



## Defence of Insanity under Indian Legal System: An Analysis

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### ABSTRACT

The subject of criminal liability and is still an unsolved problem of criminal jurisprudence. The characteristic features of insanity preclude the application of the retributive and deterrent theories of criminal justice against someone who is insane. The criminal's insanity often softens society's desire for revenge and sanctions would not be able to deter a person who may not comprehend their significance. The insanity defence in criminal law has primarily been built on the philosophy that the rehabilitative theory may work better in this case. Moreover, the fundamental maxim that an act does not constitute a crime unless it is done with a guilty intention, exempts an individual from criminal responsibility if that person was incapable of knowing the nature of the act or that the act was unlawful. The English criminal law system has adopted the M 'Naghten Rule the way it is. The M 'Naghten Rules, considered seminal to the modern treatment of insanity in criminal law. The Indian criminal law system has laid down the defence of insanity under section 84 of Indian Penal Code. This defence is based on the M 'Naghten Rule but there are some differences. This paper is an attempt to discuss the law relating to insanity.

**Keywords--** Criminal Law, Defence, Insanity, Medical insanity, M 'Naghten Rule, Guilty, Indian Penal Code, Mens rea

### I. INTRODUCTION

The subject of insanity is one of the difficult in the whole range of law of crimes and has given rise to endless discussions and controversies. It has been the cause of a war of great feelings between the medical and legal profession. The question of insanity is really not the question of fact. The legal question is of responsibility. From a survey of the history of insanity as a defence in the earlier law, if we may draw a deduction from the scant evidence, insanity is apparently a question of fact not gauged by inflexible legal tests. Recent tendencies indicate a development towards recognition of insanity not as a question of law, but as one of fact[1].

### II. OBJECTIVE OF THE STUDY

The object of the study is to discuss critically the law relating to the defence of insanity under the English and Indian criminal jurisprudence and will examine the similarities and differences in both the laws.

### II. METHOD OF THE STUDY

To accomplish the present study analytical research method has been used with the help of relevant case law and literature available in the form of report, journals, commentaries and cases to achieve the objective of the study.

### III. SCOPE AND APPLICABILITY OF SECTION 84 OF I.P.C

Section 84 of Indian Penal Code runs as, "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 of the act, or that he is doing, what is either wrong or contrary of law." The rationale of the law of insanity as embodied in the section has its source in the M'Naghten Rules.[2] The courts in India[3] have invariably followed the M'Naghten Rules referred to in our previous chapter while interpreting section 84 of Indian Penal Code. The section embodies the fundamental maxim of criminal law – "*Actus non facit reum nisi mens sit rea*" i.e. an act does not constitute guilt unless done with guilty intention. In order to constitute crime, the intent the act must concur, but in the case of insane persons, no culpability is fastened on them as they have no free will. Section 84 of the penal code incorporates two different mental conditions arising from unsoundness of mind which exempt a man from responsibility for his wrongful act namely,

1. that his unsoundness of mind was such that he was "incapable of knowing the nature of the act," or
2. that he did not know that what he was doing was wrong or contrary to law.

Of these, the first seems to refer to the offender's consciousness of the bearing of this act on those who are affected by it, the second, to his consciousness of its relation to himself. The presence of both or either of these mental conditions relieves the

offender from liability to punishment. The first category covers situations, namely automatism mistake or simple ignorance of fact. The second category is important because it is generally the test in numerous cases where mental disease has only partially extinguished reason. One example is the case of delusions, which apparently leave the mind unaltered outside the special ideas which they affect. It may be noted here that the Indian Law on the subject appears to be wider[4] than the English law, in so far as the test of insanity in the latter part of section 85 is concerned. In *Ashiruddin Ahmed v. The King*[5] the Calcutta high court tried to formulate a third test for insanity. The court held that to get the benefit of section 84 of the penal code, the accused must establish any one of the following three namely (1) that he did not know the nature of the act charged or (2) that he did not know it was contrary to law or (3) that he did not know it was wrong.

