

Insanity, M’Naghten Rule and Exemption of Criminal Responsibility

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Abstract

General exceptions is an important principle of criminal law for doing justice to the accused persons. Insanity is one of the most important general exceptions by which the accused person is discharged of his criminal liability for commission of any offence in India and European countries. Investigating the judgment of various Courts and the M’Naghten Rule, this paper attempts to study the insanity of the accused person, and we find that insanity negates the mensrea, i.e the guilty mind, which is one of the mental elements for commission of hoologanism. It is considered that the madman or the insane person has no existence or non-est in law and the Courts acquit such persons from his liability of crimes.

Keywords: Acquittal, Criminal liability, Insanity, Madman, and Mensrea.

Introduction

The basic theory of the criminal law considered mental element of the person along with the criminal act to decide whether that person is guilty or held responsible. It means that there must be mensrea, or the vicious will or guilty mind of the accused person. The insanity negates the requisite mensrea so that an insane person shall not be held liable for doing of any criminal act. It is grounded on the principle of “*furiosus volenti non est*” that a madman has no free will. At the same time, it is assumed that a madman has no existence that is “*furiosus absenti est*”. This may be applied for taking defence of insanity. Here the position of the perpetrator is even inferior to that of a juvenile within the age of seven years. We consider here four types of mad persons, having not of sound mind (*non-compos mentis*). They are idiots, *non-compos mentis* by illness, an insane or a lunatic, and the another who is drunk.

Insane person is generally deprived of his cognitive capacity to distinguish the nature of his act whether it is against the law or not. There are two situations when insanity can be taken as defence:

1. By reason of disease i.e automatism, that means when the perpetrator is unaware of the nature of his act, fails to distinguish his act as either wrong or against the law, then the element of requisite *mensrea* is absent.
2. By reason of delusion, which means when a person fails to distinguish what is either wrong or against the law. This is another category of mental disorder. If a person sacrifices his uncle shouting “*allaha-hu-akbar*” so that *allaha* will be pleased upon him, this must be due to disease of that person for taking defence of insanity.

Therefore, the factors or components of insanity are:

1. The person must be insane or madman.
2. Reason for this insanity must be disease.
3. Because of disease the person, is unable to know the nature or quality of his act and what he is doing is incorrect or against the law.

If the above factors or components are satisfied, then the accused person is entitled for the benefit of insanity.

Review of literature and judgment of various Courts

Based on the above concept Judges formulated M'Naghten¹ Rule in 1843, and stated in an authoritative form about the legal standard for fixing criminal responsibility as defined by the common law.

Daniel M'Naghten, intending to shoot Sir Robert Peel, killed the Statesman Secretary by slip-up. His acquittal for commission of murder on the basis of insanity raised controversy. This matter was debated before the House of Lords, and advice of the Judges was sought for a number of questions. The reaction to these questions became the famous M'Naghten Rule. Answer to the hypothetical questions, even by all the judges are not a source of law in its strict sense, but in Sullivan² it was accepted by the House of Lords that the Rules have provided an extensive guideline since 1843. The House of Lords came to a conclusion that:

1. Each and every person shall be assumed to be sane and possesses enough level of reason to be held liable for his criminal act unless a contrary is proved beyond satisfaction.
2. The insanity must be by reason of a disease during the commission of the offence. The perpetrator must be struggling under such shortcoming of reason or from a disorder of

mind, as not to distinguish the nature and quality of the act that he was doing.

3. Medical insanity is different from legal insanity, and
4. Doctors who had not examined the accused person before commission of the illegal act, cannot examine after commission of the offence.

It is seen that the above conclusion of the House of Lords is based on two types of defence that are available to an accused person (i) he must be acquitted if he is unaware of the quality and nature of his act because of his sickness or disease of mind (ii) even if the perpetrator knows the quality and nature of his act, the accused person must be acquitted if he was unaware of the fact whether he was 'wrong' because of his sickness or disease of mind. The two parts of the Rule require separate consideration but the first question, under both the parts, is that whether the perpetrator was under 'a defect of reason from the illness of mind'.

Whether a particular disorder amounts to a sickness or disease of mind within this Rule is not medical but a legal question, which is to be decided as per the ordinary rules of interpretation. Indeed, any disease or illness that produces the flopping of the mind is an illness, sickness or disease of mind, though it may not be a disease or sickness of the brain. *Arteriosclerosis*, a kind of tumour on the brain, epilepsy, diabetics, and all other physical illness or diseases may be considered in law as an illness or disease of mind, if they yield related malfunctioning or break down of the mind, which is created by some external factors – a blow on the head causing concussion, the injection of drugs or consumption of alcoholic material or administration of anesthetic are good example. Therefore, the law considers only the state of mind.

The law thus provides general exceptions to the prosecution of an offence. Section 84 of the Indian

¹ (1843) 4 St. Tr. (NS) 847

² [1948] AC 156

Penal Code (IPC) says "*nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law*". In fact, this entire section is based on the observation of the House of Lords. It has two components:

1. Incapable of knowing the nature and quality of the act
2. Wrong or against the law

It is often seen that problems come from the later component of insanity that the act is either wrong or against the law. Suppose A kills B, and A says that he was not knowing the fact that the act committed by him was against the law, can A get the benefit of insanity or madman? In another case, if somebody is taking alcohol for 25 years, can the accused person take the defence of wrong or against the law? Should the Court grant exemption? All these questions are solved in different cases decided by the various Courts.

