According to *M'Naghten* Rules,¹ which is the basis of the Indian criminal law of insanity contained in Section 84 of the Indian Penal Code,² a medical witness who has been present in court and heard the evidence, may be asked as a matter of science, whether the facts stated by the witness, supposing them to be true, show a state of mind incapable of distinguishing between right and wrong. How far is it applicable in Indian law regarding criminal non-liability due to mental disorder? A lot of developments have taken place in this regard in western countries. What are the changes needed in Indian law?

The opinion of a medical expert is relevant in all cases where a question of science is involved. The Indian law recognises this.³ In insanity cases the questions are (1) whether the accused had been of unsound mind at the time of the commission of the act, and (2) whether by reason thereof was he capable of knowing the nature of the act or the wrongfulness or illegality of the act. These are questions of fact as well. In England they are decided by jury and in India by the court.

A qualified expert may testify to the accused person’s mental condition either upon his personal examination or on the testimony in the

---

¹ *M'Naghten’s* case, 10 C. & F. 200 (1843): 8 E.R. 718.
² Section. 84 reads:

> “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”.

³ Indian Evidence Act, 1872, Section 45. Relevant part of the provision reads:

> “When the court has to form an opinion upon a point... of science... the opinion upon that point of persons specially skilled in... science... are relevant facts”.

* G. SADASIVAN NAIR*

---

* LL.B (Delhi), LL.M., Ph.D.(Cochin); Professor, Department of Law, Cochin University of Science and Technology, Cochin - 22.
case if he has heard it in the court. Such a witness can also give his opinion upon hypothetical factual situations even though he has no personal knowledge of the accused person. A psychiatric expert who has made personal examination of the accused after commission of the crime, may tell about his mental condition at the time of the of the examination and also whether it may have existed at the time of the offence. He may also opine whether the accused is feigning or simulating insanity. An expert who has not known the accused, but has only heard the trial may be permitted to state his opinion based on evidence whether the facts are simple and undisputed, and it becomes consequently a question of science only. The reason for this restriction is that in case of disputed and conflicting evidence such a practice would require the expert to determine its truth and value and then make the scientific inference therefrom. In this respect the fifth question and answer in the M’Naghten case is relevant. The relevant parts of the rules are as follows —

“(1) Every one is presumed to be sane until the contrary is proved.

(2) It is a defence to a criminal prosecution for the accused to show that when he committed the act he was labouring under such defect of reason, due to disease of mind, as either, (a) not to know the nature and quality of the act he was committing, or (b) if he did know this, not to know that what he was doing wrong.

(3) ..... 

(4) ..... 

(5) Evidence of the medical man who has seen the accused only at the time of trial cannot be let in to prove the disputed fact of the state of mind of the accused; but where the facts are admitted or not disputed and the question becomes one of science only, it can be done as a matter of convenience though not as a matter of right”.

4. Also see Weihofan, Mental Disorder As A Criminal Defence (1954), p.279.
5. Supra, n.1.
Two earlier decisions of the Nagpur High Court, *Deo Rao v. Emperor* and *Baswant Rao v. Emperor*, although they seem to clash with each other, are important in this respect. Incidentally the same medical expert seems to have given evidence in both the cases but in the former his evidence was accepted in acquitting the accused while in the latter the evidence was rejected as irrelevant and the accused was convicted.

In *Baswant Rao*’s case, Justice Hidayatullah of the Nagpur High Court, as he then was, referred to the fifth question and answer in *M’Naghten*’s case and approved them. According to him expert opinion can be invited only in exceptional cases where there is no dispute about the facts or their interpretation. Again the question whether or not the illness was such as to satisfy the legal criterion or test is a legal issue on which the expert witness is not competent or qualified to judge. It is not of expert testimony because experts should not be allowed to usurp the function of the court. The court held that the opinion of medical witness on the state of mind of the accused at the time of commission of the murder is barely relevant and it was not conclusive.

A view of this kind was taken by certain eminent writers in the past. Certain modern writers oppose this view. The practical value of expert evidence is to be considered. It is with this view that, in some Indian cases, experts were asked to give their opinion whether the accused had distinguished between right and wrong. It may be said that in clear cases of insanity, the question whether the accused was afflicted with some kind of mental disorder or not could be easily determined.

8. *Id.* at p. 73.
The difficulty arises where it is admitted that the accused is to some extent abnormal and the question is whether at the relevant time he was so mentally disordered as to be incapable of distinguishing between right and wrong. It is here that the court needs the help of the psychiatric experts to arrive at the right finding.12

Medical opinion played an important role in some cases.13 In some others it did not.14 The trend of judicial holdings in India show that scientific evidence is neither conclusive nor essential for the court to decide a mental case.15 But as a matter of procedure it is incumbent on the magistrate or the court to send the accused to a psychiatric expert for observation where a plea of insanity is taken on behalf of the accused or when there is reason to believe that the accused is suffering from mental disorder.16 When the report or the evidence of mental expert is available the court should analyse such opinions so meticulously to accord proper importance to them.17 Where the other evidence and circumstance in the case would otherwise support a reasonable doubt about the state of mind of the accused as being insane at the time of commission of the offence the failure of the Magistrate or the police in subjecting the accused to mental examination would be taken as the decisive factor in acquitting the accused.18

Developments in England

A correct approach to the problem of relevance and admissibility of psychiatric evidence in criminal trial seemed to have been taken by

15 Ibid.
17 Baswanta Rao, supra, n. 7, per Hidayathullah, J., at p. 73.
Alec Samuels\textsuperscript{19} in the context of English Law. Especially, from the point of view of the defendant in providing the actus reus or criminal intent, the following general propositions are contained in this approach\textsuperscript{20} —

\textit{(i) } All relevant evidence should be admissible, unless there are very strong reasons to the contrary;

\textit{(ii) } evidence which the defendant wishes to adduce in order to support his case or to challenge the prosecution should be prohibited only for the most cogent reason;

\textit{(iii) } the credibility or cogency of a prosecution witness is open to challenge by the defendant by adducing evidence, including expert evidence, relating to the physical and mental health and history of the witness;

\textit{(iv) } the expert must keep within his sphere of expertise and area of competence;

\textit{(v) } evidence of the expert, especially, the psychological or psychiatric expert, must be treated with care and circumspection but not with hostility;

\textit{(vi) } weighing, evaluation, appraisal and decision are for the jury”.

The defendant is accordingly entitled to adduce evidence of mental disorder and other abnormalities caused by alcoholic drinks or drugs. He can also ask for expert psychiatric evidence when he takes the plea of insanity, automatism and diminished responsibility\textsuperscript{21}.

Is medical evidence on normality admissible? When doctors said that the defendants were not mentally disordered but nonetheless did not form any intent to commit murder, the court would not admit

\begin{flushleft}
\textsuperscript{20} Alec Samuels, \textit{ibid}.
\end{flushleft}
Evidence. It was apparently not permissible to tell the jury or the court how the mind of a normal man worked, i.e., formation of intent. The court held in such cases that the medical witness could not be an expert on the ordinary man which was the exclusive province of the jury.\textsuperscript{22}

Normality and abnormality are not divided by a clear line; they merge with each other, there is a vast grey area. Though the ultimate decision is for the jury or the court as the case may be on question of mental disorder, the expert may, in these days of psychiatric developments, quite properly express an opinion upon the ultimate issue in the case.\textsuperscript{23}

After the enactment of the Homicide Act 1957,\textsuperscript{24} in England, it seems fairly to have been accepted in law that when, on a plea of diminished responsibility, the medical evidence is all in favour of defence, the jury should not discard it.\textsuperscript{25} In \textit{R v. Matheson},\textsuperscript{26} the respondent was convicted by the jury of a revolting murder of a boy of fifteen years. All the three doctors called by the defence agreed that Matheson was so

\begin{itemize}
\item \textsuperscript{22} For instance, \textit{R v. Turner}, [1975] Q.B. 834.
\item \textsuperscript{24} The relevant part of the provision in S.2 of the Homicide Act reads: "2.(1) where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent cause or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

2. On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

3. A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter..."
\item \textsuperscript{25} \textit{R. v. Matheson}, [1958] 2 All E.R. 87.
\item \textsuperscript{26} Ibid.
\end{itemize}
abnormal as substantially to impair his mental responsibility for the killing. Prosecution produced no medical witness. The jury convicted him of murder. On appeal the Court of Criminal Appeal held that a verdict of manslaughter should be substituted on the ground that the jury’s verdict was wrong on evidence. Here, Lord Goddard took the view that on the two questions of section 2 of the Homicide Act, viz., whether there was abnormality of mind from the specified causes and second, whether the abnormality is substantial enough to impair the defendant’s responsibility, if there was unchallenged and uncontradicted medical evidence on each question, the jury are bound by that. But Lord Parker in *R v. Byrne* took a different view. According to him the jury were bound by such evidence only on the first question and notwithstanding such evidence on the second question the jury were entitled to discard it even if there was no other materials in the case that would justify them in differing from the opinion of the doctor.

