EXEMPTIONS FROM LIABILITY

In chapter IV of the Penal Code are grouped together the cases in which an act which would ordinarily be an offence is not an offence by reason of the special circumstances in which it is done. These are described as general exceptions* and they may be pleaded in defence by an accused person charged with any crime whether under the Penal Code or any local or special law.

Broadly speaking two principles may be said to underlie these general exceptions to liability; first, that the circumstances surrounding the commission of the act amount to a legal justification for its commission; second that the circumstances are incompatible with existence of *mens rea* and so the actor is not responsible for what he has done. To the former category belong the defences relating to acts which a person is bound by law to commit or justified by law in committing, acts done by a judge or in pursuance of the orders of a court of justice, acts done to prevent other harm to person or property, acts done with the consent of the victim and acts done in the exercise of the right of private defence. The latter category comprises the defences of bonafide mistake, accident, coercion, infancy, insanity, and intoxication. To hold a man responsible for a crime his conduct should be voluntary and he should have realised that his conduct would or might produce certain harmful results. Conversely if he lacked a free will having been subjected to coercion, or was not possessed of sufficient intelligence and understanding to distinguish between right and wrong or to appreciate the harmful nature of the consequences of his act due to infancy, insanity or drunkenness, or could not foresee the evil results due to a reasonable mistake, or on account of their being entirely fortuitous, he cannot be held responsible. These circumstances preclude the existence of *mens rea*.

The general exceptions are to be pleaded only within the limits set down by law in the public interest. For example the consent of the victim cannot justify the intentional causing of death; even under the threat of instant death one may not commit the offence of murder or an offence against the state punishable with death; mistake as a defence is available only when the mistake is made after exercising reasonable care and caution, and that too with regard to matters of fact and not of law.

---

* As distinguished from these *general* defences there are special defences provided in the case of particular crimes, *e.g.*, under Ss. 339, 361, 494, 499.

In the following pages some of the problems arising in connection with the defence of insanity or unsoundness of mind are discussed.

The Law Governing Insanity

I

" Insanity as a defence in a Criminal prosecution is embodied in S. 84 of the Indian Penal Code. The Section runs as follows:

" 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 the law of insanity as embodied in this section has its source in the M'Naghten rules.[1] By the time the Indian Penal Code was finally enacted into law,[2] a significant event took place in the judicial annals of England. The law of insanity in England had not taken a proper shape until 1843,[3] when the M'Naghten rules were laid down. These are really answers by 15 judges of England to questions put to them by the House of Lords.[4] The M'Naghten rules were formulated in the following circumstances:

In 1843, M'Naghten was tried for the murder of Mr. Drummond, private secretary to Sir Robert Peel. M'Naghten suffered from an insane delusion that Sir Robert Peel had injured him. He mistook Drummond for Sir Robert, shot and killed him. He was tried in London before Chief Justice Tindall and two other judges and defended by Mr. Cockburn who later became the Lord Chief Justice of England. Chief Justice Tindall in his charge to the jury said that the question for them to determine was whether at the time he committed the act the prisoner had or had not the use of his understanding

1. *Hazara Singh* v. *State* A.I.R. 1958 Punj. 104.

2. The draft Indian Penal Code as prepared by Lord Macaulay in 1837 contained the following provisions in this behalf. S. 66. Nothing is an offence which is done by a person in a *state of idiocy*. S. 67. Nothing is an offence which a person does in consequence of being mad or delirious at the time of doing it.

3. See *Rex* v. *Arnold* (1724), 16 How. St. Tr. 695; *Ferrer's* case (1760), 19 Hons. St. Tr. 886; *Hadfield's* case (1800), 27 How. St. Tr. 1282. See also Royal Commission Report on Capital, Punishment 1949-53, p. 397 hereafter referred to as Royal Commission Report; Mayne, Criminal Law. 3rd Ed. p. 406. See also, *In re Pappathi Ammal*, A.I.R. 1959 Mad. 239, at 241.

4. *M'Naghten's* case 8 E.R. 718; The antecedent trial is reported in 4 St. Tr. N.S. 847.

so as to know that he was violating the laws both of God and man. The jury gave a verdict of not-guilty on the ground of insanity.

