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Subject: **Law**

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Paper : **Substantive Criminal Law**

Module : **24- Insanity and Intoxication as Exceptions to Criminal Liability**

ज्ञान-विज्ञान विमुक्तये

Insanity and Intoxication as Exceptions to Criminal Liability

Quadrant- I- Description of the Module

Description of Module	
Subject Name	Law
Paper Name	Substantive Criminal Law
Module Name/Title	Insanity and Intoxication as Exceptions to Criminal Liability
Module Id	Module 24
Pre-requisites	A general understanding of the primary principles of criminal law is required for a proper understanding of this module.
Objectives	To understand the mental capacity required to incur criminal liability To study the historical evolution of the principles regarding legal insanity as an excuse to criminal liability To appreciate the difference between legal insanity and medical insanity To understand the implications of Section 84 of the Indian Penal Code To explore the nuances of the excuse of involuntary and voluntary intoxication under Section 85 and Section 86 of the Indian Penal Code
Key Words	mental capacity, legal insanity, medical insanity, nature of the act, wrong or contrary to law, M'Naghten Rules, Wild Beast Rule, Irresistible Impulse

Quadrant- II- E-Text

Introduction

Criminal law is based on the idea of state sanctions against any person who has violated certain principles which are deemed to be fundamental to continued societal existence. The state mechanism takes actions against such erring individuals on behalf of the society who are proven to have been guilty of violating the criminal code of the society. As criminal liability is based on actions which are supposed to be within the volitional control of the individual, the law also recognizes exceptions to criminal liability on such situations where due to some reason, the

individual lacked a certain mental capacity and thus cannot be blamed for his actions. In this module, we shall be focusing on the mental incapacity caused by reasons of insanity and intoxication.

Foundation of Criminal Liability

The philosophical foundation of criminal liability has been beautifully expressed in the maxim of '*actusreus non facitreum nisi mens sit rea*'. When translated, the doctrine means "the act is not culpable unless the mind is guilty". Thus in order for a person to be held criminally liable, two elements need to converge;

1. That the person must have committed an act/omission which the criminal law of the state prohibits.
2. That the act/omission in question must have been committed by the person with guilty mind.

Committing an act/omission prohibited by the laws of the state

The act/omission committed with a guilty

On the first issue of an act/omission being adjudged criminal by the law of the land, the nature of the act/omissions which are so prohibited depends on the socio-ethical priorities of the community in question.[1] However, across national jurisdictions, most perceptions of criminal wrongs are universally common in their recognition.[2]

On the second issue of a guilty mind, it mandates that in order to hold a person legally responsible for some criminal conduct, it is necessary that the person who did the act had at the time sufficient mental capacity to form a criminal intent. If the person is proved to have committed the criminal act but without the said mental capacity, he cannot be held criminally liable for his actions. The reasons behind him lacking the mental capacity can be classified into three primary categories;

1. Where the person is of immature age and has not yet developed the mental capacity required to form a criminal intent.
2. Where the person is of unsound mind and by reason of his mental state, cannot be said to have a guilty intent.
3. When due to reason of intoxication, the person has lost the mental capacity to form an informed intent.

[1] For example, whether homosexuality is to be a criminal conduct or not depends very deeply on the socio-ethical inclinations of the community and different rules can be found in different jurisdictions.
[2] Offences like murder, theft and robbery are common across the variety of national jurisdictions.

Reasons Behind Lacking Mental Capacity

Here we will be look at the second and the third factor which contribute to the mental incapacity of the person who has committed a criminal act.

Insanity as an Excuse to Criminal Liability

In addition to the maxim of '*actusreus non facitreum nisi mens sit rea*'which serves as a basis for the defense of insanity,[3] there are three other maxims which establish the peculiarity of man of unsound mind.

Furiosus furore suo puniter

This maxim means that "A mad man is punished by his madness alone". This maxim emphasizes that when a person suffering from mental defect commits a forbidden act, there is no need to punish him further through the penal mechanism when his mental defect is a punishment in itself.

