Global Social Sciences Review (GSSR)
URL: http://dx.doi.org/10.31703/gssr.2021(VI-II).31

Defence of Insanity: Its Scope and Application in English law

Muhammad Amjad Naeem [*] Hamid Mukhtar [†] Kashif Mahmood Saqib [‡]

Abstract *English Law of Insanity proceeds in making assessments of the legal wrongfulness of an accused by fitting the circumstances within four slots established in line with M'Naghten case. During this process, the judges' role becomes more robust than the jury as technical and medicolegal issues are beyond the grasp of lay jury members. So we offered a critical appraisal of the approach adopted in English Law to 'fit the psychological science' in legal moulds through vast discretion vested in judges to deal with the defense of insanity. For this purpose, the authors extracted various pieces of information from case laws, books, law commission reports, Acts, statutes, and research articles published related to the subject matter and developed a synthesis to reach a conclusion. Our findings suggest the trial judge decides the extent and types of evidence to be induced for resolving the issues in contention regarding insanity and to be decided by the jury. Some issues pertaining to insanity are too difficult for the trial judge to decide, which requires expert evidence. The application of defense of insanity rests with the evaluation to see whether the judge's discretion has proved a right mechanism to plug medicolegal gaps in this process or not.*

- DOI: 10.31703/gssr.2021(VI-I).31
- Vol. VI, No. II (Spring 2021)
- Pages: 311 – 317
- p- ISSN: 2520-0348
- e-ISSN: 2616-793X
- ISSN-L: 2520-0348

Key Words: Insanity- M'Naghten Rules- English Law- Criminal Law

Introduction

Defense of insanity is historically afforded to establish the involuntary actions by an accused that resulted in the commission of the crime [Andrew, 2015]. The crimes of strict liability are not covered by this plea of defence. Such involuntary actions committed by an accused are claimed to be originated from psychological, mental or musculoskeletal disorders [Christina and Natalie, 2020]. However, the process of sifting to decide the 'functional status of mind' in insanity defense pleas crave for inducing evidence about 'malfunction of mental capacities' of an accused that have adversely affected his powers of judgment [Andrew, 2015]. Sometimes attempts are made through fabricated and false defense pleas of insanity to hinder the criminal liability from the judge through scientific jargons [Paul and Adrian, 2017]. English criminal justice system historically spares criminal liability for those accused who are not in full control of their actions [Alan and Michael, 2014]. The M'Naghten case established slots, and the courts performed pigeon-holing of circumstances of cases to decide the veracity of pleas of insanity. The sifting through fitting round psychological science in square legal rules within the limited discretionary framework of the trial court proved controversial. Accused's 'malfunction of mind' to establish automatism resulted through external and internal factors made the whole process very complex [Jonathan, 2019]. It was suggested at that point that the English courts should adopt the Australian or Canadian model of dealing with such 'psycho-based insanity defense'. However, English courts have tried to forge practicality in insanity defense by dealing with automatism under generous discretion- investing in trial judges a practical approach of using discretion to counter fabricated defense of insanity [Mackay *et al.*, 2006]. The above discretion sometimes causes confusion but has proven resilient against

[*] Department of Law, University of Northumbria, United Kingdom/Advocate High Court, Pakistan.
[†] School of Law, University of Okara, Okara, Punjab, Pakistan.
[‡] School of Law, University of Okara, Okara, Punjab, Pakistan. Email: kashifsaqib11@yahoo.com

Citation: Naeem, M. A., Mukhtar, H., & Saqib, K. M. (2021). Defence of Insanity: Its Scope and Application in English law. *Global Social Sciences Review, VI*(II), 311-317. https://doi.org/10.31703/gssr.2021(VI-II).31

the junk science for effective application of the law [Jacqueline and Tony, 2019]. To a reasonable extent, this new approach has proved successful in avoiding miscarriage of justice. It has also struck a balance between the accused's right to a fair trial and the most needed care towards the victims of domestic abuse whose perpetrators could circumvent justice under the defense of insanity [Jeremy, 2019]. But, the aforementioned discussion is related to countries other than the UK. Thus, a comprehensive overview of the above said perspective is needed to look a way forward for dealing with such cases in the courts in the UK. The aim of this study is to offer a critical appraisal of the approach adopted in English Law to 'fit the psychological science' in legal molds through vast discretion vested in judges to deal with the defense of insanity.

