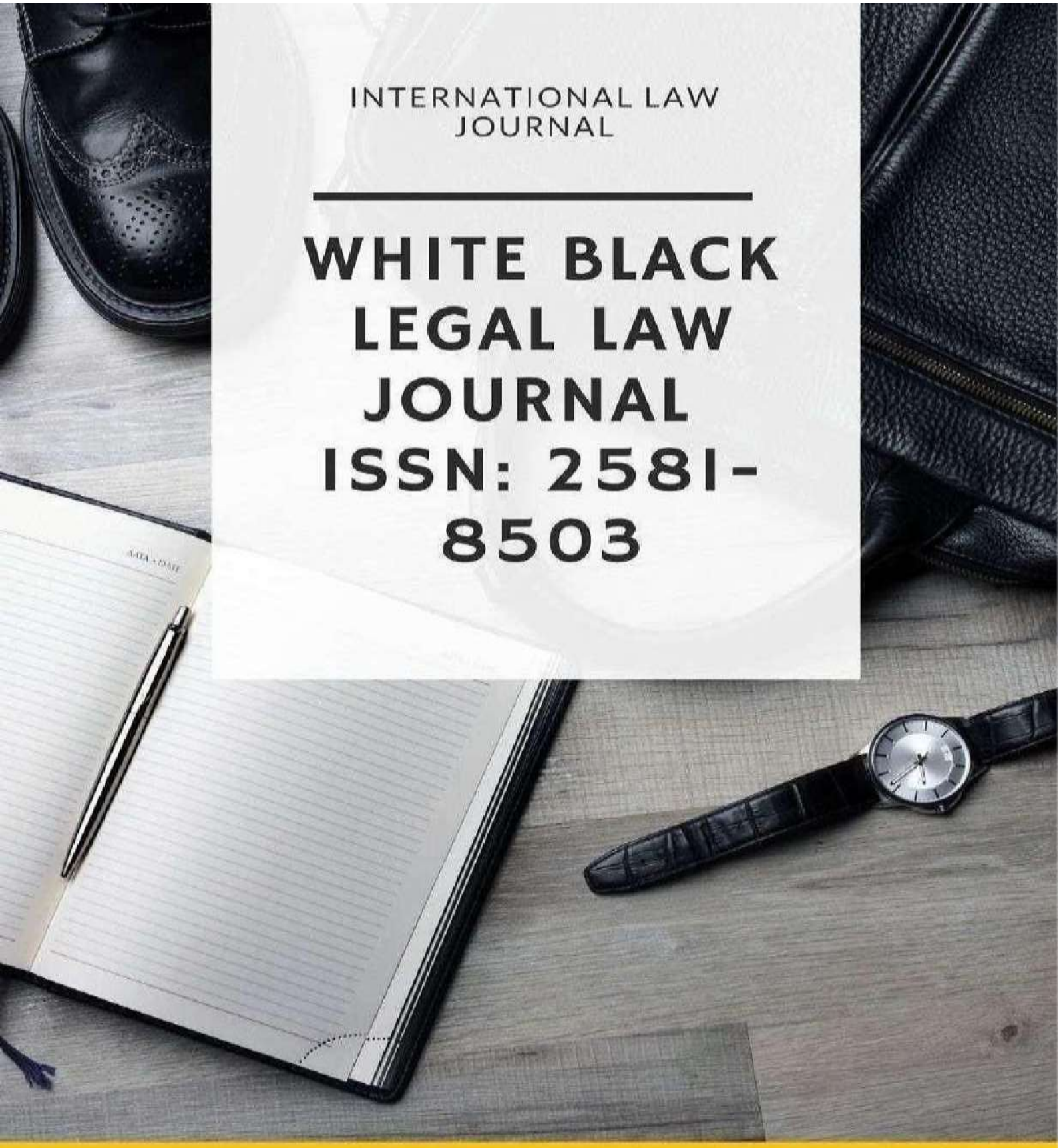

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and

refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

EVALUATING INSANITY DEFENSE IN INDIAN LAW: THEORY AND APPLICATION

AUTHORED BY - RUSHIL SHARMA

Designation: Research Scholar, Department of Laws, Panjab University, Chandigarh

Assistant Professor (Guest), UILS, Panjab University

Abstract:

"Insanity" differs from general mental illness, as it indicates a state that exempts an offender from criminal liability due to impaired moral judgment. This exemption is based on limitations within retributive and deterrent punishment theories, emphasizing the need for therapeutic care over punishment for mentally incapacitated individual. Section 22 of the Bharatiya Nyaya Sanhita, lays down the legal test for criminal responsibility in cases of alleged insanity, diverging from purely medical evaluations. This section closely aligns with the M'Naghten Rules, which remain the leading legal standards on criminal responsibility for mental unsoundness. It asserts that no act qualifies as an offense if the person, due to mental unsoundness at the time, couldn't comprehend the nature or wrongfulness of their actions. Notable cases, such as Hari Singh Gond v. State of Madhya Pradesh[1], emphasize that only specific conditions of severe cognitive incapacity meet the requirements for legal insanity. Hence, the insanity defense in Indian law underscores and highlights a balance between societal protection and compassion for those unable to comprehend their actions, reflecting evolving views on mental health and justice.

Keywords: Insanity defense, Indian Law, Bharatiya Nyaya Sanhita, General Exceptions

[1] AIR 2009 SC 31

Introduction

To the layman "insanity" often connotes mental illness or some type of mental disease. Mental health practitioners often refer to a patient's mental illness, mental disorder or mental disease as used by layman and practitioners are not synonymous with insanity. The word insanity is a legal term, whereas the term "mental illness", "mental disorder", "mental defect" indicate a condition requiring psychiatric or psychological treatment.

The philosophical basis of exemption of insane offenders from criminal liability is perhaps traceable to the functional limitations of the retributive and deterrent theories of punishment which inspire the provisions of Indian Penal Code and now the Bharatiya Nyaya Sanhita. The retributive theory, though understandable as a desire to alleviate feelings of revenge of the injured person in society generally, is pointless and unrealistic when looked at from the point of view of an insane offender who is unable to make elementary moral discernment and is thus incapable of adjusting with social demands of behaviour. It is equally clear that such persons are not likely to be deterred from the commission of crime by fear of punishment. Therefore, they must be conceived solely as the recipient of care, custody and therapy. With the development of psychiatry and behavioural sciences, correctional philosophy has been cautiously progressing towards emphasis on rehabilitation and reform as well as social protection rather than retribution and punishment.[2]

Insanity under Criminal Law

As early as 1582 certain legal treatises distinguished between those who were capable of distinguishing between the persons who could understand good and evil and those who could not. In 1603, while deciding *Beverly's Case*[3]Lord Coke discussed that a person who is deprived of reason and understanding, punishing him cannot be an example to other citizens and that there cannot be any felony or murder without the requisite intent.

With the coming of **R v. Arnold**[4] British Courts developed and elaborated the "Wild Beast Test", that if a defendant was so bereft of his sanity that he understood the ramifications of his behavior no more than an infant, wild beast or brute, he would not be held responsible for his

[2] Homer D. Crotty, *"the history of Insanity as a defence to crime in English Criminal law",*75 (12 Cal. L.R., 1923-24).
[3] 76 Eng. Rep. at p 1121 (K.B 1603).
[4] 16 How. St. Tr. 695 at 764 (1724)

crimes. Thereby, elaborating the distinction between a sane and an insane person.

It has been opined by Jerome hall[5]that if the defendant at the time of conduct in issue was insane, the much needed mens rea is lacking and no crime is committed. That a punishment should come to a person only if he is of normal competence and a psychotic harmdoer should be placed in a hospital instead of a prison.

Earlier section 84 of the IPC and now Section 22 of the Bharatiya Nyaya Sanhita, 2023 mentions the legal test of responsibility in case of alleged unsoundness of mind. It is by this act as distinguished from medical test, that the criminality of the act is to be determined. This section, in substance, is same as the M'Naghten Rules. These rules inspite of long passage of time are still regarded as the authoritative statement of the law as to criminal responsibility.[6]
The Section 22 of the Bharatiya Nyaya Sanhita which is the same as that of earlier section 84 of the Indian Penal Code lays down that:

"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"

The rationale of law of insanity as embodied in the Section has its source in the M'Naghten rules. Jurists have given various reasons for the exemption of lunatics or of person of unsound mind from criminal responsibility. Two maxims are relevant in this context:–

- *Furiosus Furore Suo Puniter:* mad man is best punished by his own madness t.
- *Furioss Nulla Voluntus est:* a mad man has no will

A mad man is therefore in all ages an object of commiseration, but as society has to be protected even against the attacks of a maniac the sections 367 to 378 of the Bharatiya Nagarik Suraksha Sanhita deal with a situation where the accused presented before the Court is of unsound mind.To earn exemption under Section 22 of the BNS, the defence has to prove insanity of the accused at the time of the offending act.