Furiosus nulla voluntas est

This maxim means that "A mad man has no will". it stresses the obvious point that a man not in control of his senses cannot be said to have a conscious and deliberate will of his own.

Furiosus absentis loco est

This maxim means that "A mad man is like one who is absent". This maxim is perhaps the most categorical recognition of the plight of a man suffering from insanity wherein he is equated with a man who is absent and thus can never be held criminally liable.

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[3] K I Vibhute (eds), *PSA Pillai's Criminal Law* (Tenth Edition Lexis NexisButterworths 2008) 137; "Insanity or mental abnormality is one of the general exceptions to criminal liability recognized by the IPC. This is based on the principle of mens rea as discussed earlier. By virtue of the maxim 'actusreus non facitreum nisi mens sit rea', an act forbidden by law is not punishable if it is unaccompanied by a guilty mind."

Most of the early jurists in England like Hawkins[4] and Stephen[5] propose the general recognition of the theory that a person of unsound mind cannot be held guilty of a crime. However there were considerable uncertainty as to the standard by which and the manner in which such unsoundness of mind could be determined. [6] This confusion regarding the standard of determination affected not simply the mind of the jurists but also of the judges. The same can be seen in some earliest decisions in relation to the plea of insanity.

Wild Beast Theory in the Case of *R v Arnold*[7]

In this case Tracy J. proposed the theory which has come to be known as the 'wild beast theory' for determining the exact kind of mental defect which should be exempted from criminal liability. He contended that not every oddity in a man's conduct can be exempted on the ground of insanity. He asserted that in order to be exempted from criminal liability a man's comprehension should be no more than that of an infant or a wild beast and consequently incapable of distinguishing between good and evil.[8]

The Delusion Test in the Hadfied Case[9]

In this case the defense attorney was able to convince the jury that the plea of insanity cannot be confined to total deprivation if understanding. He urged that the test of insanity should also take into account fixed insane delusions which operate only within given contexts and do not affect the total personality of the person in entirety.

Bowler's Case[10] **of Right and Wrong**

This was a case which saw a departure from the 'good and evil' conceptual framework to the expression of 'right and wrong'. Thus the test of insanity was held to be based on the capacity of man to distinguish between right and wrong. Though in the case itself, Lord Mansfield C.J. used the phrase 'right and wrong' synonymously with 'good and evil', this case prompted a trend where in future cases, the courts started placing greater emphasis on the conception of 'right and wrong."[11]

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[4] R.C. Nigam, *Law of Crimes in India Vol.I* (Asia Publishing House 1964) 357; "those who are under a natural disability of distinguishing between good and evil, as infants under the age of discretion, idiots and lunatics, are not punishable by criminal prosecution whatsoever."

[5] ibid 357; "No act is a crime if the person who does it is at the time when it is done prevented (either by defective power or) by any disease affecting his mind (a) from knowing the nature and quality of the act, or (b) from knowing that the act is wrong."

[6] ibid 357 see Stephen's criticism of Britton.

[7] (1724) 16 St. Tr. 695

[8] *R v Arnold* (1724) 16 St. Tr. 695; "If he was under the visitation of God and could not distinguish between good and evil, and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever. On the other side, we must be very cautious, it is not every kind of frantic humor, or something unaccountable in a man's action, that points him out to be such a mad man as is exempted from punishment; it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute or wild beast. Such a one is never the object of punishment."

[9] (1800) 27 St. Tr. 128

[10] (1812) 1 Collinson Lunacy 673

[11] Nigam (n 4) 359

M'Naghten Case[12]

This case presents the most seminar landmark in the evolution of the law of insanity. The case is important not because of the principles enunciated in it but because of the evolution it inspired as a reaction to its controversial decision. The case involved the murder of Mr. Edmond Drummond who was the private secretary to Sir Robert Peel, the then Prime Minister of England. Mr. DenielM'Nathten shot and killed Mr. Edmond under the misconception that he was in fact Mr. Peel. His motivation to kill Mr. Peel had its origins in his delusional belief that Mr. Peel had injured him. He was acquitted by the jury on the grounds of insanity. The medical evidence showed that Mr. Edburn was not in his control because of a condition of morbid delusion.