Methodology

The comparative method in legal research is commonly used to find out gaps in laws or judicial decisions [Hage and Jaap, 2014]. A multi-method approach was adopted to complete the research at hand. Mainly, the nature of the study is descriptive and exploratory. In order to achieve the objectives of the study, data used in the study consists of both primary and secondary resources, e.g., Regulations passed by legislative bodies, case laws, official reports, law books, conference materials, research articles, etc. [Banaker *et al.*, 2005]. Desk research was conducted in order to identify court cases relevant to the insanity falling in the domain of this research work. Further, content analysis techniques were used to analyze the cases found [Hallmark and Ronald, 2008]. The data collected and sorted mainly focused UK. However, some other precedents from other countries like Canada Australia were also compared and incorporated to provide a fair comparison for the sake of fitting the modern psychological approaches in the existing legislative framework.

Results and Discussion

The Law and its Foundation

Defense of Insanity is a general defense in common law by which a defendant claims being insane while committing an alleged crime and should be fully acquitted [Christina and Natalie, 2016]. It is founded in English Law in the 1800s whence the jury would return a verdict of "not guilty" by accepting an insanity plea [Section 2, Act-1883]. However, hospital detention order for lunatics was at the disposal of the Home Secretary, yet detention under law as a penalty was dispensed by the trial judge, as a punishment in murder or other heinous crimes, by exercising discretion without any guidelines [Section 5, Act-1964]. The defence of insanity was unique in the sense that the defence, the prosecution, or even the trial judge could initiate it. The scope of the law of insanity in murder cases was restricted to diminished liability with the passage of time. However, the current form of the law of insanity from pigeon-holing rules was established in *M'Naghten* [R v M'Naghten, 1843]. Criminal law holds every accused as sane, in full command of his voluntary actions and liable for the crimes he commits.

The Trial in Insanity

The defense of Insanity has found no recognition in strict liability offenses like driving; however, it is pled in offenses which require a *men's rea* in their commission [DPP v Harper, 1997]. The defense of insanity reverses the burden of proving the case from prosecution to defense [Jones, 1995]. However, the burden of proof meant for the prosecution to discharge is a 'balance of probabilities [Paul and Adrian, 2017]. The defence of insanity is usually considered by the court under three relevant issues.

(1) Issues of insanity before the trial, (2) Accused being unfit to plead and (3) Insanity at the time of the commission of crime [Jonathan, 2003].

1. Where the accused was insane and already in police or hospital custody, the Home Secretary has powers to detain any such person in a hospital. A medical board is constituted to assess the mental capacity of the accused and recommends further actions for the Home Secretary.
2. As the trial commences, the defence, Prosecution Service or trial judge can put forward questions about the accused mental capacity of the accused. The jury first decides the capacity of such accused whether he (a) understands the charges

(b) instructs his counsel, (c) follows the proceedings (d) challenges the jury (e) decides to plead guilty or not and (f) gives evidence in his defense.

3. The rules expounded in M'Naghten [R v Dennis, 2016] provide pigeon-holing of circumstances of the case while the accused claimed to be insane at the material time.

The rules established in M'Naghten for a successful defence require that an accused was suffering (a) a defect of reason, (b) such defect was due to disease of mind, (c) in this state of mind, accused was unknown to the characteristics of the prohibited act, and even if he knew, (d) he was unknown to the fact that the prohibited act was wrong. The accused in Mc Naghten shot Sir Robert Peel dead, based his defense on the plea of insanity and was acquitted. The above rules originated from the House of Lords where High Court judges answered the questions. Those answers were published the way their judgments do as precedents. The four elements of the defense of insanity are discussed as follows:

Defect of Reason

An accused must establish that his 'reason of mind' was defective at the material time when the alleged crime was committed. However, his inability to control his emotions, forgetfulness or absent-mindedness are not covered within the ambit of this please of defense. In *Clarke* [R v Dennis, 2016; R v Clarke, 1972], an accused was charged with theft and defended under insanity. She claimed that her 'reason of mind was badly affected' for suffering serious depression and in a state of absent-mindedness, she had put some stuff in her bag. Her plea of insanity defence collapsed as the court held that her 'reasoning' was sound and lack in her 'concentration' was not accepted as a 'defect in reason' under the rules established in the M'Naghten case.

Defect of Reason due to 'Disease of the Mind.'

The psychiatrists haven't yet reached an agreement about the clear meaning of it. It may be due to limitations in legal usage of the mental health situation of an accused rather than a medical condition [Clarkson *et al.*, 2010]. The case law considered it widely and included physical defects that could affect mental functions and reasoning. The court explained in *Quick* [Quick, 1973], the internal and external contributory elements in order to distinguish between sane automatism and insanity due to 'disease on the mind. A diabetic defendant, who took insulin, ate nothing for long that resulted in hypoglycaemia (A health issue caused by insulin disorder when blood sugar drops too low in the human body that leads to weakness, dizziness, blurred vision, and lack of concentration) and he attacked a person. The court validly quashed his conviction on the ground that an external element (taking of Insulin) caused a serious health condition and reasonably defected accused's mental capacity. The court accepted an external factor, *'induced disease of the mind'* as presented in the circumstances of that case but not the internal factor, the diabetes itself. Factually, 'the defect of mind due to disease' expounded in M'Naghten was extended to sane-automatism and accepted as a complete defence of insanity, which resulted in an acquittal of the accused [Christina and Natalie, 2016]. In Bingham [R v Bingham, 1991], the court of appeal overturned the conviction of a defendant on the ground that the trial erred in distinguishing sane and insane automatism, by getting confused with hypo- glycaemic (A medical condition with high blood sugar level in the human body caused by diabetes, considered as internal factor) and hyper- glycaemic condition of accused. In *Burgess* [R v Burgess, 1991], the defendant assaulted the victim with a video recorder in a state of sleep- walking. He brought forward an insanity defense for automatism. The court accepted sleepwalking could be an external factor but produced internally that resulted into 'disease of the mind'. In *Hennessy* [R v Hennessy, 1989], the defendant pleaded guilty to spare himself from indefinite detention in a mental hospital. The judges considered stress or intoxication as external factors and accepted 'sane automatism', under their discretion to avoid labeling the accused as 'insane for life' [R v Bailey, 1983]. So, in the light of the aforementioned controversies, the discretionary authority rests with the court to decide if insanity would be the right defense [Ormerod, 2009]. In

Sullivan [R v Sullivan, 1984], an epileptic accused assaulted a victim contrary to s 20, was excused of criminal liability. His defense, due to external factors, was accepted under insane automatism. However, diseases like sleepwalking and epilepsy may be considered insanity and regarded as an automatism. If sleep- walkers and patients of diabetes are considered 'insane', then such accused should be detained for the danger of likely relapse as warned by Lord Denning in *Bratty* [Bratty v AG, 1963]. Conversely, the cases above prove that every disease may not be considered a 'disease-causing defect of mind' for the purpose of the insanity defence.

Defect of Reason, Wherein Accused was Unknown of Characteristics of Prohibited act

For a successful plea of insanity due to defect of the mind, an accused is required to prove that he was unknown to the 'characteristics' (state, nature, manner and legality) of an act in question', which resulted into the commission of the crime. Being unknown to the above 'characteristics' of the prohibited activities for the reason of his 'cognitive behaviour' whereby an accused might not understand or in full control of his actions [Mental Health Act, 2007]. The court dealt with such circumstances in *Codere* [R v Codere, 1917] and decided that "…. the issue of 'characteristics' of an act established in *M'Naghten* mentioned therein physical characteristics of an act only. It didn't make any reference to physical or moral aspects of an act'. The cognitive behaviour formula mentioned above was never used by courts to decide insanity on the ground that the defendant potentially knew the physical nature of the prohibited act [The Law Commission Report, 2013]. However, the judges resisted attempts by the defence to inducing psychiatric evidence to stain the facts with junk science or scientific experts to influence their sifting [R v Johnson, 2007].

Defect of Reason- wherein Accused was Unknown 'if his Action was Wrong'

An accused must prove that his 'defect of mind' was such that he didn't know the 'wrongfulness' of his action even after proving that 'characteristic' of the act in question was unknown to him. In *Codere* [R v Codere, 1917], the court held that the accused had failed to establish that he was unknown that his act was in itself wrong. The Court held *"the Defendant knew that his act was prohibited in law, was conscious of its breaking could be punishable under the law of the state, thus knew the legal wrongfulness of his actions".* It may be suggested that the test expounded decide the legality of an action is very narrow and impractical [Howard, 2003]. In *Johnson* [R v Johnson, 2007], the Court of Appeal found a flexible approach adopted by granting acquittals after accepting insanity pleas, even though the legal consequences were to the defendant. In *Windle* [R v Windle, 1952], the defendant apprehended the likelihood of being hanged for committing an offence. The court decided that accused was fully aware of the illegality of his actions and upheld his conviction [Goldstein and Katz, 1963].

Application and Scope

Insanity, as a defence plea saved some potential defendants from conviction because of a considerable lenient approach adopted by the courts for 'disease of the mind' [Clarkson *et al.*, 2007]. 'Diseases of mind' could be planted just to spare convictions. Lawton LJ righteously commented that *"…. a diabetic could be saved from hospital order and his condition be controlled by giving sugar…"* Some commentators [Mackay 1992] opined that the English criminal justice system treated diabetics sympathetically. Sleepwalkers and epileptics who lacked fault culpability might be a serious threat to the security and wellbeing of public and required to be detained under the possibility of relapse*"* [Wilson *et al.*, 2005]. Conversely, insanity was recognised as a legal issue determined by the judge based on medical reports. The psychiatrists present 'legally wrong acts' as 'morally wrong, being unable to explain legal issues in terms of law, hence hindering legal insight of the judge as Latham LJ maintained in *Johnson* [R v Johnson, 2007]. Few commentators suggested that 'legal wrongfulness' could be articulated with an aspect of 'moral wrongfulness' to determine an act as 'prohibited' in English law insanity as being done in other

modern common law jurisdictions [Howard, 2003]. The Law Commission found no problem with the defence of insanity but suggested to save defendants of insanity from potential stigmatism due to their 'disease of the mind' declared by the court [Loughnan, 2007]. In Rejmanski [R v Rejmanski, 2017], it was made mandatory for the trial judge to consider all the relevant issue concerned to defendant's health, whether the defence of insanity to be left for the jury to decide, issue of loss of self-control (in murder charges for diminished responsibility) and consider the relevant evidence.

Defense of insanity does not benefit all accused with 'disease of the mind'. However, diabetic or sleepwalker accused could exploit it to some extent [Mackay, 2009]. It could be improved if 'only recognised medical conditions' are accepted as a valid plea of insanity rather than a generous 'mental disorder' qualification. Being so inclusive, the above approach may be exploited by accused of serious and organized crimes [R v Rejmanski, 2017]. Insanity, as a defense, could be a successful defense for people with genuine mental health issues, especially women. Insanity may be improved to handle the crimes of modern- age. However, abolishing this plea of defense may not serve any good purpose as demanded by some critics [Mackay, 2009].

Conclusion

Insanity is available as a complete defence 'to the right accused' through slotting of the relevant facts under M'Naghten rules. Some suggestions were made to revisit the pigeon-holing of insanity plea under M'Naghten, but judges' decisions in many cases proved their practicality. That's why; the Law Commission rejected the demands of abolishing this assessment as no fault was found. Some suggestions to abolish the defence of Insanity also met with the same fate. However, different approaches in assessments of facts caused confusions in 'external factors' slotting with 'induced impairments, but the judges exercised their discretion effectively with utmost care and kept the science and scientific experts off the reign of the court. The judges struck a balance with the 'internal factors' approach with an extra caution for fabricated pleas of insanity by posing a danger for the accused to be put in protective incarceration for good. The English Law of Insanity is flexible in comparison with other Common law jurisdictions but proven far effective. It may be right to commend that sticking rigidly with the rules like Australia, may lead to miscarriage of justice within the English criminal justice system. Judging moral legality of acts could potentially lead to wrong convictions of defendants with genuine mental health issues [Mackay, 2009].

References

Alan, R., & Michael, B. (2014). *"General Defences in Criminal Law: Domestic and Comparative Perspectives"* Ashgate Publishing Ltd,

Andrew, A. (2015). 'Criminal Law', Ch-Defences, OUP 2015, 4th Ed.

Andrew, A., (2015). *Criminal Law*, fourth ed. Oxford University

Banakar, R., & Travers, M. (2005). *Theory and method in socio-legal research*. Bloomsbury Publishing, UK.

Bratty v AG for NI [1963] AC 386, "-----diseases of mind that require hospital detention, rather than acquittal of defendant"

Christina McElhone and Natalie Wortley, "Criminal Law: The Fundamentals", Sweet & Maxwell 2020 4th Ed.

Christina, M., & Natalie, W. (2016). *Criminal Law*, fourth ed. Sweet and Maxwell.

Clarkson, C. M. V., Keating, H. M., & Cunningham, S. R. (2007). *Clarkson and Keating Criminal Law*: Text and Materials, sixth ed. Sweet & Maxwell.

Clarkson, C. M. V., Keating, H. M., Kyd, S., & Clarkson, C. M. V. (2010). Clarkson and Keating Criminal Law. Text and materials, sixth ed. Sweet & Maxwell.

DPP v Harper [1997]. 1 WLR. 1406-1410.

Goldstein, J., & Katz, J. (1963). Abolish the Insanity Defence-why not? Yale Law J. *72*(5), 853-876.

Hage, & Jaap. (2014). Comparative law as method and the method of comparative law. *The method and culture of comparative law 1*(4), 37-52.

Hallmark, A., & Ronald F. W. (2008). Systematic content analysis of judicial opinions. Calif. L. Rev. 96, 63-75.

Howard, H. (2003). Reform of the Insanity Defence: Theoretical Issues. The J. Crim. Law *67*(1), 51.

Jacqueline, M., & Tony, S. "Unlocking Criminal Law" Aug.2019

Jeremy, H. " Ashworth's Principles of Criminal Law" OUP 2019, 9th Ed.

Jonathan, H. (2003). Criminal Law: Texts, Cases and Materials, sixth ed. Commentary on case R v John. EWCA Crim. 3452, Oxford University Press.

Jonathan, H. (2019). "Criminal Law" McMillan Law Masters, March

Jones, T. H. (1995). "Insanity, Automatism and the Burden of Proof on the Accused" 111 LQR 475.

Loughnan, A. (2007). Manifest Madness: Towards a New Understanding of the Insanity Defence. Mod. Law Rev. 70(3): 379-401.

Mackay, I. (1992). The Sleepwalker is Not Insane. The Mod. Law Rev. *55*(5), 714-720.

Mackay, M., & Howe, 'Yet more facts about the Insanity Defence' [2006] Crim LR 399

Mackay, R. (2009). Righting the Wrong? Some Observations on the Second Limb of the M'Naghten Rules. Crim. Law Rev., *1*, 80-89.

Mental Health Act. (2007). CPS guidelines on defence of insanity, published on 12th March 2019, CPS public archive.

Ormerod, D. (2009). *Smith and Hogan Criminal Law: Cases and Materials, tenth ed.* Oxford University Press.

Paul Roberts & Adrian Zukerman, Criminal Evidence, 3rd Ed. 2017

Paul, R., & Adrian, Z. (2017). *Criminal Evidence, Third Ed.* Oxford University Press.

Quick [1973] 3 WLR 26

R v Bailey [1983] Crim. LR. 353

R v Bingham [1991] Crim. LR. 43

R v Burgess [1991] 2 WLR. 1206

R v Clarke [1972] 1 All ER 219

R v Codere [1917] 12 Cr App R 21

R v Codere [1917] 12 Cr App R 21

R v Dennis J Baker, 2016. Textbook of Criminal Law, fourth ed. On M'Naghten Rules, M'Naghten [1843] UKHL J16. Oxford University Press

R v Hennessy [1989] 1 WLR. 287

R v Johnson [2007] EWCA Crim 1978

R v Johnson [2007] EWCA Crim 1978

R v Johnson [2007] EWCA Crim 1978.

R v M'Naghten [1843] UKHL J16 "the accused needs to prove that he was suffering from a disease of mind which had affected him so badly at the material time that he didn't know nature and quality of the prohibited act; or even if he knew, he did not exactly know that such an act was really prohibited."

R v Rejmanski [2017] EWCA Crim 2061

R v Sullivan [1984] 1 AC 156

R v Windle [1952] 2 QB 826.

Section 2 of The Trial of Lunatics Act 1883.

Section 5 of Criminal Procedure Insanity Act 1964.

The Law Commission Report, 'Proposal for reform of defence of insanity and automatism' published on 23rd July, 2013.

Wilson, W., Ebrahim, I., Fenwick, P., & Marks, R. (2005). Violence, Sleepwalking and the Criminal Law. Crim. Law Rev., *12*, 614-617.