The relevant time in all the three cases is the time when the act charged was performed. The court further held that the third element was established because the accused believed that his dream was a reality. He had been commanded by someone in paradise to sacrifice his own son and believing it to be right, he killed his son. The court's interpretation in this case that wrong and contrary to law are two independent tests run counter to its earlier interpretation of Section 84 in *Geron Ali v. Emperor*[6], where it found "wrong" and "contrary to law" as forming one test only. It is really embarrassing to note that Mr. Justice Roxvurg, who was a member of the division bench in both *Geron Ali* and *Ashiruddin Ahmed* did not observe or clarify these obviously conflicting decisions. One would have been expected a more reasoned and elaborate judgment from the Calcutta High Court, particularly in view of the fact that it represented a departure from its earlier decisions on the point.

The clause in section 84 "or that he is doing what is either wrong or contrary to law" is split up into two parts relating respecting to (a) the wrongfulness of the act; (b) the unlawfulness of the act. But the structure of the clause shows that the words "what is either or contrary to law" should be taken as a whole and not split as in *Ashiruddin's* case, so as to convey the meaning that the accused would get the benefit of the section even in cases in which he was only incapable of knowing that his act was morally wrong but was aware that it was contrary to law and vice versa. It would be a contradiction in terms to say that an accused that is incapable of knowing that his act is contrary to law is incapable of knowing that his act is either wrong or contrary to law. In substance therefore the section means that a person who is capable of knowing that this act is either morally wrong or contrary to law cannot claim the benefit of the section.

In *Vishnu Govarya Yadhav v. the State of Maharashtra*[7] about two and a half months prior to the incident, *Vishnu Govarya Yadhav* had Quarreled with Pandurang in connection with a business of selling fish and Yadhav had threatened Pandurang by saying that he

would see how long Pandurang would carry on the business. One the day of incident, Yadhav inflicted a knife blow to Pandurang's chest as a result of which Pandurang died. Three eyewitnesses to the incident gave their evidence accordingly. Before the trial judge, Yadhav pleaded that on account of insanity he was incapable of understanding the nature and consequences of his act and sought the benefit of Section 84 of the Indian Penal Code (IPC). However, the Trial Court rejected the plea, and convicted Yadhav under Section 302 IPC sentencing him to life imprisonment. The High Court held that the trial judge had been fully justified in disregarding the plea of insanity raised by Yadhav. However, it was felt that in the light of the facts of the case and several decisions of the Supreme Court given on previous occasions, the conviction under Section 302 of the IPC could not be sustained.

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In *Lakshmi v. State*[8], where the court observed "what section 84 lays down is not that the accused claiming protection under it should not know an act to be right or wrong, but that the accused should be incapable of knowing whether the act down by him is right or wrong. The capacity to know a thing a quite different from what a person knows, the former is a potentiality, the latter is the result of it. If a person possesses the former he cannot be protected in law, whatever might be the result of his potentiality. Law will punish a man for doing something which he knows to be contrary to law, Whatever his private opinion may be regarding his ethics. Similarly, if an act is contrary to law its ignorance will not protect him when it is proved that he knew that what he was doing was morally wrong as knowledge of the law is presumed. Thus, it is the incapacity to know the legality as well as the morality of one's act that gives him he benefit of latter part of section 84, and in presence of anyone of them, the accused cannot avail of the protection of the section. This indicates the confusion which governs and judicial attitude with regard to the interpretation of rules which were formulated in 1843.

Not every type of mental unsoundness will render a person irresponsible in the eye of law. Only under certain circumstances is a person of unsound mind is exempted from criminal liability. To establish a

defence on the ground of insanity it must be proved that at the time of committing the alleged offence the accused was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing or, if he did not know it he did not know he was doing what was wrong. Non-liability is limited to those cases in which insanity affects the cognitive faculties of mind and the cases in which insanity affects only emotions and the will subjecting to offender to impulses, whilst, it leaves the cognitive faculties unimpaired, have been left outside the exceptions because it has been thought that the object of criminal law is to make people control their insane as well as their sane impulses to guard to guard against mischievous propensities and homicidal impulses. The accused must be presumed to intend the consequences of the action he take when his mind or faculties of ratiocination are sufficiently unclouded to understand what he is doing. If the accused was conscious that the act was one which he ought not to do and if the act was contrary to the law of the land, he is punishable.[9] The standard to be applied is whether according to the ordinary standard adopted by reasonable men the act was right or wrong. It is not mere eccentricity or singularity of manner that will suffice to establish the plea of insanity; it must be shown that the prisoner had no competent use of his understanding so as to know that he was doing as wrong thing in the particular act in question. it is only unsoundness of mind which materially impairs the cognitive faculties of mind that can form the ground of exemption from criminal responsibility. If the cognitive facilities have not been destroyed legal insanity under section 84 cannot be established.[10] The law with regard to applicability of section 84 was firmly state by the highest court of law in *Sheralli Wali Mohd. v. State of Maharashta*. [11] where the court held, all the following ingredients of section 84 must be proved namely:

- (a) that the accused was insane.
- (b) that he was insane at the time of the commission of the act and not merely before or after the act.
- (c) that as a result of the unsoundness of mind, the accused was incapable of knowing the nature of the act of that what he was doing what was either wrong or contrary to law.

It is by the test laid down by section 84 as distinguished from the medical test that the criminality of an act is to be determined.

#### IV. THE ORIGIN OF THE RULES ON THE INSANITY PLEA

Daniel M 'Naghten was found to be insane and acquitted on a charge of murdering Sir Robert Peel's private secretary, it being his intention to kill Pell. He was committed to the hospital but there was public outcry about the leniency of the verdict. The matter was debated in the House of Lords where it was decided to seek the opinion of the judges on legal principles relating to insanity. The rules laid down were:

1. everyone is to be presumed sane and to possess a sufficient degree of reason to be responsible for their crimes until contrary is proved to the satisfaction of the Jury.
2. to establish a defence of insanity, it must be clearly proved that at the time of committing the act, the accused was laboring under such a defect of reason, from the disease of the mind, as not to know he was doing what wrong.[12]
3. As to his knowledge of the wrongfulness of the act, the judge said: 'if the accused was conscious that the act was one which he ought not to do and the same time the act was contrary to the law of the land, he is punishable; and
4. Where a person under insane delusion as to existing facts commits an offence in consequence thereof, criminality must depend on the nature of the delusion. If he labours under partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. The Halsbury's Laws of England explain that where on a criminal charge, it appears that, at the time of the act or omission giving rise to the offence alleged, the defendant was laboring under a defect of reason owing to a disease of mind so as not to know the nature and quality of his act, or, if he knew this so as not to know that what he was doing was wrong he is not regarded in law as responsible for the act. The question whether, owing to a defect of reason due to the disease of the mind, the defendant was not responsible for his act is question of fact to be determined to the jury. Where the jury finds insanity is made out the verdict takes place in the form of not guilty due to insanity

There are three conditions to be satisfied in any case where a defence of insanity is raised that the accused was suffering from the disease of the mind – disease of the mind is a legal term and not a medical term. The law is concerned with the question whether the accused is to held legally responsible of his acts. This depends on his mental state and its cause complying with legally defined criteria. Lord Denning defined it as 'any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind. At any rate it is sort of disease for which a person should be detained in hospital rather than be given an unqualified acquittal'. The leading decision on what constitutes a disease of the mind was given in the case of Sullivan in which a distinction was drawn between insane and non-insane person automatism. Lord Diplock defined disease of the mind as 'mind as 'mind in the M'Naghten rule is used in the ordinary sense of the medical faculties of reason memory and understanding. If the effect of the disease is to impair these faculties so severely as to have either of the consequences referred to in the latter part of the rules, it matters not whether the etiology of the impairment is organic, as in epilepsy, or functional, or whether the impairment is itself permanent or is transient and intermittent, provided that it subsisted at the time of commission of the act'; this disease gave rise to a defect

of reason: where the defence of insanity is to succeed, the disease of the mind must give rise to a defect of reason. The reasoning power of a person must be impaired. The defendant must show that he was suffering from such defect of reason that he did not know the nature and quality of the act he had committed, or if he did know, that he did not know that what he was doing was wrong. If the accused is relying on the second limb, he must show proof that he did not know that it was legally wrong; and as a result, he either did not know that what he was doing wrong: If the accused's defect of reason is to be effective in establishing the defence of insanity, the insanity must affect his legal responsibility for his conduct as such he is not able to realise that what he was doing is wrong. Wrong here means something that is contrary to law. Where the person knows the nature or quality of the act and knows he was doing wrong, then the fact that he was acting under a strong impulse will not entitle him to a defence under the rules. In 1916, in the case of *R v. Codere*[13], the Court of criminal appeal explained the principles:

1. an objective moral test must be applied in cases where insanity is pleaded. The test of insanity is 'the objective standard adopted by the reasonable man';
2. in act is wrong according to that standard if it is punishable by law;
3. the accused must be deemed 'to know he was doing what was wrong' if he was aware that act was one which was punishable; and
4. the words 'nature and quality' do not refer to the moral aspects of what the offender was doing but solely to the physical facts.

## V. M'NAGHTEN RULE: CRITICISM

The British Royal commission on capital punishment that made its report in 1953, and criticized the rule. Experienced lawyers and doctors also criticized the rule. Doctors with experience on mental disease 'have contended that the M'Naghten test is based on the entirely obsolete and misleading conception of nature of insanity, since insanity does not only affect the cognitive faculties but affects the whole personality of the person including both the will and the emotions. Many scholars criticized the M'Naghten test because it only looked at the cognitive and moral aspects of the defendant's actions. An insane person may therefore often know the nature and quality of his act and that law forbids it but yet commit it as a result of the mental disease. The Royal Commission came to the conclusion that the test of insanity laid down in M'Naghten rules is defective and the law must be changed. Although the M'Naghten rules still hold the field in England despite the recommendations of the law commission, a new defence to murder known as 'diminished responsibility' was introduced by the Homicide Act, 1957. Provisions of the enactment states that :

1. where a person kills or is in the party of killing another, he will not be convicted of murder if he was suffering from such abnormality of mind as substantially

impaired his mental responsibility for his acts and omissions in doing or being a party to the killing;

2. a person who but for this provision would be liable, whether as principal or as accessory, to be convicted of murder will be liable instead to be convicted of manslaughter.

The procedure for the trial of insane person is laid down in the code of Criminal procedure, 1973, Chapter XXV of the Code of Criminal Procedure, 1973, Sections 328 and 329 deals with the procedure to be followed in case the accused in a lunatic. It says that when a magistrate while conducting an inquiry feels that the person is of unsound mind and consequently, incapable of making his defence, he may ask a medical officer to examine the person and postpone the trial of the case. Section 330 of Code of Criminal Procedure, 1973, provides that when an accused is found to be a lunatic, he will be released on bail provided that sufficient security is given that he will not harm himself or any other person. If sufficient security is not given or the court thinks that bail may not be granted, the accused will be detained in safe custody. Section 331 of Code of Criminal Procedure, 1973, provides that when an inquiry is postponed under code of Criminal Procedure, Sections 328 to 339 of Code of Criminal Procedure, 1973, ss. 328 and 329, the magistrate will resume the inquiry at any time after the person concerned ceases to be of unsound mind. The inquiry will proceed against the accused when the magistrate thinks that he is capable of making the defence as per Section 332 of Code of Criminal Procedure, 1973. Section 333 of Code of Criminal Procedure, 1973, says that when the accused is at the time of the inquiry is of sound mind, but he was of unsound mind, but he was of unsound mind at the time of committing of offence, the Magistrate will proceed with the case. Section 334 Code of Criminal Procedure, 1973, states that when any person is acquitted on the ground that at the time of committing the offence, he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it is contrary to law, the state will specify whether he committed the act or not. Section 338 of Code of Criminal Procedure, 1973 says that when the person detained under Sections 330(2) or 335 of Code of Criminal Procedure and the inspector general certify that in his judgment, he may be released without danger to himself or any other person, the state government may order him to be released or to be detained in custody or to be sent to a public lunatic asylum. The Code of Criminal Procedure, 1973 also makes favorable provisions for the infants.