The trial of Mr. M'Naghten and his acquittal created a stir. Due to the furor concerning his acquittal and the evident ambiguity in the laws concerning legal insanity, five questions were formulated and by the House of Lords and referred to fifteen judges so as to get a clarification on the law concerning a plea of legal insanity.[13] What is known as the M'Naghten Rules on legal insanity is nothing but the composite version of these questions and the answers to these questions.

M'Naghten Rules

The M'Naghten Rules can be summarised in the form of the following five propositions;[14]

1. Every person is presumed to be of sound mind and as capable of possessing the mental capacity so as to be responsible for his criminal conduct. If the contrary is being claimed, the burden of proof is on the person so claiming.

2. In order to be exempt from the criminal liability of a conduct, it must be proved that at the time of committing the act, the person due to a defect of mind was not aware of nature and quality of the act he was doing, or if he did know it, he did not know that what he was doing was wrong.

3. If a person was conscious at the time of doing the act, to the fact that he ought not have done the act or that his act was contrary to law of the land, he is to be held criminally liable.

4. A medical witness who does not have prior knowledge of the victim before the trial should not be implored on question of insanity of the accused on the evidence before him.

5. When a person commits certain acts suffering from delusional insanity and thus not knowing the true nature of his acts, he will be held liable to the same degree as he would be if his conduct is evaluated in terms of the facts imagined by him.

Legal Insanity vis-à-vis Medical Insanity

Here is it important to distinguish between the legal conception of insanity and the medical conception of insanity. The medical conception of insanity covers many more mental states than

[12][1843] All ER Rep 229
[13] Nigam (n 4) 360
[14] ibid 362-63

is covered the legal conception of insanity. There are many conditions of mind which affect the emotional capacity of a person but which are not taken into consideration by law in determining whether the person was suffering from insanity so as to be excused from criminal liability. The law is not concerned with the medical condition of a man. It is only concerned a particular sphere of mental defect which has affected the ability of a man to know the nature of his acts. The difference between the points of concern and emphasis is best summed up in the words of Prof. Goodhart;[15]

> "With insanity as such, the law has no concern. It is concerned with insanity only in so far as the disease has caused an act. In other words, the doctor asks: "Is the man insane?" The lawyer's question is: "Did the insanity cause the act?" If it did not, then it is immaterial whether or not the man is insane. Insanity may cause an act by destroying (a) a man's reason, (b) his moral character. The medical profession urges that the law should take into account both these results of insanity. This the law has refused to do…."

Indian Law on Insanity

The Indian law on insanity as an excuse to criminal liability is incorporated in section 84 of the Indian Penal Code;

> 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.

Is pertinent to note that the contents of section 84 are mostly similar to the M'Naghten Rules. The initial draft for the provisions regarding insanity in IPC were however significantly different. The earlier draft sections 66 and 67 had little resemblance to section 84 as it appears in the code.[16]

Draft Section 66
Nothing is an offence which is done by a person in a state of idiocy.

Draft Section 67
Nothing is an offence which is done by a person in consequence of being mad or delirious at the time of doing it.

As is evident, the scope of these draft sections was much wider than the M'Naghten Rules and Section 84 as it stands. For example, under the draft section 67, the scope of the immunity granted to a mad person is not confined any particular effect that the madness might have had on him. Instead it extends to all the possible influences of madness. If the act was in consequence of his madness, even though he was acutely aware about the nature and consequences of his actions, the courts would not have been able to punish him. Similarly, the ambit covered by draft section 66 is also expansive as it excuses a person from the liability of his acts if done in a state of idiocy, whether the act is question was as a result of his idiocy or not.

