, (2004).

²⁵ Monika Malhotra, *Criminal Jurisprudence and Law of Insanity*, 10, (1988).

²⁶ Dr. B.V. Subrahmanyam, *Modi's Medical Jurisprudence and Toxicology*, 609, (22nd ed.2002).

²⁷ Sayed Shamshul Huda, *The Principles of the Law of Crimes in British India*, 272 and 275, (1993).

²⁸ Edwin H. Sutherland, *Principles of Criminology*, 122, (6th ed. 1968).

²⁹ S. M. A. Qadri, *Ahmad Siddique's Criminology and penology*, 91, (2011).

³⁰ P. S. Atchuthen Pillai, *Criminal law*, 12, (2nd ed.1968). Insanity is a recognized defence in all legal system.

³¹ *Supra* note 3 at 122.

³² Jacqueline B. Helfgott, *Criminal Behavior, Theories, Typologies and Criminal justice*, 431, (2008).

³³ 56, *Corpus Juris Secundum*, 2,(1992).



a. Medical Insanity

Medical insanity would include examples of aberration of the mind, delusion, and irresistibility, among other things. According to medical science, insanity is a term used to describe mental aberration caused by a variety of factors that can manifest themselves in varying degrees. Even an uncontrollable impulse that drives a guy to kill or harm another person may fall under its purview.³⁴

From medical point of view it is probable and correct to say that every man at the time when he commits a murder is insane, that is, he is not in a sound, healthy normal condition. In terms of mental quality, an offender may be either normal or abnormal. The abnormal offenders vary in magnitude and degree of abnormality and may be classified in various categories such as psychotics, neurotics, psychoneurotic and mental defects. Medically insane persons are seen from different angles and look after from point of view of treatment and their rehabilitation. Such persons because of their unhealthy mental state indulge in different kinds of behavior. Psychosis is of three types:

- i. Organic Psychosis
- ii Functional Psychosis
- iii Neurosis

i Organic Psychosis

Psychosis caused by brain damage as a result of poisoning, alcoholism, disease, and other factors is referred to as organic psychosis or organic psychosis. Organic psychosis is characterised by aberrant brain function that is caused by a physical disorder that has been identified.³⁵

1. Traumatic Psychosis

This may result from brain injuries by accident. Patients suffering from it may easily get excited and be inclined to crimes of violence.³⁶

2. Dementia

There are many different types of brain diseases that cause long-term loss of the ability to think and reason properly. The severity of the disease can be severe enough to interfere with a person's everyday functioning.³⁷ It may be the result of other conditions such as infection, irreversible brain damage due to disease or injury. The patient does not take interest in his or her food, dress, environment or family.³⁸ Dementia is of two types:

2.(a) Senile Dementia

This is a mental illness which results from the gradual delay of the body as well as the brain during old age. It affects those people who have a hereditary trait of mental aberration and who have led a strenuous life. The usual symptoms are that the patient tires more readily, his initiative decreases and he begins to have memory difficulties specially with names and recent events. As the condition progresses the patient is likely to become emotionally unstable and increasingly irritable. He may start laughing or crying without reason.

2.(b) Dementia Caused by Head Injury

Head injuries may result in brain disorders. Adults are likely to develop hallucinatory and confabulatory experiences, children become noisy, crying and restless and show uncontrolled behavior.³⁹

Puerperal Insanity This may occur in women during pregnancy or in post pregnancy period. This may be due to the birth of an illegitimate child or may be the result of economic stress and strain.⁴⁰

3 Epilepsy

Epilepsy is a disease of nervous system. It can be said that it is a disorder of brain in which the abnormality remains confined to the motor cortex. It is that state of impaired brain function characterized by a recurrent disturbance in mental function.⁴¹

³⁴ H. M. V. Cox, *Medical Jurisprudence and Toxicology*, 518, (6th ed. 1990).

³⁵ Dictionary-reverso.net/English-definition/organic/20psychosis

³⁶ Supra note 29 at 88.

³⁷ En.Wikipedia.org

³⁸ Supra note 34 at 504.

³⁹ Supra note 25 at 100.

⁴⁰ Dr. R. M. Jhala, *Medical Jurisprudence*, 114, (4th ed .1981).