Much public excitement was caused by the result of the trial, and the verdict was made a subject of debate in the House of Lords, who with a view to getting the law clarified required the judges to give their replies to five questions put to them. The second and third of the five questions are relevant here :

Question II : " What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for instance), and insanity is set up as a defence? "

Question III : " In what terms ought the question to be left to the jury, as to the prisoner's state of mind at the time when the act was committed ? "

The opinion of the Judges was delivered by Chief Justice Tindall who replied as follows :

" As the second and third questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction ; and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind as (1) not to know the nature and quality of the act he was doing ; or, (2) if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong : which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put with a reference to the party's knowledge of right and wrong in respect to the very act with which he is charged."

The test thus enunciated by the English judges in *M'Naghten's* case, is known as " the Right and Wrong Test ", and is applied today in England, Canada, and in practically all the American States. The same principle is embodied in S. 84 of the Indian Penal Code.

The word ' insanity ' is not used in S. 84 of the Indian Penal Code. The section uses the expression ' unsoundness of mind '. There

appears to be no difference in the etymological meaning of the two words which may mean a defect of reason arising from a disease of the mind. There is however, a difference between legal insanity and medical insanity and it is only legal insanity which exculpates an accused person on the basis of unsoundness of mind.[4a] There can be no legal insanity unless the cognitive faculties of the accused are so completely impaired as to render him incapable of understanding the cosequences of his act.[5] It is difficult to find a definition of insanity in medical terminology.[6] However medical insanity refers to various diseases of mind and the existence of any one or more of them would render a person insane in the judgment of the medical expert.[7]

II

In the interpretation of s. 84 of the Indian Penal Code, the courts in India have invariably followed the M'Naghten Rules referred to above.[8] According to these Rules every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved that at the time of committing the act, the accused was labouring under such defect of reason from disease of the mind, as not to know the nature and the quality of the act he was doing or if he did know it that he did not know he was doing what was wrong.[9]

Section 84 embodies two different mental conditions arising from unsoundness of mind. First, that the accused was incapable, due to unsoundness of mind, to understand the nature and quality of the act, and secondly, that he did not know that what he was doing was wrong or contrary to law.[10] The first category covers two situations, namely automatism and mistake or simple ignorance of fact.[11] The second

4a. *Lakshmi* v. *State* A.I.R. 1959 All. 534.

5. Raju, Penal Code, 1st Ed. p. 286.

6. Glanville Williams, Criminal Law, General part p. 293.

7. Royal Commission Report Appendix (C) p. 396, Medical view; see R.C.R. Ch. IV. p. 73. *In re Pappathi Ammal,* A.I.R. 1959 Mad. p. 242.

8. *Ramdulare* v. *State,* A.I.R. 1959, Madhya Pradesh 259.

9. *M'Naghten's* case 8 E.R. 718 at 722.

10. Mayne, 3rd Ed. p. 412.

11. In re *Pappathi Ammal,* A.I.R. 1959 Mad. at p. 241 Ramaswami, J., observed: " .....though there is no decided case in law on the subject, somnambulism if proved will constitute that unconsciousness of mind, attracting the application of Section 84 I.P.C. " See Glanville Williams, *op. cit.,* p. 316. See also, Glanville Williams, Automatism, in Essays on Criminal Science pp. 345-354, He says " " One of the most obvious applications of the M'Naghten Rules is to a case where a defendant was in a State of insane automatism ". p. 345 " In sleep walking cases there is generally no doubt that the defendant is not responsible in law....." id. p. 346,

category is important because it is generally the test in numerous cases where mental disease has only partially extinguished reason.[12] It may be noted here that the Indian Law on the subject appears to be wider [13] than the English law, in so far as the test of insanity in the latter part of section 84 is concerned.

In *Ashiruddin* v. *King* [13] the Calcutta High Court formulated three independent and mutually exclusive tests under s. 84 of the Penal Code. The Court interpreted "wrong" or "contrary to law" in the sense that these were two separate tests and that if an accused who pleaded insanity in his defence could establish the application of any of these tests, he would not be guilty. But this rule, if correct provides greater immunity than other Indian decisions do.[14] The English rule was recently formulated by Lord Goddard C.J. in *R.* v. *Windle,* [15] in terms that the expression "wrong" means "contrary to law" and that it does not include "moral wrong". He said: "A man may be suffering from a defect of reason, but, if he knows that what he is doing is wrong and by 'wrong' is meant contrary to law—he is responsible....." He went on to say: "In the opinion of the court there is no doubt that the word 'wrong' in the M'Naghten Rules means contrary to law and does not have some vague meaning which may vary according to the opinion of the different persons whether a particular act might or might not be justified." [16]

This indicates the confusion which governs the judicial attitude both in India and abroad with regard to the interpretation of rules which were formulated in 1843.[17]

12. Mayne, (3rd ed.) *op. cit.,* p. 413.

13. *Ashiruddin* v. *The King* A.I.R. 1949 Cal. 182.