An accused person was suffering from diabetic; he was taking insulin injection regularly as prescribed by the Doctor. One day he assaulted a gentleman with an intention to kill him. The accused person took plea that due to his *hypoglycemia* (low blood sugar), he was unaware about the fact that what he was committing is contrary or against the law. Then the question arises whether it is because of his disease or illness of mind. The Court acquitted the accused person for taking insulin that caused the disease and the external factors caused the malfunctioning of the brain that gave rise to the malfunctioning of the mind (In re Quick³).

In Kemp ⁴ the accused made a completely motiveless and absurd attack on his wife with a hammer. The accused person was charged with

causing grievous bodily injury to her wife with an intention to murder her. It seemed that he suffered due to *arteriosclerosis*, a kind of disease that caused clotting of blood in the brain. As a result, he was under transitory lapse of awareness during which he attacked her wife. It was accepted that the perpetrator did not know the nature and quality of his act and for that he was suffered from the deficiency of reason. The Court admitted that the perpetrator was an insane person or madman and he was not held guilty of offence, so he should be sent to asylum. Being aggrieved by this order, the accused person appeal and argued that it arose not from any mental illness or disease, but from purely physical one. It was argued that if the physical sickness or disease caused the brain cells to degenerate then it would be the illness or disease of the mind. The temporary effect with the performance of the brain was similar to a *concussion* (accumulation of blood) and not a disease or illness of mind. However, the Court disallowed this argument and decided that he was suffering from the disease or illness of mind and the accused person was sent to asylum.

The next question, whether a "psychological blow" resulting from "dissociative state" amounts to insane or non-insane automatism? In Rabey⁵ the perpetrator was infatuated by a girl, he understood that the girl did not regard him particularly highly, and reacted by hitting her on the head with a rock that he had taken from the geology laboratory. He was acquitted of causing bodily injury with an intent of automatism, on the ground that at the time of doing the act he failed to recognize the nature and quality of the act which was contrary or against the law. If the disease of the mind is due to internal condition for stress and strain, it may affect the mind internally so that the accused person may lose his cognitive faculty.

³ [1973] QB 910

⁴ [1957] 1QB 407

⁵ 1980 Canada

The external cause for a perfect defence of non-insane automatism, and internal cause that can only give rise to a defence of insanity has been criticized. There is, however, some other reason in this matter; in this case the internal factors may typically be a continuing condition that may cause recurrence of conduct prohibited by the law or against the law. Whereas, the external factors – the blow on the head, inhalation of toxic fumes, or injection, etc. will usually have a transitory effect, of course the blow on the head may cause permanent impairment, in this situation the impairment be an internal component giving rise to a defence of insanity.

Judges, in M'Naghten case, were questioned that if an accused person under an insane illusion or delusion of the existing facts perpetrates an offence in consequence thereof, is he be excused? They answered that it must depend upon the nature of the illusion or delusion. According to Stephen – "*my opinion is that if a special divine order is given to a man to commit murder, I should certainly hang him for it, unless I got a special divine order not to hang him*".

Psychiatrists recognize that a man may know the quality and nature of an act, he may even know that it is against the law or wrong, and yet perform it under an uncontrollable impulse, such person has no defence under the M'Naghten Rule. In Kopsch⁶ the accused person according to his own admission, murdered his aunt. He admitted that he strangled her with his neck tie at the request of his aunt. There was also evidence that the accused person had acted on spontaneous impulse due to his subliminal mind. The counsel of the accused person argued that the Judge may direct the jury that a person when committed offence under an impulse, which he unable to control, is not liable

for his criminal act. Therefore, if the impulses are irresistible in nature then it comes under the defence of insanity. Both in UK and India, it is not accepted as a defence. For example, if A and B are seizer, both are talking to C, in course of discussion A because of resistible or irresistible impulse kills C but B did not do that attempt. Medically A and B are at par and if irresistible impulse is given, immunity for insanity may create problems. Therefore, the Courts are not accepting this view to accept as a good ground of defence.

In Oye⁷, a man due to delusion, gripped police officer with evil spirit, intends to kill him. He attacked a number of police officers, although he had no previous criminal records. He then charged for inflicting grievous bodily harm and affray. During trial the accused person raised 'mistaken self-defence', but the Judge insisted for the defence of insanity as the Psychiatrists report confirmed that the delusion was the result of consumption of cannabis with symptoms of '*florid psychotic episode*' that undermine internal conditions of the accused person. The Court, therefore, decided that the man was not liable within the M'Naghten Rule of insanity due to his mental incapacity⁸. However, in case of strict liability, where the *mens rea* is not required as an element of the offence, the benefit of insanity was not available⁹.

