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Insanity As A Legal Defense From A Historical Perspective

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Abstract *Crime and punishment go hand in hand. A crime is human conduct, prohibited by law, which harms the community at large and is, therefore, taken more seriously than a civil wrong that affects an individual or a particular group of individuals. It is for some reason that, unlike a civil wrong, in the case of crime, the state moves by itself against the wrongdoer and decides whether to prosecute him or not. The 'physical force' of the state or the 'sanction behind the law' is more obvious in the form of punishment when criminal law is violated or breached.*

Introduction

Theories of Punishment

The primary objective of criminal law is to punish the offender. Therefore, the whole criminal justice system rests upon the concept of punishment. The punishment inflicted upon a wrongdoer may serve one or more purpose(s). These are also termed theories or ends of criminal justice. A theory of punishment is actually an attempt to justify it. The theories of punishment, if summed up, would conspicuously give rise to at least two aspects. The first one is that punishment may be regarded as a method of protecting society by stopping or at least reducing the recurrence of criminal behaviour. Secondly, we may consider punishment as an end in itself. As for as the prevention of crime is concerned, criminal punishment is deemed to be useful in at least three different ways: deterrence, prevention and reformation i.e. aiming at the transformation of an offender into a law-abiding citizen.

Deterrence is the use of punishment to prevent others from committing crimes. The offender is punished so that he may be held up as an example of what happens to those who violate the law. Thus, it is intended to threaten all evil-minded to abstain from the commission of an offence. It is to assure them well that such activities are an ill bargain and the wrongdoers have to pay a painful price for them. Some jurists consider it to be the most important purpose of punishment as put by a notable English jurist, "Punishment before all things a deterrent and the chief end of the law of crimes is to make the evildoer an example and a warning to all that are like-minded with him"(Salmond, 1913).

According to the preventive theory, punishment is awarded to restrain the wrongdoer from the repetition of the wrong he has committed. The offender is disabled to commit further crimes through punishment like hanging for murder or imprisonment that restricts his liberties and confines him to particular premises. There is this view held by some that the theory is based upon a subtle presumption that the

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offender may continue to commit crimes and, therefore, he needs to be separated from the rest of society in order to protect ordinary members from such (future) offences (Dine & Gobert, 1993).

Reformation is to use pain and fear to direct the criminal away from crime and towards socially accepted forms of behaviour. As discussed above, the preventive theory aims at isolating a criminal from society until he does not remain a threat to ordinary citizens, the reformative theory 'behoves the state to rehabilitate offenders so that they can be released' (Dine & Gobert, 1993). This theory of punishment is mostly advocated by those who focus on the wrong more than the wrongdoer. It is also called the rehabilitative theory of punishment. The advocates of reformative theory look at crime more like a disease and suggest reforming the evil behaviour of the criminal.

According to retributive theory, punishment provides an alternative to the emotion of private vengeance as in primitive ages the victim had to personally take revenge on the wrongdoer for the injury that he had inflicted upon him. That situation is hardly desirable in a civilized community as it may open doors to further violations of law and, resultantly, may promote violence in society. Besides neutralizing the emotion of vengeance of a victim, the retributive theory also has a moral aspect of doing justice by inflicting a penalty upon a wrongdoer for the wrong he has committed with his own free choice. In other words, the champions of this theory have condemnation for both the criminal and his offending behaviour for they 'have an image of human behaviour that depicts actors' as having been able to make a choice between the two alternatives of good and evil on purely rational grounds. So if an evil-doer opts for a criminal option, it is morally just that he should suffer the punishment for it (Thomas & Bishop, 1987).

It is, however, important to note that retribution, deterrence and reformation should not be considered entirely separate and independent of one another. They must be seen in their interrelationship, for each affects and strengthens the others.

The end of criminal justice whether is preventive, retributive, reformative or to deter others; the law, in order to achieve this end, tries to locate and chase the *men's rea* or the criminal intent and once that is found on the part of a person, a penalty is imposed upon him accordingly. The offence and its punishment are defined by law; the judge imposes a specific quantum thereof which corresponds to the available evidence against the offender. In other words, the law provides for the maximum and minimum limits of punishment for an offence whereas during the actual imposition of the same, the judge exercises discretion guided by the evidence available against the offender.