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[15] Professor A.L. Goodhart, 'Recent Tendencies in English Jurisprudence' 1929 Canadian Bar Review. Cited in Nigam (n 4) 365
[16] Nigam (n 4) 387

Draft section 66 and 67 were drafted before the before the M'Naghten Rules were propounded. After the enunciation of the M'Naghten Rules, necessary modifications were made in the form of section 84 to ensure that the provision is in line with the M'Naghten Rules.[17]

Analysis of Section 84

In order to be excused from criminal liability under section 84, the following needs to be proved;

1. At the time of committing the offence, the accused was of unsound mind.
2. Because of the unsoundness of mind, he was not capable of knowing the nature of the act at the time of committing the offence.
   Or
3. Because of the unsoundness of mind, he was not capable of knowing that he was doing something either wrong or contrary to law at the time of committing the offence.

Unsoundness of Mind

It is important to note that it is unsoundness of mind at the time of committing the offence[18] which matters and any unsoundness of mind before or after the commission of the offence would not afford the protection of section 84.[19] The circumstances before and after the crime may be relevant in determining the state of mind of the accused[20] but are not relevant for the purposes of the applicability of section 84.[21]

The term 'unsoundness of mind' has not been statutorily defined. However, its general interpretation seems to be settled and it is normally equated with insanity[22]. There are no definite groupings in relation to the type of insanity recognized by the courts.[23] The term insanity includes many mental conditions in its fold.[24] However for the purposes of Section 84, the only kind of insanity which matters is a cognitive impairment which renders him incapable of knowing the nature of his acts or knowing that he is doing something wrong or contrary to law.[25] There

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[17] Nigam (n 4) 388

[18] ibid 366; "The crucial point of time for deciding whether the benefit of Section 84 should be given or not is the time when the offence takes place."

[19] *DahyabhaiChhaganbhai Thakkar v State of Gujurat* AIR 1964 SC 1563; "When a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed."

[20] Vibhute (n 3) 143; "the existence of unsoundness of mind prior to the commission of the offence or after the commission of the offence is neither relevant nor per se sufficient to bring his case within the exception provided by s. 84, though it may be taken into consideration for the purpose of deciding whether the accused was insane."

[21] *Dahyabhai* (n 19); "Whether the accused was in such a state of mind as to be entitled to the benefit of s. 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime."

[22] Nigam (n 4) 366

[23] Vibhute (n 3) 140; "There are no hard and fast rules in respect of what are the kinds of insanity which are recognized by courts as legal insanity."

[24] Nigam (n 4) 366; "Insanity has been very widely interpreted to include lunacy, mental derangement, mental disorder, madness and so on."

[25] Nigam (n 4) 366; "But we are not concerned with all those types of insanity known to medical science, as we have explained above. The only unsoundness of mind that would result in a complete excuse would that unsoundness of mind by reason of which the accused was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law."

does not seem to be any classified grounds which must have been the cause of the unsoundness of mind. In other words, the reasons behind the unsoundness of mind are not relevant and only point of consideration is that the person was of unsound mind. This state of mind of an accused has come to be known as legal insanity.

Incapacity to know the Nature of Act

No kind of mental defect will come to the aid of a person if the said mental defect did not affect his cognitive abilities to know what he was doing. Emphasis here needs to be placed on the word "know" as it appears in Section 84 which means that if unsoundness of mind affects some other aspect of mental aptitude like emotions, it would not be covered under Section 84 unless the cognitive capacity was impaired.[26] If a person of unsound mind nevertheless retained his ability to know the nature of his acts, section 84 cannot be applied.[27]

By 'nature' of act, what is implied is the physical and immediate consequences of the act.[28]

In the words of Mayne[29]

> A man is properly 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.

In order to illustrate the circumstances which would be covered by the above description, one may refer to a scenario depicted by Sir James Stephen.[30] When a person severs the head of another man who was asleep in order to enjoy the fun of watching the man search for his head, it is clear that the person lacks even the basic grasp of what he is doing.