In Siddheswari Bora¹⁰ the accused killed her ailing child, some evidences were elicited during cross-examination to infer that the accused person had suffered from some mental derangement two years prior to that incident, it was decided on the basis of only fact that the murder was committed as mercy killing or on a unexpected impulse or was no ground to allow benefits available under section 84 of the IPC, even though both euthanasia and irresistible impulse would entitled the accused in

⁶ (1925) 19 Cr. App. Rep 50 at 51

⁷ [2014] 1 All ER 902

⁸ William Wilson (2017). Criminal Law. 6th Edn, Pearson

⁹ DPP v Harper [1997] 1 WLR 1406

¹⁰ (1981) Cr L J 1005 (Gau.)

England for the benefits of diminished responsibility and her crime would be treated as manslaughter that is culpable homicide not amounting to murder. Stephen says that if a person cuts off the throat of a sleeping person because "it would be great fun to see him looking for it when he woke up", it would be a case where the person committing the act would be unable to know the physical effect of his act. Similarly, where the accused person on being commanded in his dream by some person in heaven to sacrifice his son, took his five years old child in a mosque and sacrifice him with a knife, cutting the throat of his child and thereafter straight went to his uncle, but seeing a *chowkidar* (Guard) there told him in a soft voice as to what he has done, it was concluded that the accused person was still be allowed to the advantage of section 84 of IPC even though the perpetrator knew the nature and quality of the act he did, but he was unaware that it was wrong.

Discussions

In England, the "nature of the act" means the physical nature of the act but in India while interpreting the section 84 of the IPC the Courts confronted questions. In England if an act is legal wrong then it is presumed that the act is against the law. In India, Hon'ble High Court at Calcutta held that when a person killed his son at night and just before commission of the offence he drinks as the *Khuda* (god) asked him to kill his son. Here, the person is doing the act under the direction of the *Khuda* is not a wrong when it comes to either wrong or against the law. The Court accepted the arguments that due to delusion the accused failed to perceive wrongness of the act he committed. But, the Hon'ble High Court at Allahabad did not accept this contention. In *Sheron Ali*¹¹ case the Court considered that there are two elements (i) nature and quality of the act (ii) what is doing is either wrong or against the law should be read

conjunctively. Sen and Roxenburj JJ. observed: "we are satisfied that the appellant knew the nature of the act. What we have to see is whether he knew that what he was doing was either wrong or contrary to the law, if he knew that what he was doing was wrong then he will not be protected even if he did not know that it was contrary to law. If he knew that what he was doing was contrary to law, then also he could not be protected even though he did not know that what he was doing is wrong". This view explains even if the accused person discerned the nature and quality of the act, even if he did not distinguish what is wrong or against the law he will not entitled for the advantage of the law. In other words, if the accused person is truly insane and incapable of discern the nature and quality of the act, there would be no *mensrea*, lacking elements of offence, he will not be punished.

In *Ashiruddin Ahmed v King*¹² the Court observed that the three components available under section 84 IPC, any of the three must be established by a person to obtain the benefit of that section. It appears firstly the nature and quality of the act was clearly known to the accused person; secondly, the person knew that the act was against the law or was possibly known to him, but the third element on which that case really turned is whether the person knew the act was wrong. However, the conduct of the accused subsequent and antecedent to the commission of the offence was relevant.

Conclusions

The M'Naghten Rule has been vehemently criticized by the Lawyers and Doctors. Lawyers considered that the entire mind can be divided into three compartments. One is intellect, other is will and the third is emotion. It is that M'Naghten Rule which emphasis on the intellect and ignores will and emotion, which are part and parcel of mind. It means it emphasis on the reason for which a person

¹¹ (1941) Cal

¹² 50 Cr L J 225 (Cal)

is entitled to get the benefit of insanity but if it is done due to emotion he shall not get the benefit. It was also proposed to abolish the M'Naghten Rule. The reason is that man and animal can be distinguished with respect to emotion or will and reason or intellect. It is true that animal has emotion and will but they have not reason or intellect. Therefore, there is no harm in putting emphasis on the reason.

In 1923 a Commission was set up under the chairmanship of Lord Atkin. The Commission recommended that if a person is deprived of his command of reasoning substantially then he should be acquitted or immune from his criminal liability but this recommendation was not accepted. Again in 1953 Royal Commission on Abolition of Capital Punishment considered this issue. It was then strongly proposed that the M'Naghten Rule should not be changed. The Commission observed that it should be for the jury to resolve that at the time of commission of the act whether the person failed to distinguish what is wrong or against the law. The Commission further pointed out that the accused was incapable of preventing himself from committing it, which means the Commission was in favour of including irresistible impulses. Thereafter, Butler Committee was established, it said that evidence may be given in order to negate the elements of *mens rea* and if in the transit state, a person due to intoxication, drug, etc. commits an offence then he is incapable of forming *mens rea* and excluded from the purview of insanity. Secondly, if a person commits an act while he is insane in that case the cause and effect relationship is not essential. If evidence is given, then it ought not be shown that the person is a madman. This recommendation was also not accepted, but this is good in sense that the person should be treated as a madman and should get the benefit of insanity both in India and in European countries.

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