

PLEA OF INSANITY AS A DEFENSE IN CRIMINAL CASES: AN UPDATE

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Mc'Naughten Rule is the commonest formulation for plea of insanity in most countries. Although assessment of the mental state at the time of offence is difficult, few instruments have been devised for this purpose. In the U.S.A., efforts are being made to abolish the insanity defense and in the United Kingdom, amendments in the provisions of insanity defense have been proposed. The authors have stressed the need for some changes in the relevant sections of Indian Penal Code to increase the credibility of Psychiatric testimony in such cases.

INTRODUCTION

Plea of insanity is used as a defense in criminal cases and when successful the accused is acquitted of the charge on the ground of insanity. The term 'insanity' is not a medical term but a legal concept meaning that degree of mental disorder that relieves the offender of the criminal responsibility for his action. In the Western countries, it is estimated that plea of insanity is used as a defense in 1-2% of the criminal cases (Pasewik & Craig, 1980).

Not Guilty By Reason of Insanity (NGBRI) defendants tend to be older, married and unemployed at the time of commission of the crime. Most of them have a prior psychiatric treatment history and there is a history of drug and alcohol abuse (Roger, 1987). Acquittees differed from those convicted, in being female (Roger, 1984), older and more educated, and more likely to be schizophrenic (Somasundaram, 1960 & 1974; Benezech et al, 1984). In a study of 187 men found NGBRI (Taylor & London, 1982), 34% of the defendants using the insanity plea were patients with Bipolar Affective Disorder. A high concordance rate (88%) was found between psychiatric evaluation of insanity and the verdict of the court. It reflects the influence of the psychiatrist's recommendations in the court's decision of insanity plea.

HISTORICAL BACKGROUND

The defence of insanity has been recognized in English courts for over 700 years beginning from the reign of Edward III in the fourteenth century, when complete madness was considered as a defense to a criminal charge (Simon, 1967). By 1518, it was well established that the lack of guilty mind and intellect meant a lack of criminal responsibility. Some 250 years ago an English judge, in the trial of Edward Arnold said, "in order to avail oneself of defense of insanity, a man must be totally deprived of under-

standing and memory that he is not to know what he was doing, not more than an infant, brute or a wild beast (Simon, 1983). The "wild-beast" test along with determination of ability to distinguish between right and wrong remained the standard of judging criminal responsibility until the year 1800 A.D., when the landmark trial of Hadfield set a new standard (Whitlock, 1963).

A former soldier, James Hadfield attempted assassination of reigning English monarch, George III with the belief that he was the savior of mankind. He thought that in order to become popular he should sacrifice his life like Jesus Christ and for this he chose to carry out an act for which he would be hanged. The prosecution argued that the defendant's behavior (purchase of gunpowder, concealment of pistol etc.) clearly indicated that he was neither an idiot nor a madman, so "afflicted by absolute privation of reason". The jury acquitted him because he was insane at the time of commission of the crime.

This decision was a landmark because it rejected two concepts previously held by the court. First, it is not necessary for acquittal on the ground of insanity that he must be completely deprived of his mental faculties; second, it severed the tie between insanity and ability to distinguish between right and wrong.

Mc'NAUGHTEN RULE

Daniel Mc'Naughten was a Scottish woodcutter who assassinated Edward Drummond who was secretary to the Prime Minister Sir Robert Peel, in the mistaken belief that Drummond was the Prime Minister. Mc'Naughten was described by nine medical witnesses as 'an extreme paranoiac entangled in an elaborate system of delusions' and he believed, albeit falsely, that the Prime Minister was responsible for all his financial and personal misfortunes. His trial, acquittal and reference to the House of Lords led to the formulation of a popular set of rules for criminal responsibility which have come to

be known as Mc'Naughten Rule (Modi, 1969). According to this rule, in order to establish innocence on the ground of insanity it must be clearly proved that at the time of committing the crime the accused was laboring under such defect of reason from disorder of mind as to not to know the nature or quality of the act that he was doing, or that he did not know it was wrong and contrary to the law.

DEVELOPMENT IN THE UNITED KINGDOM AND SCOTLAND

The most important criticism of the Mc'Naughten Rule is that it rests on an entirely obsolete and misleading concept of nature of insanity. Insanity does not only or primarily affects the cognitive or intellectual faculties but also affects the whole personality including both the will and emotions (Marfatia, 1972). A person who developed hypoglycemia and committed assault on others, in one of the cases in Scotland (Camishe vs Boyle, 1985), it was held that in absence of insanity he could not be acquitted on the ground that he lacked 'mens rea' owing to hypoglycemia (Blueglass, 1991). In another case, R vs Kemp, the accused made a motiveless attack on his wife. He was charged with the attempt to murder. Medical evidence showed that he had cerebral arteriosclerosis and suffered from transient lapse of consciousness. The judge commented that plea of insanity could not be established as it could not be proved that the brain had been affected in anyway (Hogan & Smith, 1978).

The case of Suvillian vs Suvillian (1980) is a leading modern case on the defense of insanity. The defendant kicked the head of his friend while undergoing a seizure in post ictal stage. The medical evidence was that seizures are rarely associated with such type of behavior and the subjects may be unaware of what had happened. The ruling of the judge was that the defense open to him was insanity and he should plead guilty. Lord Dopock (Blueglass, 1991) commented on this case "...it matters not whether the etiology of impairment was organic as in epilepsy, or functional or whether the impairment itself is permanent, transient or intermittent, provided that it subsisted at the time of commission of the act"

It has been argued that the Mc'Naughten Rule must be replaced by more practical rules based on experience and therefore the Law Commission in the United Kingdom have prepared a draft bill which will replace the verdict NGBRI to "not guilty by evidence of mental disorder" (Law Commission,

1985) and this verdict will be given if it is proved that at the time of commission of the act, the accused, on the balance of probabilities, was suffering from a mental disorder. An act in the state of automatism by reason of mental disorder or combined effect of mental disorder and intoxication will be brought under the purview if this verdict. If the reform is passed, a defendant like Suvillian will no longer be required to plead guilty.

DEVELOPMENT IN THE U.S.A.

Mc'Naughten Rule became the prevailing rule in the U.S.A., even though the formulation was criticized. Over the past 150 years, different legal formulations have been adopted by different states of the U.S.A., eg. "Irresistible Impulse Test" and Durham's formulation of "product of mental illness". The irresistible impulse test excuses the accused if it is proved that he had a mental condition that prevented him from exercising control over his conduct even though he could intellectually understand the difference between right and wrong. The Durham's decision acquits the accused if it is shown that the act was the product of mental illness. If it is so, sociopathy and other personality disorders may be considered 'product of mental illness' and the law assumes that such a disorder may impair behavior control. But this view is not generally held by psychiatrists who believe that persons with antisocial personality should be held responsible for their behavior.

The alternative formulation for insanity defense is the ALI (American Law Institute) Test: "A person is not responsible for criminal conduct if at the time of such a conduct as a result of mental disorder or defect he lacks substantial capacity to appreciate the criminality (wrongfulness) of his conduct or conform his conduct to the requirement of law". The essential improvement over the Mc'Naughten Rule is the use of the word 'appreciate' rather than 'know' to include the emotional and intellectual capacities for a 'conforming conduct' to the requirement of law (Boomrang, 1979).

New reforms are taking place in different states of the U.S.A. after the public outcry over the release of Hinckley Jr., who had tried to assassinate President Reagan. Public opinion is building to remove the plea of insanity altogether, although Montana and Idaho states have abolished the insanity defense much earlier (Arnella, 1982). It however does not mean that the insanity defense has been completely done away with. The defense open is 'mens rea' that

relies on traditional psychiatric testimony, but allows for only limited defense and it is argued that the 'mens rea' is still an insanity defense (Steadman et al, 1989), although the number of insanity acquittals have diminished substantially following 'abolition' of insanity defense.

THE SCENARIO IN INDIA

The law relating to insanity is laid down in the Indian Penal Code (IPC), which in substance is the same as Mc'Naughten Rule. Section 84 of IPC states, "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 that he was doing or that it was wrong or contrary to the law (Saxena, 1992).

The object of the legal test, as distinguished from the medical test, is to determine the criminality of the act to ascertain how far 'guilty intent and knowledge' can be attributed to a person of unsound mind. It is necessary for application of section 84 of IPC to show that (1) the accused was of unsound mind (2) he was of unsound mind at the time of the commission of the act, not before or after and, (3) he, by reason of insanity, was incapable of knowing the act and that what he was doing was wrong and contrary to the law. It is not sufficient to prove merely the presence of mental derangement or psychotic illness. The accused must prove that his cognitive faculties were so impaired that he was deprived of understanding the nature of the act or distinguish right from wrong; 'Wrong' here means moral and not legal wrong (Kherajmal vs State, 1955). Besides, the state of mind should be proved at the time of commission of the act, not before or after, although to arrive to this conclusion, certain corroborative evidence such as absence of malice, after-thought, application of excessive violence, impulsivity, lack of meticulous planning, lack of guilt, insight and judgement (Rath & Dash, 1990) may be helpful (Shivraj Singh vs State of Madhya Pradesh, 1959). Other characteristics of homicide committed by the insane are want of secrecy, lack of concealment, want of accomplices, indifference to the crime and multiple murders (Verma & Jha, 1966).

ASSESSMENT OF CRIMINAL RESPONSIBILITY

The assessment of criminal responsibility is replete with difficulties, particularly in the retrospective evaluation of the criminal defendant on any specific insanity standard. As yet there is no

instrument that can precisely determine the mental condition of the accused at the time of commission of the crime. It has to be inferred from the evidence of persons who happened to observe the behavior and conduct of the accused prior to, during and after the commission of the offence and on the basis of available medical evidences (Globogin et al, 1984).

Efforts have been made in this direction by devising two clinical instruments, Mental State at the Time of Offence Screening Evaluation (MSE), (Rogers, 1987); and Roger's Criminal Responsibility Assessment Scale (R-CARS). MSE has three components, history of mental disorder, psychological impairment at the time of crime and current mental state. MSE demonstrated high agreement where the criminal responsibility was not an issue (97%) but was much less accurate (50%) where insanity was raised as defence (Roger, 1987). R-CARS evolved from a simple Likert like scale. It consists of 30 individual assessment criteria and responses to these criteria are investigated through the use of three decision models: Mc'Naughten Rule, ALI and NGBRI. Independent clinicians utilizing R-CARS showed nearly perfect (97% concordance rate and Kappa co-efficient = 0.58) agreement (Rogers et al, 1984). R-CARS can discriminate intermediate range of impairment from GBMI standard and can distinguish the sane from the insane according to Mc'Naughten Rule.

RECOMMENDATIONS FOR OUR COUNTRY

In our country, serious controversy in this field does not occur and psychiatry and law co-exist with mutual trust and understanding (Somasundaram, 1992). The only insanity defense open is the Mc'Naughten Rule incorporated in the Indian Penal Code. The number of psychiatrists giving testimony in such cases is very small and insanity is often inferred from the evidence given by lay persons (Somasundaram, 1960). In our opinion, psychiatry in India has developed at par with that of the developed countries; it is high time that it must be made obligatory to have independent psychiatric testimony in all cases like multiple murders, infanticides, crime committed by an epileptic, apparently motiveless murders, and crime committed during puerperium. (Somasundaram, 1960).

The experience of the United Kingdom or the USA should be kept in mind while formulating insanity tests for this country. We cannot and should not do away with the insanity defense altogether.

There seem to be two compelling reasons: first, criminal culpability requires the presence of 'mens rea', or the intent to commit a criminal act; individuals who lack this capacity of 'free will' can not form a criminal intent. Second, the purpose of the criminal justice system is not served by punishing those who do not have the capacity of making a free rational choice (Tarceredi et al, 1977). There is, however, an urgent need to modify the insanity defence so that the testimony of the psychiatrist may become an important ingredient for our criminal justice system.

A formulation like 'irresistible impulse' has practical difficulties and the dividing line between the irresistible impulse and the impulse not resisted is very thin. Durhams's Rule of 'product of mental illness' will also not be acceptable to us, which may even excuse a crime committed by a person with antisocial personality disorder. For at least heuristic reasons, they must be responsible for their act (Insanity Defense Workgroup, 1983). The formulation proposed by Bonnie (1983) and modified for our purpose is amply suited for our country which states that, "A person may not be guilty by reason of insanity if it is proved on the balance of probabilities that as a result of mental disease and mental retardation, he was unable to appreciate the wrongfulness of the act at the time of offence"; it must be clarified that "mental disease should be only those mental conditions that grossly and demonstratively impair a person's perception and reality contact and it could not be attributed to voluntary ingestion of alcohol or other intoxicant". Such a formulation will be helpful for psychiatrists to give a conclusive opinion and their testimony will be more respectable. It must be very clear that the opinion of a psychiatrist is only viewed as advisory by the court and as a statement of probabilities and not factual truth. Nonetheless, psychiatric testimony will command more credibility and will have a potent influence on the justice system.

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