## VI. LEGAL BUT NOT MEDICAL INSANITY: DISTINCTION

Section 84 of the Indian Penal Code lays down the legal test of responsibility as distinguished from the medical test. It may be observed that the absence of will arise not only from the absence of maturity of understanding but also from a morbid condition of mind. This morbid condition of the mind, which affords an

exemption from criminal responsibility, differs in the medical and legal point of view. According to the medical point of view, it is probably correct to say that every man at the time of committing a criminal act is an insane and therefore needs an exemption from criminal responsibility; while from the legal point of view, a man must be held to be sane so long as he is able to distinguish between right and wrong:[14] So long as he knows that the act done is contrary to law, a test which has been incorporated in section 84.

The Supreme Court has ruled 'mentally diseased' persons and psychopaths cannot seek immunity from criminal proceeding as the burden is on them to prove the insanity at the time of committing the offence. So every person, who is mentally diseased, is not ipso facto exempted for criminal liability. A distinction is to be made between legal insanity and medical insanity." a Bench of Justices Arijit Pasayat and DK Jain said while upholding the life conviction of a man who chopped off his wife's head. Mere abnormality of mind, partial delusion, irresistible impulse or compulsive behavior of a psychopath affords no protection from criminal prosecution as provided under Section 84 of the Indian Penal Code (IPC), the apex court held. The Bench said Section 84 of the IPC which provides immunity from criminal prosecution to persons of unsound mind would not be available to an accused, as the burden to prove the insanity would rest with them as provided under Section 105 of the Indian Evidence Act.[15]

*In Venkatesh v. State of Karnataka*[16] Evidence on record showed that the accused stopped victim, sprinkled chili powder on his face, caught hold of his hair and assaulted him on his face, head and other parts of his body. Ingredients of Section 307[17] were proved. Careful scrutiny of evidence of accused, victim injured and other eye-witnesses established fact that accused was not of unsound mind when assault took place. It was held that benefit of Section.84, Indian Penal Code cannot be extended to him and Conviction not liable to be interfered with. However, in view of fact that about three years prior to the incident the accused was treated for schizophrenia and if he was sent back to prison, it would lead to mental imbalance or mental disorder, so due to the evidence of fact that the accused was having records of being insane medically but not legally his sentence of 5 years was modified to simple imprisonment of 2 years 20 days.

## VII. UNSOUNDNESS OF MIND MUST BE AT THE TIME OF COMMISSION OF THE ACT

The first thing that a court has to consider when insanity has been pleaded in defence is whether the accused has established that at the time of committing the act he was of unsound mind. The word 'insanity' is not used in section 84 of the penal code. The section uses the expression 'Unsoundness of mind'. There appears to be no difference in the simple meaning of the

two words which may mean a defect of reason from a disease of the mind. The Code has not defined what unsoundness of mind is. It assumes that the phrase will be understood, but few will dare to explain it. Stephen[18] explains this term to be equivalent to insanity, which means, "A State of mind in which one or more of the above named functions (i.e. of feeling and knowing, emotions and willing) is performed in an abnormal manner or not performed at all by reason of some disease of the brain or the nervous system".

The use of the more clear and comprehensive term 'unsoundness of mind' has the advantage of doing away with the necessity of defining insanity and of artificial bringing within its scope various conditions and affections of the mind which ordinarily do not come within its meaning, but which none the less stand on the same footing in regard to exemption from criminal liability. The expression 'unsoundness of mind' covers mental defects both congenital and post natal, such as idiosyncrasy, madness, delirium, melancholia, mania, dementia, hallucination and every other possible form of mental affects known to medical science by whatever name designated[19]. It is equivalent to 'non compos mentis' and it may be temporary or perpetual or due to any cause[20]. It is only that unsoundness of mind which impairs the cognitive faculties of the mind that can earn exemption under Section 84 where it was proved in case[21] that the accused had committed multiple murders while suffering from mental derangement of some sort and it was found that there was an absence of any motive; absence of any secrecy; want of prearrangement; and want of accomplice.