"Wrong" or "Contrary to Law"

There have been authoritative cases in England where the term 'wrong' in the context of M'Naghten Rules has been interpreted in the sense of a legal wrong and not a moral wrong.[31] However in view of the fact that section 84 makes a clear mention of the phrase 'contrary to law', it seems that the better opinion is to understand the term 'wrong' in its moral sense and not in a legal sense.[32] It may also be admitted that in a practical sense, this distinction between

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[26] ibid 368; "…in order to entitled an accused to the benefit of Section 84, insanity must have affected "cognitive faculties" If it merely affected his 'will', or 'emotion', leaving his cognitive faculties substantially unimpaired, he cannot be exempted from responsibility, though it may be a case of extenuation."

[27] *AmritBhushan Gupta v Union of India* AIR 1977 SC 608; "If, at the time of the commission of the offence, the appellant knew the nature of the act he was committing, he could not be absolved of responsibility for the grave offence of murder."

[28] Vibhute (n 3) 140; "A person can be said incapable of knowing 'nature' of the act if he, at the time of doing it, was ignorant of the physical characters of the act."

[29] Cited in Nigam (n 4) 367

[30] Vibhute (n 3) 140

[31] *R. v Windle* (1952) 2 Q.B. 826; "In the M'Naghten Rules 'wrong' means contrary to law and not 'wrong' according to the opinion of one man or a number of people on the question whether a particular act might or might not be justified."

[32] Vibhute (n 3) 140; "The word 'wrong' is interpreted to mean a moral wrong and not a legal wrong since s. 84 uses the alternative phrase 'contrary to law'. The very fact that the authors of the IPC used both the words 'wrong or contrary to law' indicates that the word wrong does not mean contrary to law for if it is taken as 'contrary to law' the already existing phrase becomes redundant and the legislature would never use a word which is redundant."

legal wrong and moral wrong has been held to be more of an academic concern than something which is likely to have an impact on the decision making of a case.[33]

If a person did not know what he was doing to be wrong, he would not be criminally liable even if he knew the nature of the act.[34] It also needs to be appreciated that the phrases 'wrong' and 'contrary to law' can only be applied alternatively. That is, if a person was aware either that he is doing something wrong or doing something contrary to law, he is punishable under the law.[35]

The Plea of Irresistible Impulse:

The M'Naghten Rules over the years has drawn criticism in relation to the mental conditions not afforded protection by its ambit. One of the most recurring issues in this regard is that of 'irresistible impulse' or 'uncontrollable impulse'. Irresistible impulse refers to a state of mind where man loses control of not his awareness of what he is doing but of the will to stop himself from doing it. It is a mental condition affecting the emotion of a person and demolishing his control over his own will.[36] This plea has been consistently rejected by courts in England.[37] Even in India, the courts have not been favourable to such an argument.[38] Though this defense of irresistible impulse is legalized in many states in USA, with the most categorical ruling known in the form of the Durham Rule,[39] such an approach has also drawn stringent criticism.[40] Some of the major problems in accepting irresistible impulse as a defence are the following;

1. The difficulty in distinguishing between resistible impulse and irresistible impulse.
2. The availability of such a defence would instigate men to lose control of their impulse.

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[33] Nigam (n 4) 370; "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 the 'legal' wrong would be necessary. Undoubtedly, insanity may be pleaded as a defence is any crime, yet it is rarely pleaded except in murder cases. Therefore this distinction may not be very useful for the decision in a case."

[34] *Geron Ali v Emperor* AIR 1941 Cal 129; "The section however does not stop there. It goes on to deal with another type of insanity which would also take away from the criminality of an act. It says that if a person does an act and at the time of doing the act by reason of insanity does not know that the act is either wrong or contrary to law then also he would be protected even though he knew the nature of the act. This is perfectly clear from the section and it is nothing but sound common sense."