4. Somnambulism

Though it is not regarded as a manifestation of insanity, it is an abnormal state of mind wherein the person walks during sleep. It is the unconscious state known as 'sleepwalking'. A person suffering from somnambulism leaves his bed, may walk out of the house, perform some act of which he has no memory later. Mind in such a person is in confused state and he may commit same crime. The person who has done an unlawful act in a state of somnambulism is not held responsible for such an act if the legal parameters are met.⁴² It is midway between sleep and awakens. He cannot recall the event that occurred during this phase.

5. Psychosis by Intoxication

Insanity or psychosis may be caused by alcohol and other intoxicants and in this way intoxicants may also contribute indirectly to crime besides the crime directly committed due to intoxication.⁴³

6. Delusion

It is a false belief in something which is not a fact. These beliefs may be in relation to the person himself or to others.⁴⁴ The more common types of delusions are:

7.(a) Delusion of Persecution

In this type of delusion the affected person has a firm belief that some person or persons are planning to kill him. This type of delusion may often be associated with delusion of grandeur and the person imagining himself to be very rich may imagine that his neighbour or his spouse or family members or relative are planning to kill him to acquire his wealth.

7.(b) Delusion of Infidelity

This type of delusion is seen in a male who believes that his wife has sexual relations with other even though she is of good character and is faithful towards her husband. Such a person may kill his wife in the wake of such a delusion.

7. (c) Delusion of Influence

Under this type of delusion the person believes that his thoughts and actions are being influenced by someone else. Whatever he is thinking or doing is under the influence of that person.⁴⁵

Hallucination

It is an erroneous sense perception. It occurs in relation to one or the other sensations, such as sight, hearing, smell, taste or touch. It has been recognized to be of the following types:

8. (a) Visual Hallucination

It is that where a person visualizes someone coming with a dagger to attack him or some wild animal about to devour him when actually there is none. This type of hallucination is usually unpleasant causing panic to the sufferer.

8.(b) Auditory Hallucination

This hallucination pertains to hearing. The affected person hears some people talking or someone singing or any such sound which actually does not exist. It can be pleasant or unpleasant and the sufferer's reaction to the hallucination varies accordingly.

9. Illusion

Illusion is defined as false interpretation of an external object by senses. It is usually associated with sight or hearing. Some of the common experiences of illusion are to interpret a rope as a snake or a coat on a wall as ghost.

10. Impulse

It is a sudden and irresistible force compelling a person to the conscious performances of some action without motive and forethoughts. He does the act without motive. In response to the impulse an insane person performs the act without giving any thought on the nature and consequences of the act.⁴⁶

⁴¹ Karan Raj, *Encyclopedic Dictionary of Psychology*, Vol. I (A-I), 265, (2001)..

⁴² Id. at 503. see also P.S.A. Pillai's *Criminal law* by K I Vibhute, 141 (10th ed. 2008 reprint. 2012).

⁴³ *Supra* note 29 at 89.

⁴⁴ *Supra* note 7 at 454. See also John B. Saund

⁴⁴ *Supra* note 34 at 502. *ers, Words and Phrases, Legally Defined* Vol. 3. 245, (2nd ed. 1969).

⁴⁵ *Supra* note 34 at 502.



11. Delirium

Delirium is a state of disturbed consciousness characterized by impaired orientation, loss of critical faculty and irrelevant or incoherent thought and may be accompanied by delusions, illusions and hallucinations. A person may become impulsive and violent and may commit suicide. A person is not held responsible for his violent act performed in delirious state if legal requirements are met. It may occur during high fever, due to over work or during intoxication or head injury.⁴⁷