Elements of Crime

There goes the legal maxim '*Actus non-facitreum, nisi mens sit rea'* – the act alone does not amount to guilt; it must be accomplished by a guilty mind. In other words, a person can only be held responsible for an offence if two elements can be proved on his behalf: the guilty act or *actusreas* and the guilty mind or the *mens rea*. The terms may sound simple at the first glance but in their legal parlance, each carries a specific meaning. For example, the term 'guilty mind' does not mean a mind suffering only from moral guilt or there could be certain acts that are considered 'guilty acts' in moral or religious meanings but they might not carry a 'legal guilt'. Therefore, both the elements of the crime are needed to be explained briefly.

The Actus Reas

The *actusreas* is the more obvious element of a crime and is more often encountered. However, it may not be confined to a simple act and may comprise a number of other elements that are not part of the *mensrea*. Many times, for example, the circumstances in which the act is committed or the consequences of the act become relevant and, hence, cannot be excluded from the *actusreas*. It may also affect the nature of the offence for example aiming a gun at a person and shooting him may injure the victim or may result in his death. The physical act of the offender is the same but the consequences are different and both constitute separate offences. In some cases, the *actusreas* may not be referring to 'an act', in its literal sense,

but an omission. Those are cases where the breach of duty has been declared by law as an offence. It can, however, be said with certainty that *actusreas* includes all elements of an offence that are not part of the mental condition of the offender.

The Mens Rea

It has been stated earlier that *mensrea*(Latin) means a guilty mind. In criminal law, the term refers to a particular state or condition of mind that is carried by the offender during the commission of an offence. Keeping in view the variety of offences, the criminal codes often employ different words to refer to *mens rea*. It is obvious in the definition of offences that different terms like willful, dishonest, reckless, fraudulent etc appear in the texts of criminal laws. In a criminal trial, in order to prove an accused guilty of a crime, intention, knowledge and motive, which are but mental conditions, are more often required to be proved in the first place.

Actusreas and *mens rea* being the two essential elements and, with rare exceptions, it is only the combination of the two that constitutes an offence. Likewise, a person accused of an offence would only be held guilty if both these components are proved against him.

The Concept Of Criminal Responsibility

Responsibility has been defined as "the bond of necessity that exists between the wrongdoer and the remedy of the wrong"(Salmond, 1913). The concept of 'responsibility' revolves around the fundamental view of man being a free, intentional being, and is said to form the basis of criminal codes and systems of punishment in most societies. A person is held responsible for his actions with an assertion that he has certain normal capacities. This mental ability to understand the nature and effect of one's acts is known as mental capacity. This is also obvious from the texts of various criminal codes that bear words like voluntarily, recklessly, dishonest intention etc while defining certain offences. This is to refer that certain mental condition(s) should be present on part of the perpetrator while committing a specific act that has been made unlawful by that particular penal law. Certain jurists term the lack of such mental condition(s) as '*excusing* conditions' and the individual's liability to punishment depends, *inter alia*, on the existence or non-existence of such conditions (Hart, 2008).

Therefore, for a crime to have been committed, the physical act or *actusreas* must be enjoined with the criminal intention or *mens rea*. These are two essential components of a criminal act and responsibility can only be fixed when both these components are present. The*actusreas*is the material whereas *mens rea*is are the formal condition and it is only the presence of both that is needed to be established before fixation of criminal responsibility (Salmond, 1913).

As for as the *actusreus* is concerned, it is observable and can be proved through objective evidence whereas the *mens rea*, being the state of mind, is more elusive and nobody can tell what was exactly going through the mind of an accused at the time of the commission of an offence. This makes *mens rea* the most crucial concept of criminal law as criminal culpability is directly concerned with a specific state of mind. If it is proved that the accused is not capable of making a criminal intent, the culpability is not established. This is obvious in cases of minors, insane persons or lunatics to whom the law offers a valid defence. It is so because the law presumes a lack of mental capacity on their part to know and understand the nature and consequences of their acts even if such acts are a gross violation of law per se. Likewise, the perpetrator not only must have had criminal intent but must have been capable of having had that intent. This is the concept of *mens rea*. There cannot be *mens rea* without the mental capacity for its existence in the offender. In other words, if a person lacks the mental ability to distinguish between right and wrong and afterwards commits an act that is otherwise unlawful, he cannot be held responsible for such an offence.