It was held that these circumstances were insufficient to support the inference that the accused suffered from unsoundness of mind of the kind referred to in section 84. The crucial point of time at which the unsoundness of mind of the accused should have existed is the time when the offence was actually committed in India.[22] This is a question of fact to be decided on merits of each case. There mere fact that on former occasions the accused had been occasionally subject to insane delusions or had suffered from derangement of mind and subsequently he had behaved like a mentally deficient person is per se insufficient to bring his case within the exemption.[23]

*In Rattan Lal v. State of M.P.*[24] it was well settled by the court that the crucial point of time at which the unsoundness of mind should be established is the time when the crime is actually committed and whether the accused was in such a state of mind as to be entitled to benefit of section 84 can only be established from the circumstances which preceded, attend and followed the crime. In other words, it is behavior antecedent, attendant and subsequent to the event which may be relevant in ascertaining the mental condition of the accused at the time of commission of offence but not those remote in time[25].

*In Kamala Bhuniya v. State of West Bengal*[26] Accused was tried for the murder of her husband with an axe. A suit was filed against the accused, she alleged

to be insane at time of incident, the Investigating Officer at initial stage recorded about the mental insanity of accused. Duty of prosecution was to arrange for medical examination of the accused, it was held that there was no motive for murder. Accused made no attempt to flee away nor she made any attempt to remove incriminating weapon Failure on part of prosecution was to discharge its initial onus about presence of *mens-rea* in accused at time of commission of offence. Accused was entitled to benefit of Section 84. And therefore the accused was proved insane at the time of commission of the offence and was held guilty of Culpable Homicide[26] and not of Murder.[27]

### VIII. INCAPACITY TO KNOW THE 'NATURE OF THE ACT'

The word incapacity of 'Knowing the nature of the act' embodied in section 84 of the Indian penal code refer to that state of mind when the accused was incapable of appreciating the effects of his conduct. It would mean that the accused is insane in every possible sense of the word and such insanity must sweep away his capacity to appreciate the physical effects of his acts[28].

### IX. INCAPACITY TO KNOW 'RIGHT AND WRONG'

In order to avail of the defence of insanity under the latter part of Section 84 namely "or that he is doing what is either wrong or contrary to law" it is not necessary that the accused must be completely insane, his reason need not be completely insane, his reason need not be completely extinguished. What is required is to establish that even though the accused knew the physical effects of his act yet he was incapable of knowing that he was doing what was either "wrong" or "contrary to law". This part of section 84 has made a new contribution to criminal law by introducing the concept of partial insanity as a defence to criminal insanity[29].

However as a practical matter there would probably be very few cases where insanity is pleaded in defence of a crime in which the distinction between the "moral" and "legal" wrong would be necessary. Undoubtedly insanity may be pleaded as a defence in any crime, yet it is rarely pleaded except in murder cases. Therefore, this fine distinction may not be very useful for the decision in a case. The Indian penal code has advisedly used either "wrong or contrary to law" in section 84, perhaps anticipating the controversy.

### X. IS IRRESISTIBLE IMPULSE A VALID DEFENCE?

One of the essential elements of criminal responsibility is the existence of a free-will, and where this is negative as in the case of compulsion, there is no

crime. The insane besides being entitled to the benefits of all forms of external compulsion to which the same may be subject, have the additional advantage of being allowed to plead the existence of a species of internal compulsion. The compulsion arising from a diseased state of the mind affecting the "emotions" and "will" of offender is known as the irresistible impulse or uncontrollable impulse and is treated as part of the law of insanity. Some eminent legal authorities' medical writers are convinced that even though a person may know the nature of his act and that it is morally wrong or contrary to law, yet he may be incapable of restraining himself from doing it because he might have lost the power to choose between right and wrong and his freedom of will completely destroyed by the mental disease[30].

### X. CONCLUSION

In India ever since the penal code came into operation nearly a century ago, the interpretation of section 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 strait-jacket of these rules notwithstanding the strides which medical; science ad psychiatry have made during this period. The court 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. However Shamshul Hude is of the opinion that the plea of irresistible impulse would not be itself be a defence, but should be a good defence only where there is evidence of antecedent unsoundness of mind. The irresponsibility will however not be extended to one who with no mental disorder acts from overmastering, anger jealously. There must be insanity first. Reforms in this connection are proposed by various other jurists whom we shall take up in the letter part of our study. With knowing the above contributions of Section 84 of Indian penal code in the field of defence of insanity in criminal law, there must be some evidence for supporting the legal provisions laid down by our criminal law.

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