12. Lucid Interval

Lucid interval is the period of clarity of mind of an insane. During this period there is no manifestation of insanity and he is a normal person and legally liable for all acts done by him during this period. The period of Lucid interval varies from person to person and from time to time and therefore one cannot be certain about the time when a person passes again in the state of insanity. It is on account of this that when a person in lucid interval commits some crime, he is not held responsible for his act. Besides insanity, lucid interval is also seen in cases of head injury. It is the period of consciousness between the initial unconsciousness after sustaining head injury.⁴⁸

b. Legal Insanity

There is difference between medical and legal insanity. Legal insanity as distinguished from medical insanity connotes the idea as to when law regards a person insane or of unsound mind. From the point of view of criminal law, for example section 84 IPC exempts a person of unsound mind from criminal liability if the conditions laid down therein are fulfilled. A person is considered legally insane under Section 84 of the Penal Code if he or she is incapable of comprehending the nature of the act or is incapable of realising that they are doing something improper or in contravention of the law while they are engaged in it. The legal point of view is important to the judiciary. There can be no legal insanity unless the accused's cognitive faculties are so severely affected that he is unable to comprehend the nature of the act or the act is illegal or opposed to the legislation in question.⁴⁹

An individual may be regarded legally insane if they are suffering from a level of mental illness that is so dangerous and crippling that they are considered legally immune from certain responsibilities. Legal insanity and medical insanity in many cases may overlap but there are two distinct and different concepts. A person may be medically insane but may not be legally insane. Similarly a person may be suffering from legal insanity but may not be suffering from medical insanity. In India, a person is legally insane if his case falls within the parameters of S.84, IPC insofar as criminal liability is concerned.

c. Kinds of Insane Offenders

Personal psychological aspects, contextual factors in the context of the crime, and a combination of psychological and environmental components must all be considered in developing a classification system for offenders. Besides the personality involvement in every criminal act and the presence of certain situation or circumstance, one thing that must be taken into consideration when classifying any offender is the history of his criminal behavior. Lombroso explained a type of classification based upon different criminal types. He divided criminals into: (1) the born criminal; (2) the epileptic criminal; (3) the criminal of irresistible passion; (4) the insane and feeble-minded criminal and (5) the occasional criminal.⁵⁰

Dr. Manfred Guttmacher, a psychiatrist grouped the criminals into following categories:

- i. The normal criminal – Generally speaking, this is an antisocial individual who is associated with the antisocial parts of our society and, more specifically, with morally and socially deficient parental role models.
- ii. The accidental or occasional criminal – This is a person who has a superego that is generally healthy but who has become overwhelmed by a unique set of circumstances. This is a relatively small subset of the population.
- iii. The organically or constitutionally predisposed criminal – It is subdivided into several subgroups, such as the cognitively disabled, the epileptic, the senile deteriorating, the post-traumatic, and so forth.
- iv. The psychopathic criminal- A psychopathic criminal is defined as an individual who is not psychotic (crazy), but who engages in antisocial behaviour, which is most likely the result of concealed unconscious neurotic tensions in their minds.
- v. The psychotic criminal - In criminal justice, a psychotic criminal is a person who engages in criminal activity as a symptom of his or her psychosis. He is suffering from one of the most serious mental illnesses.⁵¹

⁴⁶ Id at 501 and 502.

⁴⁷ Ibid.

⁴⁸ Id at 503.

⁴⁹ Supra note 40 at 106.

⁵⁰ David Abrahamsen, The classification of criminals, available on www.self.defender.net.

⁵¹ Martin S. Haskell and Lewis Yablonsky, *Criminology: Crime and Criminality*, 269-270, (2nd ed. 1978).



According to Guttamacher:⁵²

An individual's mental illness is distinguished by regressive behaviour, in which the ego is overcome by basic hostile desires. These can be directed either towards oneself or at others, depending on the situation. Even though most of insane behaviour appears to be odd and nonsensical, it serves a practical purpose for the one who engages in it. Its meaning and significance might be deciphered in each and every circumstance. Only one and a half percent of criminals are clearly psychotic.

D. CAUSES OF INSANITY

The causes of mental disorder may be divided into two heads namely, intrinsic causes and extrinsic causes. Intrinsic causes are following:

- a. Hereditary.
- b. Psychogenic.
- c. Inborn urges and other epochs of life.
- d. Environmental causes.
- e. Organic causes.