From Insanity Defence To Diminished Responsibility

So far as in this discussion, it has been asserted that the Insanity defence is an 'excuse' and not a 'justification'. One of the differences between the two is that a 'justification' is focused on the alleged offence or the act whereas an 'excuse' is on the alleged offender or the defendant. A 'justification' plea is taken to deem the criminal act worthy in an attempt to protect it from criminal responsibility. To elaborate further we may take the example of killing made in self-defence. It is a classic case of justification where the focus remains not on the offender but on the act of killing and the court or jury is made to believe that in the given circumstances, the act does not attract criminal responsibility. On the other hand, in the case of an 'excuse' as a legal defence, the defendant remains in focus and an excuse is sought for his behaviour or conduct in the given circumstances. To put it simpler, the plea of justification focuses on the *actusreas* whereas that of excuse on the *mens rea*.

Legal and Medical Insanity

The insanity defence remained controversial and of greater debate for it may excuse the evilest behaviour and, if established successfully, may result in total acquittal of the defendant. It is, however, interesting to mention that an insanity plea is rarely taken and even more rarely successful to result in an acquittal. There are two main reasons for it. The first one is that by pleading with the insanity defence, the defendant actually accepts the commission of the offence. Secondly, it is very hard to establish it and the burden of proof is shifted to the defendant. Despite the number of cases in which the insanity defence is raised has been reported as 'statistically insignificant'(Dine & Gobert, 1993) and in the US, less than 1 per cent of all felony cases and out of them only 26 per cent make it a success (Reid, 1998), yet it resulted in raising some very profound issues in criminal law. The question of insanity when raised in a courtroom becomes a question of criminal responsibility. Many times, people indulging in criminal activities carry mental diseases with them and may produce proof of their aberrant mental condition in the form of medical testimony. The problem is that legal insanity is different from medical insanity and when it comes to taking a legal plea of insanity; it is harder to establish in a court of law.

There is a philosophical aspect involved herein as to why a separate standard has been adopted for legal insanity and that is related to the debate we had about the ends or purposes of criminal justice in the previous chapter. The criminal justice system is based on the concept of punishment and the purpose of criminal law is to punish the wrongdoer. The medical aspect, on the other hand, is focused on 'curing' the defendant and would rarely agree with punishing him. So, if society gets benefited from punishing the offender, the conduct of the defendant won't be excused.

Having said the above, however, a disease of mind needs to be established in the first place while pleading for insanity. The Pakistan Penal Code, under the heading of 'General Exceptions', grants an excuse if it could be clearly established that the defendant was, at the time of the commission of an offence:

- was suffering from a defect of the reason of unsoundness of mind
- to the extent that he was incapable of knowing the nature of his act or
- He did not know was he was doing was wrong or contrary to the law.

An analysis of the relevant provision shall be made at an appropriate place later in this work, it has been reiterated in order to refresh what has to be established in the court when a defence of insanity is pleaded by the defendant. The burden of proof would lie upon the shoulder of the defendant.

Basis For The Plea of Insanity

The support that comes in favour of the plea of insanity is based at least on two assumptions. The first one is that an insane person does not have control over his conduct and secondly, he is unable to make an ill intent. In the first case, he becomes excusable as it can be hardly established that he has voluntarily

committed an act. In the second case, he cannot differentiate between right and wrongful conduct as his capacity is impaired. In other words, when mental incapacity is established successfully in a criminal trial it absolves a defendant from liability. The ends of justice cannot be met by punishing an insane as deterrence is defeated and retribution becomes pointless. It would be wrong on moral grounds as well to punish a person who is temporarily or permanently deprived of making a criminal intent that is a sine qua non for the establishment of a crime. It may also result in the deterioration of public confidence in the criminal justice system of the state. A utilitarian point of view, however, asserts that curing the disease of a mentally ill offender will be more beneficial to society than punishing him. That will better serve the ends of justice.

A Historical Background of Insanity Defense

The ancient laws and codes do not appear to differentiate between offenders on basis of mental abnormalities. That reason perhaps less was known about the human brain and its functioning.

The British Period

Great Britain remained an imperialist power during the last few centuries and during this period it ruled a major population of the world. Therefore, the laws of territories which remained under British rule have been greatly influenced by the law in Britain. Indian subcontinent remained a British colony for almost a hundred years during which it was directly under the control of the Crown and all legislation was passed by the British Parliament. Our current criminal laws are not an exception. The Pakistan Penal Code, for example, dates back to 1860 A.D. and was drafted and passed by the British Parliament. Section 84 of the Code which is about the defence of insanity has been part of it since the British era and its insertion was caused by changes in the then British law regarding insanity.