[35] ibid ; "If he knew that what he was doing was wrong then he will not be protected even if he did not know that it was contrary to law. If he knew that what he was doing was contrary to law then also he would not be protected even though he did not know that what he was doing is wrong. The law will punish a man for doing something which he knows to be contrary to the law whatever his private opinion may be regarding its ethics. Again if an act is contrary to law ignorance of the law will not protect a man from punishment when it is shown that the man knew that what he was doing is wrong."

[36] Nigam (n 4) 373; "The answers given by the judges is M'Naghten Case have been the subject of much consideration and criticism by legal and medical writers ever since their birth. One of the common criticism leveled against them is that they make no allowance for 'irresistible impulse', a species of insanity according to medical experts, which affects the will. According to them, insanity affects not only a man's belief but also, and indeed, more frequently his emotion and will. in such cases, according to them, although he was aware of the nature and quality of his act and knew it to be wrong, if he is irresistibly impelled to do what he did, he should be exempted from criminal responsibility."

[37] *Sodeman v R* (1936) 2 All E.R. 1138

[38] *Re Raja Gopala* AIR 1952 Mad 289

[39] *Durham v U.S.* (1954) 214 D. 2d 862; "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

[40] Nigam (n 4) 376-77

Thus it is well settled that the statutory framework of India does not admit of an exemption where a person has merely lost control over his actions and not the ability to know the nature of his actions.

Insanity and Analogous Concepts

While dealing with the defence of insanity, few other mental states also need to be discussed to determine or fix criminal liability in such cases. The issue of somnambulism is one such area. Somnambulism , commonly known as sleep-walking is a disease in which the patient walks while he is actually sleeping and may indulge in criminal actions. If it is proved that a person committed a criminal act while sleep walking, the element of mens rea can be positively ruled out as somnambulism is an abnormal medical condition in which the person has no control over his actions as the mind is still in a state of sleep. In Re Pappathiammal[41], an interesting set of facts evolved when a woman was accused of attempting to commit suicide and murdering her child. The Madras High Court held that if it can be proved that at the time of committing the crime the accused was suffering from somnambulism, it can be a very strong ground for defence. However, in the instant case, although the court was satisfied that some puerperal disorder may have been in existence, it was not established with certainty. The conviction was upheld but the punishment reduced substantially on account of the fact that there was sufficient evidence placed before the Court to show the possibility of Somnambulism although a confirmation to the effect could not be reached. Likewise, automatism is a condition in which the accused has no control over his actions. The reasons for it may be many but if it shown in a court of law that actions of the concerned individual were automated when he was committing the crime, the element of mens rea can be ruled out.

Likewise, another mental state which has gathered a lot of attention lately is Battered Woman Syndrome, an outcome of a depressive disorder which owes its origin to domestic violence. The leading case on this point is that of R.v. Kiranjit Ahluwalia.[42] What is significant about Battered Woman Syndrome is that it leads to a violent action resulting from a very long period of piled up emotions. Unlike the grave and sudden provocation, this phenomenon is not a sudden reaction to an irresistible stimulus. Rather, there is a long gap of time between the stimulus and the response as a consequence of which, it is difficult to dilute mens rea. For instance, in the case of Ahliwalia, the accused set fire to her sleeping husband. On being questioned she revealed of various forms of domestic violence, physical and mental that she had been suffering silently at the hands of her tormentor for ten years of her married life. Finally one day, when he threatened to burn her face with a hot iron and 'break her ankles', she decided to burn him down and put an end to her problems. Medical evidence suggested that Ahluwalia was not in a normal frame of mind as she had developed a depressive disorder which was later on termed as the Battered Woman Syndrome. On that account, it was held that the accused was guilty of manslaughter and not murder and her mental state was taken into account to partially dilute the *mens rea* of murder, thus bringing it down to the level of manslaughter. However, as a general rule, courts in India would not accept this defence as the element of time-gap between the stimulus and response rules out the possibility of a grave and sudden provocation.