- a. **Hereditary**– is an important factor for severe mental illness. Amaurotic familial idiocy and few other rare forms or disease are directly transmitted from the parents to the offspring.
- b. **Psychogenic Causes**- Mental conflicts that have been unsuccessfully suppressed are regarded to be a very major causal component. Conflict exists between an individual's natural impulses, motives, or wishes on the one hand and his or her ideals, cultural and ethical rules, and conventions as established by the social group to which the individual or group belongs on the other. When his attempts to resolve these issues fail, it may result in tension and worry among others around him.⁵³
- c. **Inborn Urges and other Epochs of Life**- It involves sexual psychopaths. Affected in a way that predisposes him to commit sexual offences and in a way that makes him a threat to the health or safety of others is defined as anyone who has any form of mental illness or personality disorder, as well as any marked departure from normal mentality, and who is a threat to the health or safety of others.⁵⁴
- d. **Environmental Causes**- Developing a healthy personality begins when the child's first and most important environment is his or her parents and his or her house. The attitude of parents will have an impact on the development of their children's personalities. If the parental attitude is flawed, such as overprotection, rejection, excessive strictness, and unfavourable comparisons with other siblings, an unhealthy personality will develop. It is important to correct the inclination to take the path of least resistance, to escape responsibilities, and so on from an early age.
- e. **Organic Causes**- They may be related with mental symptoms such as any chronic illness, cerebral haemorrhage, fevers, or as a result of numerous addictions such as alcohol, opium, and other drugs of abuse. Injury to the brain, advanced cardio-renal illness, and so on.⁵⁵
- f. **Extrinsic Causes**
It may be mental or physical, but certain events in life, such as marriage, the death of a close relative, failure in life, ill health, financial reversals, domestic problems, business problems, and many other such matters, where emotions are inextricably linked to the stress, can result in mental illness and other complications.⁵⁶

g. TESTS TO JUDGE UNSOUNDNESS OF MIND IN INDIA

The law of Insanity in India is based on the M'Naghten rules as laid down in the famous case of M'Naghten decided in 1843

M' Naghten Rule

The foundation of the law of insanity was laid down in the House of Lords in a series of answers given by the law-lords to a series of question put to them subsequent to the decision in the then sensational M'Naghten's case (1843).

⁵² Id at 270.

⁵³ Supra note 26 at 614.

⁵⁴ www.social.stanford.edu,

⁵⁵ Ibid.

⁵⁶ Supra note 34 at 504.



Daniel M’Naghten was a paranoiac who believed himself to be persecuted by the Tories and to have been goaded beyond endurance to commit alleged murder. Suffering from delusions of persecution, he determined to kill Sir Robert Peel but killed Edward Drummond his private assistant by mistake. He was tried and acquitted on the ground of insanity. His acquittal on the ground of insanity provoked wide spread discontent throughout the country. It resulted in a debate in the House of Lords. With a view to strengthening the law; five questions were formulated and put to the judge for definite answer. The replies given by the judge had been summed up in the following propositions.⁵⁷

1. To the satisfaction of a jury, every man is considered to be the same as the other and to possess a sufficient degree of reason to be held responsible for his crime until the reverse is proven to be true.
2. In order to establish a defence on the grounds of insanity, it must be clearly demonstrated that the party accused was laboring under such a defect of reason, resulting from a disease of the mind, that he was unable to recognize the nature and quality of the act he was performing, or if he did recognize it, that he was unaware that he was performing what was wrong.
3. With regard to his awareness of the wrongfulness of the deed, the judges ruled that if the accused was aware that the act was one that he should not have done and that the act was also opposed to the law of the land, he was guilty of the crime.
4. The answer to the question of whether a person is guilty of an offence in consequence of an insane delusion as to the facts of the case must be determined by the nature of the delusion; however, on the assumption that he is only partially insane and is not otherwise insane, he must be considered in the same situation as if the facts with respect to which the delusion exists were real, according to the judges. Suppose he believes another man is attempting to take his life and he kills that man in self-defence believing he is acting in self-defence, he would be exempt from criminal prosecution and would not face any consequences.⁵⁸

However, it should be emphasized here that, for a defence of insane delusion, the act must have a direct connection with delusion. That is to say that the conduct of the accused must have been actuated by his insane delusion.

The important part of the rules is mentioned in Rule (ii). The first part of this, ‘not to know the nature and quality of the act’, means that the accused must be insane in every possible sense of the word. The second part, ‘not to know that he was doing wrong’, is critical for the following reasons. Firstly it had been argued, that ‘know’ means to ‘appreciate’ to ‘comprehend’, or to realize in full meaning, secondly it was not clear whether ‘wrong’ means legal or moral wrong.