In **Hari Singh Gond v. State of Madhya Pradesh**[7] and Sidhapal Kamala Yadav v. State of Maharashtra,[8] the Supreme Court reiterated that a person is exonerated from criminal liability

[5] Jerome Hall, General Principles of Criminal Law, 120(Indianapolis : Bobbs-Merrill 1960 2d ed).
[6] State vs Emercian Lemos A.I.R 1970 Goa I
[7] AIR 2009 SC 31
[8] AIR 2009 SC 97.

on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law.

Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behavior of a psychopath does not ipso facto afford protection under section 22 of the Sanhita. Similarly, mere fact that an accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts in the past, or that his behavior was queer, is not, by itself, sufficient to bring the relevant section into play. The crucial point of time at which the unsoundness of mind needs to be established is the time when the crime was actually committed.

Therefore, unsoundness of mind prior or subsequent to the commission of crime cannot absolve him of liability. In **Rajesh Kumar v. State of NCT of Delhi,**[9] the appellant-accused was sentenced by the trial court to death for brutal killing of two children of very tender age of 54 months and of 9 months of his wife's brother, who refused to lend him money for starting business. The Delhi High Court, while confirming the death sentence, also ruled that every mental imbalance cannot be equated with 'unsoundness of mind' and it, by itself, does not make the person 'insane'. Insanity contemplated under Section 84 is such unsoundness of mind that renders the person incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. The court added that anger or hatred, though blurs rational thinking, cannot be equated with insanity as every human being is expected to control his emotions and remain in senses.[10]

Essentials for application of Insanity plea:

A. Unsoundness of mind:

The word unsoundness of mind has not been defined in the code. To Stephen it is equivalent to insanity. Insanity means a state of mind in which one or more functions of feeling, knowing, emotion and willing is performed in an abnormal manner or is not performed at all by reason of some disease of brain or the nervous system.[11]

[9] MANU/DE/1652/2009
[10] MANU/DE/1652/2009.
[11] Stephen History of Criminal Law, Vol II, p. 30

All types of insanity known to medical science are not embraced under section 22 of the Sanhita it is only the mental derangement or disorder which leads the person incapable of determining the nature of the act and even if he knew it, he did not know it was either wrong or contrary to law. All varieties of want of capacity whether short term or indissoluble, natural or supervening, has occurred from the disease or exists from the time of birth come in the ambit of the expression unsoundness of mind. Though there are several degrees of insanity but in order to afford protection under this section a person must fulfill all the above-mentioned ingredients.

When the mental disorder is of a kind that it renders the sufferer incapable of knowing the nature of the act and affects his reason and judgment of acknowledging what is either wrong or contrary to law. It is only the le[12]gal and not the medical insanity that absolves an accused from criminal responsibility.

B. Incapable of knowing the nature of the act

A man is said to be ignorant of the nature of the act when he is ignorant of the properties and operation of the external agencies which he brings into play.[13] The M'Naughten rules declare that the act is punishable only when it is contrary to the law of the land and was consciously done by the accused who knew that he ought not to do it. The Penal code uses 'nature of the act' as opposed to the 'nature and quality of the act' used in M'Naughten rules. A person is ignorant of the quality of the act if he knows the result which will follow but is incapable of appreciating the elementary principles which make up the heinous and shocking nature of the result.[14] To absolve the responsibility, insanity should be such as to incapacitate the accused from knowing the nature and consequences of his act at the commission of the offence. The correctness of the sentence in such a case cannot be questioned by the Supreme Court and the court cannot re-examine the facts once the matter has been rejected by the President of India in a capital offence.[15]

A lucid interval[16] 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

[12] S Suneel Sandeep v State of Karnatka (1993) Cr LJ2554
[13] Mayne, Criminal Law (4th ed.) Part II, p. 173, cited with approval in Jaswantrao Bajirao, A.I.R. 1949 Nag. 66.
[14] Mayne, Criminal law (4th ed.) Part II, p. 173
[15] Amrit Bhusan v Union of India, 1977 Cri. L.J. 376 (S.C.)
[16] "The Indian Penal Code", by "K. D. Gaur" , "universal publication", 4th edition, pg 115.

or perfect restoration of the mental faculties to their original condition.[17] 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.

C. At the time of commission of the offence

This phrase indicates that insanity or the lack of capability of understanding should be non-existent at the point of time in which the act is done. Insanity which afflicts a person subsequently to the act or previously would not make him entitled to a plea of insanity under section 22 of the Sanhita.