The M'naghten's Case

Before the drafting of the Pakistan Penal Code, 1860 (then Indian Penal Code), in 1843, a man named Daniel M' Naghten murdered Edward Drummond, the secretary of the British Prime Minister, Sir Robert Peel, believing him to be the Prime Minister. He was arrested and charged with murder. The defendant stated that the Prime Minister, along with the Queen, was conspiring against him and were planning to murder him. During the trial, however, the counsel to the defendant took the plea of insanity. Witnesses were called on behalf of the defendant who testified to the court that the defendant, at the time of the commission of the killing, was not in a sound condition of mind. This was also supported by the testimony of the medical expert who described the abnormality of the accused as "morbid delusions", a state of mind in which a person might appreciate the moral aspect of the rightfulness and wrongfulness of his act but in this case, the accused was "carried away beyond the power of his control"(Keeton, 1961). So the accused became unable to perceive the moral aspect of his act and, in the course of time, lost his control, totally dictated by the commands of his abnormality. Such abnormality was termed "irresistible insanity" by the medical expert opinion in this case(Dine & Gobert, 1993).

The Formation of The M'naghten Rules

The verdict given in M'Naghten's case was 'not guilty, on the ground of insanity'. The case stirred a furious debate in legal circles and the members of the legislature as well. It was soon after the verdict that the House of Lords started a debate on the trial. As a result of the debate, five questions were prepared to seek legal opinion from legal experts. The House called upon fifteen judges to give their response to those questions and, in the light of those responses, they framed certain to deal with a plea of insanity at any court in the future. Those rules became famous as the M' Naughten's Rules and became the basis for legislation

on the subject in many countries. The record of these proceedings in the House of Lords is available (Dine & Gobert, 1993) and one may summarize the M'Naghten Rules in the following points:

- The basic presumption of sanity about every man and of having a degree of reason sufficient enough to be held liable for his wrongful acts unless he satisfies the court by proving the contrary to it.
- The defendant, in order to claim the insanity excuse, must establish that he was suffering such a defect of reason caused by a disease of the mind which incapacitated him from knowing the 'nature and quality' of the act he was doing, or even if he knew it, that he did not know that what he was doing was wrong.
- If the defendant was suffering from a mental disease during the commission of the offence but knew the nature and quality of his act or could differentiate between right and wrong, he is criminally responsible for the act.
- If the accused, suffering from a mental abnormality, commits an offence, acting under a delusion which has caused distortion of the true image of facts that surround him, hence being incapable of knowing the true nature of his act, he shall be responsible for the extent he would have been in a case where the facts he imagined happened to be true.
- Expert testimony about the mental condition of an accused who claims insanity defence shall only be admissible if he has seen the condition of the accused before trial(Nigam, 1965).

The M' Naghten Rules provided for a test of legal insanity that, if established successfully in a criminal trial, may prove as a valid defence or excuse and may result in the acquittal of the offender. It is also called the right-wrong test. According to the M'Naughten Rules, a person may be found not guilty by reason of insanity if, before the court or a jury, it is established that the accused was suffering from a 'defect of reason' that arise out of 'a disease of the mind', and that at the time of the commission of the offence he was unable to know the 'true nature and quality' of his act or incapable of knowing what he was doing was against the law.

The test itself attracted both acclaims as well criticism. Most of the critics objected to the language of these rules and the definitions of the phrases used therein remained the centre of controversies. Terms like 'disease of the mind', 'defect of reason', and 'suffering from', according to these critics, are difficult to interpret. How to tell whether the accused 'knew' the nature of his act? Does 'knowing' the nature of one's actions mean the 'cognitive knowledge' or the 'moral understanding' of the nature and quality of the act? There is, due to this reason, very little case law that defines the terms 'disease of the mind' or 'knowing the nature and quality of one's act' (Reid, 1998). These rules also pose a challenge of interpretation while the judges' are concerned with other phrases used in them like 'nature and quality of the act' or the term 'wrong'. It was mainly due to the problems in the meaning of phrases used in M'Naghten Rules, besides others, the critics declared them 'far from clarifying the law', making it more 'confusing and uncertain' (Pearlstein, 1986). Further criticism is based on the argument that these rules focus on the cognitive part of human personality and set back the emotional side of it. Human personality is a sum of both and the mere cognitive faculty of the mind does not control human behaviour. Ignoring the emotional aspect of personality would result in compromising the testimony of expert witnesses as these rules would face them with impossible questions which are needed to be answered during a trial. This makes these rules inadequate to identify defendants which are not worthy to be punished for a crime (Wayne & Austin, 1986). And finally, these rules, though not judgments of the courts or statutory provisions but the opinion of certain judges of that time who appeared in the House of Lords and responded to certain questions put to them by the House, received an authoritative status till this day in the interpretation of insanity law.