The M’Naghten rules are still received binding authority in courts on the defense of insanity in England. Section 84, IPC is based on M’Naghten Rules.⁵⁹ The M’Naghten rules made significant contribution is the development of criminal law relating to unsoundness of mind. It served the purpose for long period and much better than the earlier tests. It proceeded with that a person is to be presumed to be sane unless the contrary is proved. The burden of proof lies on the person who claims to be of unsound mind. The insanity must exist at the time of doing the act. And because of it, he did not understand the nature and quality of the act or that if he understood this, he did not understand that the act was wrong. Thus the test was based on the absence of *mens rea* and included impairment of cognitive faculties of mind.

However, the M’Naghten Rules may be criticized and in many cases are not satisfactory. Despite making positive contribution in the legal systems of many countries, some difficulties were also experienced in its actual working. For example it does not recognize partial insanity. According to the test a person will be sane or insane. There are various shades of insanity.

The Royal Commission on Capital Punishment in the United Kingdom published its report in 1953, in which it denounced the practise. Lawyers and doctors with extensive experience have also expressed their displeasure with the ruling. Doctors with extensive experience in mental illness had argued that the M’Naghten test was based on an outdated and misleading conception of the nature of insanity, because insanity affects not only the cognitive abilities of the individual but also the entire personality of the individual, including both the will and the emotions. Many academics have criticised the M’Naghten test, claiming that it only considered the cognitive and moral components of the defendant’s actions and did not consider other factors. As a result, an insane person may frequently be aware of the nature and character of his or her act, as well as the fact that the act is prohibited by law,

⁵⁷ (1843) 8 ER 718.

⁵⁸ L.B. Curzon, *Cases on Criminal Law*, 93,(2nd ed. 1978).

⁵⁹ S. 84 Provides that, “nothing is an offence which is done by a person who at 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”.



yet nonetheless commit it as a result of the mental illness. The royal commission came to the opinion that the criteria for insanity set out in the M'Naghten guidelines was flawed and that the law needed to be amended as a result.

The M'Naghten rulers had been criticized chiefly as being too restrictive. They do not let out people who have insane delusions not related to legal guilt. The points which were frequently made against the rules are as follows:

- * The 'right and wrong' test was concerned solely with rational elements of knowledge and altogether ignored the equally vital questions relating to will, emotions, and unconsciousness.
- * The meaning of the expressions, 'quality' and 'wrong' was not clear. It is debatable whether these words are used in the legal or in the moral sense.
- * When there is a complete impairment of cognitive abilities, the law recognises insanity only in the most extreme scenario, according to the rule. People are either sane or insane, according to the standards, as if there are no shades of insanity in between the two extreme stances.
- * The defence of insanity had to be specifically raised by or on behalf of the accused with his consent. So the defence could not be available if the accused pleads innocence, even if a reasonably credible case of insanity was made out having regard to the evidence produced by the prosecution and defence.⁶⁰

Conclusion

Insanity is a universally recognized defence to criminal liability. It is found in all the legal systems and at international level that disability whether physical or mental has been recognized as a ground of favourable, preferential or beneficial treatment. Internationally various provision are there to protect the person with mental illness. The united Nations Universal Declaration of Human Rights, 1948; international covenant on economic, social and cultural rights, 1966; declaration on the rights of disabled persons, 1975; United Nations Convention on the Rights of the child, 1989 and European convention on Human Rights, 1953 plays an important role in the development and awareness of human rights relating to health at international level. The provisions on mental health are direct as well as indirect.

According to the findings of the study, considerable changes have happened in Indian mental health legislation over the last two decades. In spite of the fact that there is no single comprehensive legislation, a number of Acts have addressed many critical issues facing mentally ill people, such as the provision of treatment, protection against discrimination and the provision of equal opportunities, as well as promoting mental health among high-risk populations such as women and children, among others. The human rights challenges of mentally ill people have not been adequately addressed in any of the Acts to date. The primary focus of Indian legislation is institutional treatment. India's mental health law has neglected to emphasize the need of taking care of mentally sick family members and caretakers.

⁶⁰ Supra note 29 at 89 & 90.