Insanity must be prove to exist at the time of committing the act constitution the offence complained of.[18] A plea of insanity at the time of trial will not help the accused. [19] The application of this section is strictly confined to whether the person was labouring under the defect of reason at the time of commission of crime as not to knoe the nature of the act he was doing or even if he knew it, he did not know that it was either wrong or contrary to law. Behaviour of the accused before and after the commission of an offence must be taken into consideration.[20]

In **State v. Emerciano Lemos**,[21] Z and accused X were brothers, and Y was a neighbour and a distant relative. On the day of the incident when Z and his wife were away, X started throwing stones at Z house when Z's children got frightened and came out of the house, they were also attacked. When Y came out he was also attacked with a stick and his wife after being beaten died five days later. The other persons who assembled there subsequently and the police which reached there later were also attacked. The doctors pronounced in the court that the accused was suffering from schizophrenia. The Section 84 was held to be applicable. The report of medical examination by the doctors unequivocally indicates that the accused was of unsound mind at the time when he committed the offences. The courts were satisfied that the report submitted by the authorities and the annexure there to is a correct report. The report was therefore taken on record and the court could safely place reliance on it. On the basis of this report, it

[17] "Indian Penal Code", by "B M Gandhi", 3rd edition, "Eastern Book Company", pg 110
[18] Gunadhar Mondal v State, 1979 Cri.L.J. (NOC) 178
[19] Nota Ram, (1866) P. R. No. 56 of 1866.
[20] Govinda Swami padayachi, A.I.R. 1952 Mad. 479; Ahmadullah, (1961) 3 S.C.R. 583; dahyabhai, A.I.R. 1964 S.C. 1563
[21] AIR 1970 Goa 1.

became clear that the accused was of unsound mind at the time when the offences were committed.[22]

The Supreme Court Of India in **State of Madhya Pradesh v Ahmadulla,[23]** has held that the burden of proof lies on the accused that at the time of commission of the offence he was suffering from the defect of reason due to which he could not see that his act is wrong or contrary to law.

In **Ratan Lal v. State of Madhya Pradesh** ,[24] the accused was in the habit of setting fire to his own clothes and house . It was held that it is purely contrasting the concept of rationality and more inclined towards insanity. The Supreme Court absolved the accused of his criminal responsibility by accepting his plea of insanity under the given facts.

In the case of **Jai Lal v. Delhi Adminstration**[25] The appellant was a railway employee and often lost his temper and had altercations with other clerks in the office. On October 1960 he was found to be suffering from a mental illness as he exhibited symptom of acute schizophrenia and showed disorder of thought emotion and perception of external realities. He was treated for and was cured of this illness by July 1961 when he resumed his duties. On the morning of November 25, he went to office as usual but as he was late in attendance he was marked absent. He applied in writing for one day's casual leave and returned home. No one noticed any symptoms of any mental disorder at that time. Just after 1 o'clock he entered his neighbour's house and stabbed and killed a girl 1 ½ year old and later also stabbed and injured two other persons with a knife. He was thereafter arrested and interrogated on the same day when he gave normal and intelligent answers. After his arrest and upon a medical examination, the appellant was declared to be lunatic though not violent and the psychiatrist found that he had had a relapse of Schizophrenia. A plea of insanity was raised as a defence. But his subsequent behaviour was taken into consideration by the court as he hid the knife, locked himself in the house to prevent arrest and attempted to run away from the back door. He also tried to dispense the crowd by throwing brickbats from the roof.

It was held that to establish that the acts done were not offences under section 84 it must be proved clearly that at the time of the commission of the acts the appellant , by reason of unsoundness of mind, was incapable of knowing that the acts were either morally

[22] Chandrashekar v. State of Karnataka 1998 Cri LJ 2237 at 2238 (Karn) (DB).
[23] AIR 1961 SC 998
[24] AIR 1971SC 778
[25] AIR 1969SC 15

wrong or contrary to law. The outlook of accused suffering from such mental impairment at the time of the commission of the act is of paramount importance and frame of his mind before and after the crucial act is relevant. In addition to that there was medical evidence, that between 12 October, 1960 and 12 January, 1961, when he resumed his normal duties he was found to be normal. But it was theorized that at even at the moments of greatest excitement, he was able to differentiate between right and wrong. His intelligent answers to authorites indicated that there was nothing abnormal with his state of mind. The Supreme Court held that there was a wakefulness of guilt in his conduct. He was aware of the physicality of stabbing and that it would kill. He was convicted under section 302 was sentenced to life imprisonment. However, in the determination of question of insanity, at the time when the act was committed the chronicle of the state of mind of accused is necessary to adduce him guilty.