Intoxication as an Excuse to Criminal Liability

In English law, from an earlier era where drunkenness was considered an aggravating factor while deciding on punishment, law has since reformed itself to the point where insanity

[41] AIR1959 Mad 259

[42] [1992] 4 All. E.R. 889

produced by drunkenness is held in the same regard as insanity produced by any other cause.[43] However, the drunkenness has to be involuntary as voluntary drunkenness does not offer any protection.

The Indian law on intoxication has been incorporated in Section 85 and Section 86 of the Indian Penal Code.

Section 85 of the Indian Penal Code provides the following;

> Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

It has to be noted that this section is constructed in the same manner as Section 84 of the code with involuntary intoxication substituting unsoundness of mind as the factor impairing the cognitive capacity of the accused. Thus the scheme of principles applicable in case of a excuse of insanity are also applicable to an excuse of involuntary intoxication. The term 'without his knowledge' refers to a state of ignorance on the part of the accused as to the consumption of the substance which caused the intoxication.[44] Whereas, 'against his will' refers to a scenario where the substance has been administered to the accused by use of force or by compelling him.[45] In order to avail the protection of section 85, the accused needs to prove the following;

1. He was intoxicated at the time of committing the offence
2. The thing which intoxicated him was administered to him without his knowledge or against his will.
3. Due to the intoxication, he was incapable of knowing the nature of the act he was doing.
   Or
   Due to the intoxication, he was incapable of knowing that what he was doing was wrong or contrary to law.

Section 86 provides the following;

> In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

It stipulates that when a person is voluntarily intoxicated, he is deemed to have the same knowledge as he would have had had he not been intoxicated. Thus, in an offence requiring the presence of particular knowledge, the plea that the person lacked the knowledge due to voluntary intoxication will not be accepted. However, in offences requiring a particular intent, voluntary intoxication may be pleaded as the ground for lacking such intent.[46]

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[43] Nigam (n 4) 388-89
[44] Vibhute (n 3) 155
[45] ibid 155
[46] Nigam (n 4) 391

The most authoritative ruling in relation to Section 86 has been provided in the case of Basudeo v State of Pepsu[47] wherein it has been categorically asserted that in case of voluntary intoxication, the law only allows the knowledge required for the offence to be presumed to be present in the accused. The intention cannot be presumed and must be gathered from surrounding circumstances keeping also in mind the degree of intoxication.[48]

Thus, IPC makes a distinction between voluntary and involuntary intoxication. Where as in a case of voluntary intoxication, the law provides for presumption of knowledge, in case of involuntary intoxication it provides for exemption from liability, provided the accused was in a condition of not forming requisite mens rea due to such intoxication.

Summary

1. Mental Capacity of the accused at the time of committing the alleged act is one the primary considerations while imposing criminal liability.
2. The early history of legal insanity in English law is marked by unsatisfactory parameters like Wild Beast Theory and Delusion Test.
3. The M'Naghten Rules provided categorical parameters for determining legal insanity by proposing the test of being incapable of knowing the nature of the act or of knowing that what is being done is wrong.
4. Legal insanity is different from medical insanity and is applicable to a more restrictive state of mental conditions.
5. Section 84 of the Indian Penal Code is based on the principles of the M'Naghten Rules.
6. The term 'nature of the act' in Section 84 refers to the physical aspects of the act.
7. The term 'wrong' in Section 84 does not refer to the idea of legal wrong.
8. The defence of 'irresistible impulse' is not admissible in Indian law.
9. Involuntary intoxication affords the same degree of protection under Section 85 as is given under Section 84 for insanity.
10. In case of voluntary intoxication, a required intention of an offence is not presumed but the particular knowledge of an offence is presumed to be existent as it would have been had the man not been intoxicated.

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[47] AIR 1956 SC 488

[48] *Basudeo v State of Pepsu* AIR 1956 SC 488; "So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being? If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts."