

UNDERSTANDING THE LEGALITY AND CONCEPTS OF INSANITY UNDER LEGAL JURISPRUDENCE

INDERJEET KAUR.¹

ABSTRACT

In criminal jurisprudence, the liability of wrongdoer can be determined on the basis of the capability and state of mind. It is submitted that no person shall be convicted until he is proven guilty beyond reasonable doubt. In another word „an accused is presumed to be innocent until he is proved guilty. Here, researcher endeavors to state that a healthy mind is involved in crime if he can understand the consequences of his act. In case questioned person is mature enough and has ability to differentiate between rights or wrong he must be booked in the eyes of the law. In criminal jurisprudence, it becomes very difficult to trace the intention from the face of the accused; as it requires satisfying the ingredient of crime i.e., „Actus non facit reum nisi mens sit rea“¹⁸, injury act of doing, etc. However, question arises when a person with an unhealthy mind commits crime, which indicates presence of „actus reus“ but framing „mens rea“ will be difficult due to his disordered mind.

Psychology is a subject of scientific study of human behavior in any context. 1 It is a science of experience and behavior, which tells us how the mind processes the experiences in daily life, and how mind works and responds. This subject can predict the behavior of a person to some extent, and it helps to control the behavior in a certain manner by putting the individuals under appropriate conditions. It seeks to discover the laws of mind. Behavior is the expression of inner experiences originating from interaction of an individual with the environment. Psychology also aims at a self-consistent body of knowledge relating to mental processes. Thus,

¹ Associate Professor, Faculty of Juridical Sciences, Rama University, Kanpur, U.P, India

psychology can be considered as a natural science of mental processes and behaviour. Further, it can measure the capacity of an individual's mind to interact with the environment. One hand, understanding of psychology becomes very important to determine the cause of action of an individual. On the other hand, law is made for supervising human behaviour that can deviate from existing social norms of a particular society. In this way, both subjects can be interrelated to each other.

KEY WORDS: Legal Jurisprudence, Unsoundness, Insanity Etc

INTRODUCTION

There are several psychological conditions such as delirium, dementia, hallucinations, delusions, dissociation, etc. where a person lacks mental capacities to distinguish between right and wrong. Hence, if a person suffering from any mental defect or having disordered mind commits an offense under its effect cannot be proved guilty. Because commission of an offense is a very normal phenomenon that has no say in executing the crime, but to determine the responsibility of the act establishment of intention is essential. The responsibility is individual or collective, no litmus test can determine it. There is a very well-known proverb to determine criminal responsibility which states that a person must be guilty not only by an act but also with mind to read the mindset of criminal is considered as intention under the law.¹

The Constitution of India also provides immunity to the person who is not held responsible for the act. However, if punished, it is a violation of basic human and fundamental rights. Also, if the person is unable to defend himself in the court of law it evokes the principle of natural justice. The inability of a person to commit a criminal act exempts him from getting punished by the court.

Now, here it would be pertinent to explicit the concept of intention which is one of the important ingredients to determine the quantum of involvement in a certain crime.

If an act is done with an intention to cause harm it is called crime and it held responsible to the person. Intention can be defined as „a thing intended; an aim or

¹ 21Antony Duff, "Legal and Moral Responsibility" 4/6 Philosophy Compass 978-86 (2009) available

at: <https://doi.org/10.1111/j.1747-9991.2009.00257.x> (last visited on Jan 18, 2022)

plan“ and criminal intention means knowledge of wrong doing. Intent is defined in Canadian law as the conscious decision someone makes to deliberately engage in an unlawful or negligent act, or to harm someone else.

THE CONCEPT OF SANITY AND INSANITY

The term sanity is defined as a state of having a healthy mind demonstrating the sign of good judgment and understanding and not being mentally ill. It is a condition where behaviour, thoughts, emotions, and actions of a person are appropriate as per the existing social norms and values and are not considered unlawful in the constitution. A person must be aware of the consequences of his conduct and should possess enough knowledge to distinguish right from wrong. Under the law, every person is presumed to be sane and assumed to possess a sufficient level of reason to be responsible for his conduct or action unless proved contrary. It is also presumed that he knows the natural consequences of his act and also knows the law. The term insanity is defined as repetition of the same mistakes repeatedly and expecting a different result. Mc Auley defined legal insanity as an excuse for wrong doing, because, the insane person lacks the capacity to act rationally. He further explained insanity as an ethical and legal matter that must be settled by the court when framing the insanity defense².

But it is not a matter in which mental health professionals have any special competence, although their evidence may quite properly have a decisive influence on how judge actually determines it. Insanity is purely a legal term pertaining to the defendant's inability to determine right from wrong during the commission of a criminal act. This may occur in a very severe psychological condition, where a person fails to distinguish between fantasies from reality. He loses his abilities to perform his daily affair and projects uncontrollable impulsive behaviour. Insanity as a concept is mostly discussed in the courts to help in distinguishing guilty from innocent. Mostly mental health professionals are involved with accused/offenders in the assessment and diagnosis of their existing mental health status. The term „insanity“ is not listed in any accepted classificatory system for psychiatric diagnosis such as Diagnostic &

² B. Sutar, Psychology (NCERT, New Delhi, 2007).

Statistical Manual (DSM) or International Classification of Disease (ICD). Therefore, there is no such accepted definition of insanity in psychology, however; presence or absence of particular psychopathological condition in an individual indicates insanity or sanity for legal purposes.

ROLE OF PSYCHOLOGY

Psychology as a subject is a scientific study of human behaviour in any context. It is the science of experience and behavior, which tells us how the mind processes the experiences of daily life? How it works and responds? It can predict the behaviour of a person to some extent and control it to a certain extent by putting him under proper conditions. It seeks to discover the laws of mind. Behavior is the expression of experience, which belongs to a subject mostly a human being, originating from interaction of subject and object. Psychology also aims at a self-consistent body of knowledge relating to mental processes. Thus, psychology can be considered as a natural science of mental processes and behaviour. It can measure the capacity of a mind to interact with the environment.³

Therefore, understanding of psychology becomes a very important factor to determine the cause of action of an individual. On the other hand, law is made for supervising human behaviour which deviates from existing social norms of a particular society. In this way, both subjects can be related to each other. Law was developed as a subject with the progress of human socialization and use of psychology was there since its emergence but at that time psychology & philosophy were used interchangeably. Gradually, psychology developed as a science and started finding its application in all the related fields of human science, especially in the field of law and justice.

The application of psychology started in different modalities of law and justice. The plethora of applications of psychology to law has been differentiated in three terms „Psychology in law“, „psychology and law“, and „psychology of law“. Psychology in law refers to the specific applications of psychology within law: such as the reliability

³ Known as father of clinical psychology see Gilstein J. Psychoanalysis and jurisprudence, 77 (6) The

Yale Law Journal, 1053-1077 (1968)

of an eyewitness testimony, mental status of the defendant and parent's suitability for child custody in divorce cases. The term Psychology and law was coined by Blackburn in 1996 to denote the psycho-legal researches into offenders, lawyers, magistrates, judges and jurors. Psychology of law is used to refer to psychological research in the area of moral development and public perceptions or public attitude towards various penal sanctions, punishments, and sentencing⁴.

HISTORICAL DEVELOPMENT OF THE CONCEPT OF INSANITY IN THE CRIMINAL LAW

It has been considered injustice to call criminal in law to an individual, unless his action was voluntary and conduct with guilty intention. The imbeciles, infants and deaf-mutes were not considered blameworthy for their crimes in the early Jewish law as they lacked the necessary guilty intent required to frame crime. The concept of Rule of law was advocated and discussed by ancient Greek philosophers such as Plato and Aristotle around 350 BC.

Other philosophers such as Hobbes, Locke, Rousseau, Montesquieu in their theory of social contracts have enlightened the concept of Rule of Law. In 5th century AD „Corpus Iuris Civilis, mentions that the insane person is „Compos mentis non est“ (later known as non-compos mentis) and cannot understand the consequences of his acts, like an infant or a four footed animal, such a person was believed to have no „culpa“ and was, therefore, not accountable in justice.

Paine Thomas, (1776) quoted „The Law is King“ in his pamphlet Common Sense. He has also mentioned that the King is law in absolute governments, therefore in free countries the law ought to be King and there ought to be no other.

The term „Rule of Law“ is derived on French phrase „la principe de legalite“ which means „The principle of legality“. The principle of law refers to a government based on principles of law but not of men. It further clarifies that power should be exercised

⁴ R. Blackburn, what is forensic psychology? *Legal and Criminological Psychology*, 3–16(1996).

within the statutory bound and claimed exercise of it. This would not beyond the powers but in a true sense of term arbitrary.

INDIAN COURTS ON BRAIN INJURY AND INSANITY

Brain injuries can cause insanity and the Apex Court in the case of Nagappa v. Gurudayal Singh & Ors accepted personality change. Brain injuries and cognitive deterioration is discussed in several other cases in different High Courts of India which were related to victims, pleading for compensation. However, no cases were found in the Indian judiciary, where the defendant raised a plea on the ground of brain damage related abnormalities. This indicates the lack of knowledge among people about this technological advancement and its application. The above facts lead the researcher to conclude that there is a need for clinical neuropsychological expertise in criminal justice system⁵.

DEVELOPMENT OF THE TESTS TO DETERMINE INSANITY IN THE COURT OF LAW

As per available records, insanity defense has been in practice since the twelfth century. Traditionally, insanity has been measured by cognitive test. Under the inquiry of this test, it is tried to establish if the defendant's mind was disturbed to an extent so as to render him completely incompetent to comprehend the nature and the quality of the conduct. It is a complex and one of the most discussed topics since its existence in the law. The modern concept of insanity defense emerged from several milestone judgments in different parts of the world. Time to time different jurisdictions have taken different views to decide insanity, some of them are obsolete in the present time and a few of them have laid down new principles for insanity defense in various criminal law jurisdictions of the world

(a) Wild Beast Test

This test or rule was evolved in 1724 in the Rex v. Arnold case. In this case, Edward had made an attempt to kill Lord Onslow and was tried for the same. As per this

⁵ A. Kapardis, Psychology and Law: A Critical Introduction, (Cambridge University Press, 2nd eds.,

2003).

observation in the aforementioned case, a person can demand benefit if, due to his mental disorder, he was incapable of distinguishing between good and evil and did not know the nature of the act committed by him. This explanation and emphasis made by the Court have opened the scope for the theory in concern with insanity defense. However, in this case, accused Arnold was found guilty after all the deliberation. However, his capital punishment was substituted with life imprisonment. Prior to the establishment of a legal plea of insanity, this sort of pardon was not uncommon in the Courts. In the trial of Earl Ferrers⁹⁴ in 1760, the jury was advised that if the defendant was able to comprehend the nature of his actions, and could discriminate between moral right and wrong, he should not be acquitted. It must be particularly noted that the only expressions of judicial opinion on insanity as a defense were found in the instructions of the trial judges to the jury. According to the custom that has always prevailed in England the court, in instructing the jury, expressed its opinion upon the evidence; hence the statements of the judges in these early cases were not made as propositions of law, but represented a large part of the medical view regarding the insanity as stated in testimony.⁶

(b) Insane Delusion Test

In the trial of Hadfield in 1800 for high treason, in shooting at King George III, the insanity defense was pleaded. It was shown in the evidence that the defendant, was suffering from delusion, at the time of attempted act but he had perfect understanding about the nature and significance of his conduct. The counsel pleaded that insanity had to be determined by the fact of fixed insane delusion. Hadfield was suffering from the delusion and his criminal act was the direct cause for the criminal act. In this case, defendant lawyer Mr. Erskine has proved legal insanity successfully and concept of insane delusion got acceptance. Delusion is a false and unshakeable belief that is out of keeping with the patient's social and cultural background. A person in possession of an insane delusion stubbornly believes certain facts to exist which really have no existence or even a reasonable foundation. He persists in believing these facts regardless the existence of contrary facts and evidence to disprove them which

⁶ Somasundram, O., "In his presidential address: The Indian Lunacy Act 1912", Indian Journal of

Psychiatry, 29 (1), pp 3-14 (1987).

Fashion his belief into an apparent absurdity. The belief may be in something impossible in the nature of things or impossible under the circumstances surrounding the victim. The influence of insane delusions on accused is generally of a serious nature. In order to show that cognitive faculties had been affected by insane delusions, it must appear that the accused delusional thought entered into the mind and responsible in the making of his action. The holding of only delusions does not of itself constitute testamentary incapacity but affects testamentary capacity only when it enters into or controls in some degree of its exercise⁷.

(c) Irresistible Impulse Test

The irresistible impulse test usually appeared as a third prong in the traditional Mc“Naghten test. This volitional prong broadens Mc“Naghten rule by including insane actors those who act out of irresistible and uncontrollable impulse. This test was among one of the most controversial tests in the field of Criminal Law. Generally, the person under irresistible impulse targets his near and dear ones the victim of their excessive impulse. It is must for an impulse to be irresistible in nature and should have complete absence of motive. It should be in form of a mania which generally coexists with complete sanity. Therefore, these acts are common in homicidal killings. Mostly the person under such mental state attack and victimize his/her close ones. 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 control to choose between right and wrong and his freedom of will is completely destroyed due to his mental state. From a biological point of view, frontal lobe dysfunction, in particular, has long been recognized as a possible causation factor in violent crime. It is the job of the frontal lobes to focus attention and to modify and inhibit behaviour impulses that surge up from the other parts of the brain. Frontally damaged people often cannot keep their behaviour within the general framework of society. This test was applied in a very famous case State of Virginia v. Lorena in 1993 USA. In this case, Lorena was charged for cutting down her

⁷ G. W. Henry and G. Zilboorg, Mental Hospitals in A History of Medical Psychology (Gregory

Norton and Company, New York, 1941).

Husband's penis with a kitchen knife. Her attorney pleaded for insanity defense and argued that her client was unable to restrain her action. They brought it to the Court's notice that her actions were motivated by the perpetual physical, sexual, and mental abuse inflicted by her husband over the years of their marriage. This judgement emerged as a new concept of insanity defense in criminal law, which later got popularized as „Battered Women Syndrome (BWS)“ However, this test was considered inherently inadequate and unsatisfactory by a large number of Jurist worldwide, criticisms for the same endorsed in *Durham v. United States*.

INTERNATIONAL CRIMINAL COURT ON INSANITY DEFENSE

International Criminal Court (ICC), Governed by an International treaty called the Rome Statute, and it is the world's first permanent international criminal court. Its judges are independent of their home states to try perpetrators of crimes against humanity, genocide, war crimes, and aggression. The ICC Statute contains provisions including some of the general principles of criminal responsibility. Article 31 is such a provision that provides certain defenses among them are the defense of insanity which reads as follows: “A person shall not be criminally responsible if, at the time of that person's conduct: The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law”⁸

The ICC provision described mental disorder in the terms of „a mental disease or defect“ by this, it recognized the difference between a disease and a defect. Then uses the word „appreciates“ to describe the defect in the cognitive faculties which signifies the disruption of a deeper level of reasoning ability. This indicates that ICC is not considering the nature and quality of the accused's conduct. Hence, it provides an opportunity for defense to a person who knew the nature of his or her conduct but, due to a mental disease or defect, could not understand the harmful effect or consequences of his/her conduct. This provision also supports recognition of cognitive defects and, in so doing, match with the many Commonwealth jurisdictions who have taken this stance. And by using the word „destroys“ it adopted empathic

⁸ S. D. Sharma, and L. P. Varma, *History of Mental Hospitals in Indian Sub-continent* (26) Indian

Journal of Psychiatry, 295-30(1984)

View and rejected the term „substantial“. Therefore, incapacity of the doer becomes necessary component for the defense to succeed. The absence of a defense of diminished responsibility in the Statute lends support for the approach that it should be treated as a sentencing factor rather than given an exculpatory role⁹

CONCLUSION

On the basis of above discussion, it can be said that the laws related to the mental health issues are very old and differ as per social norms and values in various parts of the world. India also has a long history in this regard, but these laws have been well established and properly categorized during British rule. These categories provide immunity to the person who is not intended to commit offence. Certain amendments are made time to time in particular laws pertaining to mental illness and disabilities to meet with the demands of social harmony and justice.

While certain categories especially in general exceptions are still based on old colonial period which need amendments as per the new scientific development and technological advancements. Insanity defense is one among it that requires special attention from the law commission of India. Though law commission of India⁸¹ in their 42nd report recommendations has tried to discuss this issue and asked suggestions from experts if amendment can be made in existing section. However, due to medico legal complexities once again no amendment has been made and the concept has been ignored. Even if law commission of India has decided that there is no requirement of change or amendment, the researcher is eventually hopeful that this research work will explore the new possibilities for amendment in existing definition¹⁰.

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¹⁰ Supra note 28

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