The Irresistible Impulse Test

It has been mentioned in the previous section that the Right-Wrong Test, based on M'Naghten Rules, faced harsh criticism for it created a heavy burden on the defendant. It suffers significantly and potentially from unfair limitations and, for those reasons, some jurisdictions, at least in the US, opted for the Irresistible Impulse Test. The test was adopted along with the M'Naghten Rules either through formal legislation or by a decision of the court. It was, in a way, an effort to overcome the shortcomings in the M'Naghten Rules which, as mentioned earlier, focus on reason and not emotions. Human beings are sometimes tempted by certain emotions to the extent that they become uncontrollable and, as a result, the mind loses control over the behaviour. Cases of sudden provocation or acts done in extreme anger, for example, would fall under this category. The application of the Irresistible Impulse Test is, however, limited to specific cases and would vary from case to case. Although it may be traced back to a case in the United States in 1834, the main proposition of the Irresistible Impulse Test may be summarized as under:

"The defendant's state is such that he or she may know the nature and quality of an act and that it is wrong but cannot forbear from committing the act"(Reid, 1998).

The test is used in a conjunction with the Right-Wrong Test and its application would be determined by the facts of the case. However, its application demands from the defendant show that the strength of his impulse to commit the act was such strong that he would have not been able to control it or conform to the standards of law even if there were a "policeman at [his] elbow". This implies a very tough standard of proof and has been criticized as being "too restrictive" (Reid, 1998)and as if the idea of irresistible impulse has been employed in "an especially literal fashion"(Thomas & Bishop, 1987).

The Durham Rule

The Durham Rule, also termed the Direct Product Test, is basically a derivation from a court judgment in the District of Columbia, the US in 1954. Before going to the content of the rule, it should be noted that the 'direct product test' is not applied in any of the jurisdictions in the United States of America. Its significance, however, lies in the role that it played in furthering the discussion on the defence of insanity. The Durham Rule states that:

"If the unlawful act was a product of mental disease or defect, the accused is not criminally responsible for his or her conduct".

"The court in its judgment in Durham v. the United States maintained that the Right-Wrong Test did not take 'sufficient account of psychic realities and scientific knowledge and 'is based upon one symptom and so cannot validly be applied in all circumstances' (Reid, 1998). The court, therefore, needed a broader test that may cover those circumstances which would otherwise be left from the ambit of the Right-Wrong Test. The court declared that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."The judgment in Durham v. United States (1954) was also an effort to ameliorate the problem of expert opinion in cases where the defendant pleads not guilty by reason of insanity. The Right-Wrong Test, as has been mentioned earlier, was not free from such problems. The Durham Rule, however, was not well accepted and the judgment on which the rule was based was also overruled in 1972 in the District of Columbia where it originated (United States v. Brawner, 1972). The rule also faces problems of interpretation as the meaning of the terms 'mental disease' and 'product' are difficult to ascertain.

The Substantial Capacity Test

In order to bring a revised version of the Right-Wrong Test and the Durham Rule, legal experts of the American Law Institute (ALI), who drafted the Model Penal Code (MPC), inserted the Substantial Capacity

Test under Section 4.01 of the MPC, 1962. It is also called the ALI Test after the name of the institute, the American Law Institute, which provided an alternative to the previous tests.
Section 4.01 of the MPC, 1962 may be summarized as:

- An accused that suffers from a disease of mind or defect could establish that
- At the time of the commission of the offence, due to his abnormal mental condition, he lacked the 'substantial capacity' of either
- The appreciation of the fact that he was doing something that is an offence
- Or he knew that the act was wrong but was unable to act in accordance with the dictates of the law.

The provision, however, excludes the cases where the accused relies upon mere the repetitive nature of such conduct as a basis for his insanity defence claim (The Model Penal Code, 1962).

The ALI Test is intended to improve the previous tests as can be inferred by comparing their wordings. For example, the ALI standard uses the word "appreciate" instead of "know" which implies that a defendant who 'knows' the difference between right and wrong but is unable to 'appreciate' it may successfully establish the plea of insanity. Likewise, if a defendant lacks substantial capacity to conform his conduct to the requirements of the law would cover the emotional aspect of human personality that seems the focus of the Irresistible Impulse Test. It appears to be bridging the M'Naghten (Right-Wrong) and the Irresistible Impulse tests and has been softer on part of the defendant in terms of his burden of proof.