The position seems to be that the jury are bound by the doctor’s evidence that the defendant was suffering from abnormality of mind only if (i) the medical view is unanimous, (ii) it is not challenged in cross-examination and (iii) there is no other material in the case entitling the jury to go against the medical evidence. *Matheson* does not in any way conflict with this position where the medical evidence was unanimous and unchallenged. In *Waltson v. Queen,* psychiatrist gave evidence that the defendant satisfied the test in section 2 of the 1957 Act. Two other medical witnesses also gave evidence. Though they did not contradict with the psychiatrist, their evidence fell far short of the conclusions of the psychiatrist. The Privy Council said, disallowing the appeal from conviction, that quality and weight of the medical evidence fell far short of that in *Matheson.*

27. *Id.* at p.89.
Expert evidence is not only desirable but also of great importance because subjective assessment of guilt is getting more and more recognition.\textsuperscript{32} The greater is the emphasis on subjectivity, the more is the role of the expert evidence. Psychiatric expert witnesses can bring out what is within the defendant himself.\textsuperscript{33} Modern psychiatry and psychology have achieved tremendous progress in mental health problems.

Butler committee recommended that all evidence as to the state of mind of the accused should be admissible, subject to giving advance notice to the other side.\textsuperscript{34} In homicide cases, in England, the prosecution always obtains a psychiatric report. This is given sufficient weight. There is no question of usurpation of the role of the judge or the jury. The psychiatrist or psychologist only assists them. The position of uncertainty whereby the psychiatric evidence is sometimes admissible and sometimes not, is illogical, the expert evidence should be admissible if it is relevant to an issue in the case. The jury or the judge can evaluate the expert evidence tested in the forensic setting, draw upon their experience of life, and bring in an informed, considered and responsible verdict. It is said that the medicine, science and law must draw close together.\textsuperscript{35}

Section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act, 1991 introduced a statutory requirement for juries to have access to the expert evidence of psychiatrists before returning the special verdict of not guilty on account of insanity. Though the legislation makes no express reference to the M’Naghten rules, the Act largely abolishes the rigid disposal provisions contained in the Criminal Procedure (Insanity) Act, 1964.\textsuperscript{36} In their place it provides for a degree of flexibility in

\textsuperscript{33} Alec Samuels, \textit{op. cit} at p.769.
\textsuperscript{34} Report of the Committee on Mentally Abnormal Offenders, Cmnd. 6244 (1975), Paras 18, 48-49 and 19-21.
\textsuperscript{35} Alec Samuels, \textit{op. cit} at p.770.
outcome following the return of the special verdict. Two reasons have been put forward for the introduction of the new requirement. One is that research conducted into the operation of the defence of insanity under 1964 Act had revealed examples of cases in which insanity verdicts had been returned despite a complete lack of medical evidence to support the plea. It was felt that this was unsatisfactory and needed to prevent from recurring. Quite clearly, there is nothing in the 1991 Act to suggest that doctor’s views are to bind the court. However, it is clear that the evidence is primarily for the benefit of the jury and it does not seem unreasonable to suppose that doctors giving evidence under section 1 of the Act will be in a position of some influence. One persistent controversy concerning the insanity defence is that it embraces a number of conditions which are interpreted as diseases of the mind, diseases of mind within the M’Naghten rules, but which are not considered properly to fall within the ambit of modern psychiatry. A move to harmonise the defence with Mental Health Act would obviously require the M’Naghten rules to be amended.

**European Convention on Human Rights**

It may be fruitful to refer to the European Convention on Human Rights, where Article 5 (1) (e) provides that persons of unsound mind have to be lawfully detained, “in accordance with a procedure prescribed by law”. In interpreting this provision, the European Court of Human Rights has made it clear that compliance with the convention requires a strong correlation between the legal and medical criteria used to assess the issue of unsound mind and in particular, that the assessment must take proper account of “objective medical evidence”.

37. R.D. Mackay, “Facts and Fiction about the Insanity Defence”, [1990] Crim.L.R. 247 at p.251 (In 61 percentage of cases examined by him the verdict had been returned without medical evidence).


39. See id. at p.84. Also see Sutherland and Gearty, “Insanity and the European Court of Human Rights”,[1992] Crim. L.R. 418 at p.419.
Conclusion

In India, the system of jury trial is not in existence and so the judge is responsible not only for the final decision but also for the evaluation of the evidence. This does not minimise the role of the psychiatric expert evidence because as far as the mental health and medicines are concerned the judge is a layman. The approach of the courts in admitting psychiatric medical evidence had not been consistent; sometimes such evidence was held admissible and sometimes not. Obviously, strict adherence to the right and wrong test of responsibility has been mainly responsible for having only a limited role for medical evidence. Logically, such evidence ought to have been held admissible wherever it is relevant for the final decision of the court. For that we have to bridge the gap between legal and medical insanity.