14. *Geron Ali* v. *King* A.I.R. 1941 Cal. 129 *Narain* v. *Emp.* A.I.R. 1947 Pat. 222, *Baswant Rao* v. *Emp.* A.I.R. 1949 Nag. 66. *Deorao* v. *Emp.* A.I.R. 1946 Nag. 321; *Barelal* v. *State* A.I.R. 1960 M.P. 102.

15. *R.* v. *Windle* (1952) 2 Q.B. 826.

16. This decision has not been followed in Australia, See. *Stapleton* v. *The Queen* (1952) 86 C.L.R. 358; See also Norval Morris, Essays in Criminal Science, pp. 282-284, and for American Law see Burdick: Law of Crimes, Vol. 1, section, 211, pp. 280-283.

17. In *Geron Ali* v. *King* A.I.R. 1941 Cal. 129, the Calcutta High Court laid down that there were two tests of insanity under section 84 I.P.C. Incidentally Mr. Justice Roseburgh was a member of the division bench in both Geron Ali and Ashiruddin cases. He, however, did not notice or explain away these decisions which apparently run in opposite directions. The commentaries on the Indian Penal Code also do not discuss or explain this problem. See Raju, Penal Code, 2nd ed. (1960) Vol. 1 p. 213.

III

The burden of proof in a case where insanity is set up as a defence in a criminal charge is said to rest upon the accused person.[18] There are judicial pronouncements to the effect that the onus must be fully discharged by the accused and it would not be sufficient to create a doubt in the mind of the court about the quantum of insanity which would exempt him from criminal responsibility.[19] However there is no unanimity of judicial opinion in this regard. One does come across judicial dicta which run contrary to this interpretation.[20] The judicial opinion is coming round to the view that the burden of proof cast upon the accused in such cases is less than it is on the prosecution, [21] at any rate it is not higher than the burden which rests upon a plaintiff or defendant in civil proceedings.[22] A clarification of this point is therefore called for in the interest of justice, because this rule of evidence places the accused in such cases under a two-fold disadvantage, one that though insane, he is an accused person, and secondly, that being insane he cannot make use of his faculties and resources to discharge this burden to his advantage.

It is hardly reasonable to expect an insane person to conduct his defence reasonably. In the United States the tendency is distinctly to place the burden of proof in the true sense upon the prosecution.[23] This is also the rule on the continent.[24] It has been held in India where the Court may suspect insanity from the behaviour of the accused at the time of the trial, it may elicit information from the witnesses

18. Section 105, Indian Evidence Act, 1872; Mayne, *Criminal Law, op. cit.* p. 419, para 192.

19. *Ibid*; *Kashiram* v. *The State*, A.I.R. 1957 Madh. B. 104; 1957 Cr. L.J. 370. " The accused cannot get the benefit of S. 84 by merely creating a reasonable doubt in the mind of the court about the existence of circumstances bringing his case within the exception.

20. *Nitai Naik* v. *State* A.I.R. 1957 Orissa 168 " If on a review of the entire evidence the court entertains a reasonable doubt about the guilt of the accused, he is entitled to an acquittal in the case, on the cardinal principle of criminal justice which has not been affected by special provisions of S. 105 of the Indian Evidence Act ".

21. *In re Pappathi Ammal*, A.I.R. 1959 Mad. 239 at 243. According to Glanville Williams, the rule regarding burden of proof in case of insanity originated in a confusion between the introduction of evidence and the burden of proof proper. See Glanville Williams *op. cit.* 355.

22. *Raju Shetty* v. *State of Mysore*, 1959 M.L.J. (Cr.) 198.

23. Weihofen, Insanity as a defence in Criminal Law Ch. 4 (1933). Wharton, Art. 79 12th Ed. (1932).

24. See Grunhut, *Penal Reform* p. 436 cited in Glanville Williams *op. cit.* p. 356.

regarding insanity of the accused at the material time and if any such evidence is brought forth, then it has to be considered in weighing the criminality of the accused and in judging whether he was responsible for the crime or [25] not. This may lead to an anomaly in the sense that where an accused pleads insanity he is exposed to a heavy burden of proof to establish this defence. On the other hand if he does not and the court suspects insanity from his behaviour in the court, the latter may take upon itself the burden of deciding the question of his criminality in the light of such evidence.

Ever since the Penal Code came into operation nearly a century ago, the interpretation of S. 84 has followed in the footsteps of the celebrated M'Naghten Rules. The courts have by and large refused to depart from these rules. The result has been that every case in which insanity has been set up as a defence has to be fitted in the straight-jacket of these rules notwithstanding the strides which medical science and psychiatry have made during this period. The Courts have not been able to adopt a more progressive attitude in determining the responsibility of an insane person who is charged with a crime. There are no provisions of law which may enable the courts to do so.[26] It does not mean however, that the judicial opinion is oblivious to the need for a reorientation. In *Ram Dulare Ramadhin Sunar* v. *State*,[27] we have an instance of such awareness in the following passage of the judgment: "……in the practical application of the principle enunciated in section 84 of the Indian Penal Code, a more progressive attitude will have to be adopted for determining criminal responsibility of a person suffering from 'mental disorder' in the light of recent advance in the medical science especially in the branch of psychiatry."

IV

An important issue which often crops upon under M'Naghten Rules is whether irresistible impulse is a ground of exemption from criminal liability. The Indian judicial opinion on this point has been

25. *Kamla Singh* v. *State* A.I.R. 1955 Pat. 209.

26. *Hazara Singh* v. *Emp.* 47. P.L.R. 158 "There is no provision of law which imposes an obligation on the court to call scientific evidence before recording a finding of sanity."

27. A.I.R. 1958 Madh. Pra. 259 at 261, per Naik, J." In the opinion of the court the accused would be better advised when setting up the plea of unsoundness of mind to specify the type of disorder because mental disorders have now been fairly well classified and their essential characteristic described in some detail in medical text-books which make it easier to appreciate, the evidence bearing on the point in record" See also *State* v. *Chhotellal* A.I.R. 1959 Madh. Pra. p. 203.

till recently in line with its English counterpart.[28] In England, in view, however, of overwhelming medical and psychiatric[29] authority and also a sizable legal[30] opinion in its favour various attempts have been made to recognise "irresistible impulse" as an additional test of responsibility in criminal cases. But whereas the country where the M'Naghten Rules were first born, has modified them,[31] no attempt has been made in India to soften the rigour of these rules. In England the Royal Commission on Capital Punishment though it first rejected the doctrine of "irresistible impulse" as "largely discredited" and "inherently inadequate", adopted it in its final recommendations.[32]

---

28. Raju, Commentaries on the Indian Penal Code Vol. 1 (1960) Ed. pp. 223, 224; See *R.* v. *Keder Nasver Shah* 23 Cal. 604; *R.* v. *Lakshman Dagdu*, 10 Bom. 512; *R.* v. *Venkatachalam* 12 Mad. 459; *Kalicharan* v. *Emp.* A.I.R. 1948 Nag. 20; *Deorao* v. *Emp.* A.I.R. 1946 Nag. 321. But see contra *Unniri Kannan* v. *State* A.I.R. 1960 Ker. 24; English decisions in this behalf may also be noted

(1) *R.* v. *True* (1922) 16 Cr. App. 164; 27 Co. C.C. 287.

(2) *R.* v. *Kopsch* (1925) 9 Cr. App. A. 50.

(3) *R* v. *Sodeman* (1936) 2 All. E.R. 138; See also *Sodeman* v. *The King* (1936) 55 C.L.R. 192.

29. See Tayler's Manual of Medical Jurisprudence 10th Ed. R. 745; Maudsley; Responsibility in Mental Disease Ch. 3; Buckinill and Tuke, Psychological Medicine 269.

30. See Stephen H.C.L. Vol. II, pp. 167-168. He was of the view that M'Naghten Rules embodies this defence. The bill of 1878 in England embodied the principle, but it was rejected in the English Draft Penal Code of 1879. However in 1923 Lord Atkins Committee recommended an addition to M'Naghten Rules recognizing that an act may be Committed under an impulse which the prisoner was by mental disease in substance deprived of any power to resist" (1923). This recommendation was opposed by the judiciary and dropped. Cmd. 2005.

1. *Commonwealth* v. *Rogers* 11 Am. Dec. 458 (Mass).
2. *Commonwealth* v. *Mosler* 24 Pa. 264 (1846).
3. *Parson's* case 81 Ala. 577 (1886).
4. *State* v. *Green* 78 Utah. 580 (1931).
5. In some United States Jurisdictions "irresistible impulse" is an additional ground of exemption; See p. 284-289. French Penal Code (Art. 64) cited in Burdick.