In **Kuttappa v. State of Kerala**[26], In a plea of insanity, the antecedents, attending the subsequent conduct of the accused is relevant, but such conduct is not per se enough to show, the state of mind of the accused at the time of the commission of the act. In absence of materials to show that he was incapable of knowing the nature of his action that what he was doing, was wrong or contrary to law.

The mere circumstance that without apparent motive he has committed at least two murders and in all four ghastly murders, in itself does not lead to a reasonable inference that he suffered from insanity. In absence of proper materials such defence, if treated as part of our judicial system would be subversive to life and property.

Independent Evidence

It has been rightly reiterated that there should be independent evidence to prove insanity under section 84 IPC. In Bihari Lal v. State of HP,[27] the accused tried to prove that he was suffering from schizophrenia by way of a certificate issued by an independent practitioner. The court rejected the defence. Similarly in Sadashivu Balappa Samagar v. State of Karnataka,[28] the abnormal behavior of the accused in having attempted to cut the pennies of his 5 year old nephew and sending his wife to the parents, the Karnataka High Court ruled that at the most the acts of the accused indicate his sexual deficiency and mental imbalance which need to be treated but does not reduce the culpability of the accused. He was not entitled to take the

[26] AIR 1977 SC 608
[27] 2006 Cri L J 3832 (HP)
[28] 2006 Cri LJ 899 (Kar) (DB).

defence of insanity under section 84 Indian Penal Code. In Chandra Bhan v. State[29], the accused after causing injuries with sharpedged weapon to his wife dragged her to a pit nearby. On children raising alarm he ran away from the place of occurrence. In his statement before the court under section 313 the accused pleaded that he was staying in a temple and receiving medical treatment. In her dying declaration the wife had stated that her husband behaved like a mad person. This was not considered as enough evidence of unsoundness of mind. His plea was rejected. Conviction under section 302 and life imprisonment sentence were upheld.

Burden of proof

Burden of proving insanity on the accused and not the prosecution even thought the standard of proof is not the same. This burden arises by the operation of Section 105 of Indian Evidence Act. The burden, however is not higher than upon a plaintiff or a defendant in a civil proceeding. This onus has to be discharged by the accused through showing evidence that his conduct shortly prior to the offence and his conduct at the time and immediately afterwards in addition to showing mental condition and other relevant factors.

Section 108 of the Bharatiya Sakshya Adhiniyam, 2023 reads as

"*108. Burden of proving that case of the accused comes within the exceptions.- 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 in the Bharatiya Nyaya Sanhita, 2023, or within any special exception 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.*"

This section only applies to criminal trials and says that when any set of circumstances are alleged by the accused, where he says that his act falls under any of the General Exceptions provided under the Indian Penal Code. As stated in the case of Nanhey Khan v. State of NCT[30] when the accused never sets up the defence of insanity, it cannot be entered into judicial considerations. Even in cases of epilepsy, the mere fact that the accused had been a patient of epilepsy will not be sufficient as he will have to prove that at the time of the crime he was under a fit of insanity on account of epilepsy.[31]

It was held in **Siddhapal Kamala Yadav v State of Maharashtra**[32] that in case of murder

[29] 2005 Cri LJ 35 (All).
[30] (1986) 2 Crimes 328.
[31] Devinder Singh v. State of H.P, (1986) 3 Crimes 82 (HP).
[32] (2009) I Cri. L. J. 373 (S.C.)

when defence of insanity is claimed by the accused the onus of proving unsoundness of mind is on the accused . But where during the investigation previous history of insanity is revealed, it is the duty of 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. The onus, however, has to 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 and other relevant factors. The burden of proof however, is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding.

A more specific instance can be taken from Illustration (a) of Section 108 which says that when a person named A, who has been accused of murder alleges that, by reason of unsoundness of mind he was not aware of nature of his act, the burden of proof will sit upon him. As already noted that a person *ipso facto* cannot be exempted from liability due to insanity, certain principles have been laid down in the context of insanity in the case of **Dahyabhai Chhaganbhai Thakkar v. State of Gujrat**[33] which are:

1. That prosecution has to prove beyond reasonable doubt that the accused had commited the offence with the requisite *mens rea*; and the burden of proof always rests on the prosecution from the 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 section 84 of the Indian Penal Code. This can be rebutted by placing before the court all the relevant oral, documentary or circumstantial evidence, 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, evidence placed before the court by the accused or by the prosecution may raise an reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including *mens rea I* of the accused and in that case the court would be entitled to acquit the accused on the ground that general burden of proof resting on the prosecution was not discharged.