It should be noted that the Model Penal Code is not a formal piece of legislation but is an effort, on part of the experts, to provide a standardized version of the law for legislatures. The MPC can be regarded as mere a proposal but it has played an important role in the drafting of penal laws in the US and elsewhere. Many jurisdictions in the US have adopted the ALI test in their respective criminal laws.

Guilty But Mentally Ill

Since 1975, in the state of Michigan, US a defendant who seeks relief on grounds of insanity may be declared as 'guilty but mentally ill'. The statutory law of Michigan on the subject mandates that a person on a criminal charge if pleads guilty or is convicted after a trial but is found to be mentally ill, may be sentenced for the offence but the Mental Health department would be duty bound to provide treatment to such an offender. Such a defendant, during the period of psychiatric treatment, may be on probation or in prison. The statute has been upheld by the Michigan Supreme Court by stating the purpose of its judgment as, "to limit the number of persons who… were improperly being relieved of all criminal responsibility by way of the insanity verdict" (People v. Ramsay, 1985). Michigan was followed by the state of Utah where the court upheld the mentally ill statute in the following judgment (State v. Young, 1993).

The Doctrine of Diminished Responsibility

The doctrine of diminished responsibility was originally taken from Scottish Law where it was adopted to avoid the consequences of capital punishment. In England, the Royal Commission on Capital Punishment was formed and worked for five years (1949-53) and submitted its report after completing its task. The Commission, in its report, recommended the adoption of the doctrine of diminished responsibility in Scottish law and as a result of such recommendation, it was accepted in the Homicide Act of 1957. The Act establishes different defences in cases of murder which may reduce murder to manslaughter and that, resultantly, would also minimize the punishment for such an offence. Manslaughter, on the other hand, may be voluntary or involuntary. If an accused could convince the jury of his entitlement to any of the defences established under the Homicide Act, 1957, the charge of murder would be categorized as that of

voluntary manslaughter. Section 2 of the Homicide Act, 1957 establishes the doctrine of diminished responsibility in English Law. The section can be summarized into the following points:

- The provision expands the scope of the insanity defence by applying it to cases of mental abnormality that is caused by improper development or inherited genetically or by disease or stroke.
- It is applicable in cases where the accused has been charged with an offence of murder.
- It applies whether the defendant acted as the principal or secondary performer.
- The burden of proof to establish such a plea lies on the defendant.
- If the plea is successfully established by the defendant, he would be charged with an offence of a lesser degree i.e. manslaughter instead of murder.

If the act was committed jointly by more than one person where one did suffer from a mental abnormality and the other one did not, the one who is not abnormal would not be benefited from this section.

The Homicide Act of 1957 allows the judge to pass a sentence lesser than the death penalty in cases where the defendant is convicted of manslaughter instead of murder. It provides room for the court to give a verdict other than that of the death penalty which would be the only option, if it has to impose a penalty, under the M'Naghten Rules. Moreover, the Homicide Act, 1957 by differentiating among offences on the ground of intent, also recognizes mental conditions that are not normal but fall short of insanity. Thus, the doctrine of diminished responsibility suggests mitigation in sentencing on grounds of a reduced mental capacity that is found on part of the defendant at the time of the commission of the offence. This has, indeed, mellowed down the objections put forth on the strictness of the M'Naghten Rules and allowed the judges to exercise their discretion in a more just and reasonable way.

Conclusion

Insanity is a social concept but it involves a certain mental condition that may affect the actions of persons who suffer from it. When an insane person commits an act which is prohibited by law, especially a crime, questions are raised as to the culpability and corresponding punishment of the wrongdoer. As it has been asserted that a crime has two basic elements the *actusreas* and the *mens rea*, both of which are needed to be proved in order to associate criminal liability to the perpetrator. The *mens rea*, however, is the most important element yet the most elusive that needs to be proved beyond the shadow of a doubt in order to hold an accused criminally responsible and to inflict punishment on him. It is in this parlance that the debate about insanity is appreciated in criminal law.

Laws cannot remain static and have to take pace with the developments and advancements in society. The field of psychiatrics is no exception to this rule and so is the law about insane persons. There are many mental diseases which may be short of insanity yet they may substantially affect the mental capacity of the patient. Criminal liability is related to the guilty mind with which a crime is committed and punishment is awarded as per quantum of the guilt. In order to analyze the mental condition with which a person having impaired capacity due to a mental disease commits an unlawful act, certain tests have been devised and laws are moulded accordingly in various civilized countries. It is, therefore, very important to study these practices and techniques so as to revise and reform the criminal justice system in order to bring it to par with other civilized nations.

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