31. Homicide Act, 1957, Sect. 2(1), 5 and 6 Eliz. II C. II. However, the Rules have been modified only as a corollary of the reform of the law of murder.

The primary recommendation of the Commissioners and the Central thrust of its report was "to abrogate the M'Naghten Rules and to leave the jury to determine whether at the time of the act the accused was suffering from disease of the mind (or mental deficiency) to such a degree that he ought not to be held responsible." See R.C.R. p. 116.

See Hall. *op. cit.* p. 499.

32. R.C.R. pp. 111, 116, 287.

See also Hall, *op. cit.* pp. 496-499.

A recent decision of the Privy Council in *Attorney-General for South Australia* v. *Brown* [33] might give the impression that the court ruled out the doctrine of "irresistible impulse." However the decision proceeded "on the ground that the defence of irresistible impulse was not put up in this case, nor any medical evidence was adduced to that end".[34] The moral is that "M'Naghten Rules lead to harsh results," [35] and should be modified to embody new trends.

Whatever may be the impact of this case on the doctrine of "irresistible impulse" in the *State of South Australia*, there are other jurisdictions where this doctrine finds acceptance in their statute law. The Criminal Codes of Queensland (1899) and Western Australia (1902) have made provision permitting incapacity to control one's action as a ground of defence.[36]

In 1924 Tasmania embodied a similar provision in its criminal code. Section 16 in defining the defence of insanity has achieved greater precision [37] in this behalf.[38]

A majority of the Commission recommended as its second preference (and the minority's primary recommendation) retention of the M'Naghten Rules with an additional independent alternative clause exculpating an accused if he "was *incapable of preventing himself* from committing the act".

33. 1960 2 W.L.R. 588.

34. 76 L.Q.R. 329. See, Norval Morris, *op. cit.* pp. 291-298 particularly at pp. 296-298.

35. *Ibid.*

36. Sections 26, 27 of the Criminal Code Act of Queensland provide as follows:

Section 26 "Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question until the contrary is proved."

Section 27 "A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or *capacity to control his actions* or of *capacity to know* that he ought not to do the act or make the omission." Western Australia in 1902 copied the above provisions of the Queensland code.

"In his introduction to the code Sir Samuel Griffith discussing this defence wrote that "no part of the drafting of the code has occasioned me more anxiety but I may add that I regard no part of the work with more satisfaction. His satisfaction has proved to be justified. There is scant case law from these two states dealing with the defence of insanity and the general view of the profession of law and psychiatry in these states indicates a broad acceptance of the social wisdom of the legislation." Norval Morris, (Mueller Ed.) *Essays in Criminal Science*, p. 274-275.

37. The Code was enacted after Lord Atkins committee had submitted its report in England.

See Norval Morris *op. cit.* p. 275; R.C.R. p. 408.

38. Section 16; 1. "A person is not criminally responsible for an act done or an omission made by him.

It would thus seem that these statutory provisions afford a much wider ground of exemption from criminal responsibility than the M'Naghten Rules purport to do. The above provisions tend to eliminate the gap between the cognative and conative disorders affecting human behaviour, which in the light of modern research in psychology, it is unnecessary to maintain.[39]

V

In the United States the M'Naghten doctrine prevails in the majority of the States. But in some others the Rules have been extended to include " irresistible impulse." [40] However a special doctrine of criminal responsibility prevailed in New Hampshire. The courts in New Hampshire have expressly repudiated not only the M'Naghten Rules but all legal tests of criminal responsibility and have held that the question of responsibility is one of fact for the Jury to decide.[41]

Besides, a few newer trends are also noticed in regard to the law of insanity in the United States in this connection. In a recent case, *State* v. *White* [42] the New Mexico Court following the English Royal Commission's [42a] recommendation held that a person may be exempt from liability if his case falls within the M'Naghten tests or if he has been deprived of or lost the *power* of his *will* which would enable him to prevent himself from doing the act.

A more remarkable decision which has attracted attention in recent times is a decision of the court of Appeal for the District of

(i) When affilicted with mental disease to such an extent as to render him incapable of;

(a) understanding the physical character of such act or omission; or (b) knowing that such act or omission was one which he ought not to do or make; or

(ii) When such act or omission was done or made under an impulse which by reason of mental disease, he was in substance deprived of any power to resist.