[33] AIR 1964 SC 1563

Finally, the standard of proof which has been mentioned earlier as well under this heading is that of "preponderance of probabilities" and the inference regarding preponderance can be drawn no only from the material brought before the court by the parties but also by the circumstances on which the accused relies.[34]

Relevant judgments

- In case of **Shrikant Anantrao Bhosle v. State of Maharashtra**[35], The appellant was a police constable. He and Surekha were married in the year 1987. On the date of the incident, they were living in police quarters along with their daughter. On the morning of 24th April,1994, there was a quarrel between husband and wife. While Surekha was washing clothes in the bathroom, the appellant hit her with grinding stone on her head. The appellant was immediately taken by the police to the quarter guard. Surekha was taken to the hospital where she was found dead. After usual investigation the appellant was charged for the offence of murder of his wife. He pleaded his defence on the ground of insanity at the time of commission of crime. The appellant had a family history as his father was also suffering from psychiatric illness. His illness was taken as hereditarily acquired. Since 1992 he was being treated for unsoundness of mind and was diagnosed as suffering from paranoid schizophrenia. Soon after the incident, within in a short while from June 27 to 5 Dec 1994, he had to be put in the hospital for treatment of illness 25 times. Accused was treated regularly for his mental ailment. The motive which could be discovered behind killing his wife was weak as she had a contrasting mindset regarding the idea of resigning from the job of police constable. No attempt was made by him to keep the dead body of his wife out of sight or to run away.

Decision: The Court held that, considering all the facts and circumstances in entirety and taking into account the evidence on record it was deduced that the accused was suffering from paranoid schizophrenia. The unsoundness of mind before and after the act would be a relevant fact. Looking at the circumstances of the case it can be reasonably speculated that accused was under delusion at the relevant time. He was in a condition of deceptiveness and hallucination. The essence of anger theory as put by prosecution cannot be ruled out under schizophrenia attack. It is well summarized that the burden of proving the existence of such

[34] Krishna Janardhana v. Dattatreya Hegde, AIR 2008 SC 1325
[35] 2002 CrlJ 2356

circumstances at the time of commission of an act lies on the accused under section 105 of Evidence Act in the sense of introducing his defence and claiming the benefit of section 84, Indian Penal Code. There is always a space for raising a reasonable doubt that at the time of commission of crime accused was incapable of knowing the nature of the act due to the deranged condition of mind. Thus he would be entitled to the benefit of section 84, Indian Penal Code. Hence accused was not held liable for the offence.

- In the case **of U Kannan v. State**[36] the accused was suffering from epileptic fits since he was a child and on the day he killed his mother, symptoms of the epileptic seizure were seen. The evidence also showed that weapons such as a bill hook, reaper and a stick of firewood were used in the attack. It was suggested by the prosecution that the accused used to have occasional quarrels with his mother over the quality of food and this constituted as motive for the crime.

Decision: The Division Bench of Kerala High Court gave the benefit of defence of insanity to the accused and held that it would be puerile to hold that an occasional quarrel over quality of meals would lead to such an act or for that matter motivate a mature man to hack to death his old and defenceless mother. The complete absence of motive and duration of attack which was accompanied by a maniacal fury with which the attack was delivered and his subsequent conduct were all indications that the accused was acting under an insane impulse and as a result his act was saved by Section 84 of the Indian Penal Code, 1860.

- In **Queen Empress v. Kadar Naryer Shah**[37], accused neglected his house and field work and complained of frequent headaches and spoke to no one when the pain was severe. Ever since his house and property were destroyed by fire. He normally played and went about with children much more than in normal for man of his age. He was very fond of one boy in particular. Unaccountably he one day killed this boy. There was no motive for his action. However there was proof that he observed some secrecy after committing the murder.

Decision: The court held that the behaviour of the accused did not prove that he was by reason of unsoundness of mind incapable of knowing the nature of the act and thus found him guilty but recommended to the government for indulgent consideration as, in its view, the accused was suffering from some kind of mental derangement.

[36] 1960 Cri LJ 73 (Ker HC)
[37] (1896) ILR 23 Cal.604