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

39. *See Evatt J's* opinion in *R.* v. *Sodeman* (1936) 55 C.L.R. 192 at 227.

40. R.C.R. p. 409; Hall, *op. cit.* 490; see also, Burdick: *Law of Crimes* Vol. 1. p. 283.

41. See R.C.R. 411.

This view was first stated in 1869 by Judge Doe in instructions to the Jury which were approved on appeal. *State* v. *Pile* 1869, *ibid.*, 411. This doctrine was reasserted two years later in *State* v. *Jones*; For Criticism of New Hampshire Rule see Ellenbegen, 1 Journal of Criminal Science p. 178.

42. *270 p. 2nd 272* (N.M. 1954); Annual Survey of American Law (1954) 147.

42-a. R.C.R. *op. cit.*

Columbia.[43] In this case the court adopted the recommendation of the Royal Commission in toto.[44] The new test formulated by the court of Appeal is :

" It is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." [45]

The Durham Rule, however, has evoked much controversy and interest in the legal circles, in the United States.[46] But the doctrine will be of significance in any formulation of criminal policy. It may be of interest to note in this context that keeping in line with the new thinking in this direction the American Law Institute in its Model Penal Code has put forward the following provisions relating to mental condition.

1. A person is not responsible for Criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

2. The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.[47]

VI

These trends unmistakably mark a definite departure from the traditional M'Naghten tests and indicate the direction or directions in which both judicial and legislative thinking is moving. The law in India has remained static and the courts have not been able in view of the statutory provision in S. 84 Penal Code, to strike new ground for its interpretation during the past one hundred years that the Code has

43. *U.S.* v. *Durham* 214 F. 2nd 862.

44. (1954) Annual Survey of American Law 147.

45. *Ibid.*, 148.

46. See Annual Survey of American Law (1956) p. 90-93.

47. A.L.I. Model Penal Code S. 4·01 Tentative Draft No. 4 (1955) quoted in Annual Survey of American Law (1955) p. 137.

Prof. Jerome Hall has criticized both the Durham Rule and the proposal of the American Law Institute and has offered his own rule :

"A crime is not committed by any one who because of a mental disease, is unable to understand what he is doing and to control his conduct at the time he commits a harm forbidden by criminal law, in deciding this question with reference to the criminal conduct with which a defendant is charged, the trier of facts should decide (1) whether, because of mental disease, the defendant lacked the capacity to understand the physical nature and consequences of his conduct; and (2) whether because of such disease, the defendant lacked the capacity to realise that it was morally wrong to commit the harm in question"—65 Y.L.J. 761, 781. (1956).

been in opinion.[48] Both commentators on the code and the judicial tribunals have refused to face the problem of revision of the law although they have not always failed realise to its need.[49] Even sections 66 and 67 of the Draft Penal Code appeared to embody a wider rule.[50] The courts have occasionally attempted to mitigate the rigour of M'Naghten Rules by taking recourse to Ss. 54 and 55 of the Penal Code, thereby leaving the matter in the hands of the executive for lenient consideration. This however is not enough to meet the needs of modern social thinking on the problem of criminality and it may be worthwhile to examine the whole matter *de novo*. Statutory crystalisation of rules like this has a tendency to create stultification on the part of the profession and the Bench because one is not required to go out of the inelastic words of the Code and examine new ideas and trends which pervade other legal systems.

48. *Rustam Ali* v. *State* A.I.R. 1960 All. 333, *Hazara Singh* v. *State* A.I.R. 1958 Punj. 104 *Kandasami Mudali* A.I.R. 1960 Mad. 316 *Kalicharan* v. *Emp.* A.I.R. 1948 Nag. 20, *Deorao* v. *Emp.* A.I.R. 1946 Nag. 321 ; *Lakshmi* v. *State* A.I.R. 1959 All. 534 ; *State of Madhya Pradesh* v. *Ahmadulla*, A.I.R. 1961, S.C. 998.

49. *In re Manickam* A.I.R. 1950 Mad. 576, *Unniri Kannan* v. *State* A.I.R. 1960 Ker. 24. The Court went a step further in recognizing insane impulse as a ground of exemption under S. 84, I.P.C. Raju, Commentaries, Vol. 1 pp. 223-224.

50. Mayne, *Criminal Law*, 3d. Ed. p. 405.

He says : It is clear that S. 67 would grant to a lunatic an immunity extending as far as anything claimed by medical theorists.