

An Evaluation of Insanity Defense in Criminal Justice System

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Abstract

Criminal law defines a criminal act and protects the human against violence to his body and property. Law entitles a person to do anything to protect his life and property. Some defenses are private defense, such as alibi defense and insanity defense, etc. Using this defense, an accused may escape his criminal liability. When the accused is insane and cannot realize the consequence of his work, the accused cannot be held liable for his criminal activity. It's hard to determine legal insanity, and indeed harder to successfully defend it in court. The author focuses on insanity defense and principles employed in court; presents a model for assessing a defendant's internal status examination and briefly denoted the legal norms and procedures for the assessment of insanity defense evaluations. There's a burning need to initiate formal courses, set up Forensic Psychiatric Training and Clinical Services Providing Centers across the country to increase the manpower and to give a fair and speedy trial in the Criminal Legal System.

Keywords: *Criminal Defense, Insanity, Legal Insanity, Insanity Defense, Fake Insanity.*

1. Introduction

The criminal justice system is the procedure to prosecute an accused considering the existing laws and evidence provided before the court and management of the criminals. It also deals with the fundamental individual right provided to the accused by the Constitution of the People's Republic of Bangladesh, private defenses, etc. This system provides multiple opportunities for the accused to defend himself from criminal liability. The criminal legal system aims to ensure justice. The notion of responsibility connects with our most simple verdicts about mortal nature and quality and everyday experience of guilt and innocence and blame and penalty. penalizing an individual, who isn't liable for the crime, may be a violation of human rights and basic rights under the Constitution. It also brings the due process of law, if that person isn't in a position to defend himself within the court of law, addressing the principle of natural justice. The affirmative defense of legal insanity applies to the present fundamentals by excusing those mentally disordered criminals whose infirmity deprived them of a reasonable understanding of their conduct at the time of the crime. Hence, it's generally admitted that incompetency to commit crimes exempts the individual from penalty. Section 84 of the Penal Code, 1860 denotes insanity defense. It states no act of any person of unsound mind is a crime. A person of unsound mind cannot be held liable for his criminal activity. This section exempts persons like idiots, lunatics, drunkards, and people unsound through the disease of the mind. This work is on the person unsound through the disease of the mind as an insane person.

These defenses may encourage wrongdoers to act lavishly and do harmful work as they can use this defense in the court as a weapon. Long history and some famous cases denote that it was abused many times. The author has searched for its origin, objective use in the court, and other related issues. The author has documented some cases, where the defense was used as a weapon to defend the wrongdoer, to show how it can be abused. The author highly thought that the insanity defense needs to be amended to uphold its objective and purpose in the criminal law legal system.

By going through all the existing principles to decide over insanity defense, the author has tried to set a complete procedure to deal with the case related to the insanity defense. The author has suggested some amendments to ensure its actual purpose and most of them weren't his own, the author has summarized some scholarly recommendations.

2. What is Insanity Defense?

Legal Information Institute defined insanity defense as it refers to a defense that a defendant can plead during a criminal trial. In an insanity defense, the defendant admits the action but asserts a scarcity of culpability-supported mental disease. The insanity defense is assessed as an excuse defense, instead of a justification defense.¹

In another word, it's a defense asserted by an accused during prosecution to avoid liability for the commission of a criminal offense because, at the time of the crime, the person didn't appreciate the character or quality, or the wrongfulness of the acts.²

The insanity defense was used in the criminal justice system based on the assumption that at the time of the crime, the accused was not of sound mind and didn't realize the consequence of his crime. Therefore, the accused lacked a guilty mind and acted without motive. Moreover, the accused cannot remember what he had done at the time of committing a crime. There are vivid types of insanity as follows:

Fitness to Stand Trial

Fitness to stand trial and insanity are two different things. Here insanity means the condition of the accused mind at the time of committing a crime and fitness to stand trial means assistance to the prosecutor who seeks immunity of the accused. If the accused can do that, he is fit to stand trial.

Conceptualizations of Insanity

There are two types of concepts of insanity, cognitive insanity, and irresistible impulse. Cognitive insanity means the defendant has a mental illness and couldn't understand the wrongful act he committed at that time. Irresistible impulse means the accused bearing mental illness can differentiate right and wrong act, but the accused was unable to control psychologically himself from doing the wrongful act. However, this concept varies from country to country.

Insanity in Court

Insanity in court is a different thing. It depends on evidence, comments from experts, report of psychologists, and so on. The person claiming insanity defense receives two types of the verdict "Not guilty because of insanity (NGRI)" or "guilty but mentally ill (GBMI)". NGRI means the defendant is not found guilty as he is mentally sick while GBMI means the defendant is found guilty but he requires psychological treatment. The defendant is not released in public. Both the defendants are sent to custody for psychological care.

3. Evolution of the Insanity Defense

¹ Insanity defense, Legal Information Institute, <https://www.law.cornell.edu/wex/insanity_defense> accessed Feb 27, 2022.

² Insanity Defense. (n.d.) The People's Law Dictionary. <<https://legal-dictionary.thefreedictionary.com/Insanity+Defense>> accessed Feb 27, 2022.

The insanity defense has a long history about half a century from 1800. Some argue that it was first denoted by King Edward I(1271-1327).³ At the time it was used as an exception from crime. During the reign of king Edward II(1307-1321)and king Edward III(1326-1327), insanity was being used as a complete defense.⁴ Until the 18th century, the insane convict was released in public, and no question arose. Time passes and more cases were filed where the accused claimed a defense of insanity. Several accused were granted a verdict not guilty for the reason of insanity. And people started to think about it and its abuse.⁵

The subject of mental insanity can be divided into two parts. The first, those whom the law knows as idiots, and the second, those whom the law knows as lunatics.⁶ Blackstone in his Commentaries has a chapter on the treatment of persons capable of committing crimes and speaks of the defect of idiocy and lunacy. The summary is that in a criminal proceeding idiots and lunatics cannot be charged with their harmful acts.⁷ *Parker's case in 1968*⁸, Parker was working in the army and was prosecuted for desertion. The accused became mentally ill during the trial. The court found that he was able to perceive right or wrong while committing treason and so found him guilty.⁹ *Rex v. Lord Ferrers*¹⁰ in 1760, the accused claimed that he was suffering from several unfounded delusions. The doctor and psychologist described that murder was committed with coolness and care. The accused was able to realize the consequences of his activity. He was found guilty and punished.

In *Bowler's Case in 1812*¹¹, the defendant asked for an insanity defense on the ground of epilepsy while shooting and wounding the victim. Epilepsy was not considered a mental illness moreover he was able to realize the fact. The most famous case of this time was *Hadfield's Case*.¹² Hadfield was indicted for high treason in shooting at King George III. The accused was suffering from delusions and was discharged from the army. The accused was not found guilty for the reason of insanity.

The landmark in the history of insanity as a defense to crime comes with *McNaughton's Case*.¹³ In this case, the accused killed Edward Drummond mistaken him for Sir Robert Peel. Then he had a long delusion that Robert Peel was after him and was going to kill him. While drafting

³ Abraham L Halpern, "The Insanity Verdict, the Psychopath, and Post-Acquittal Confinement" (1992) 63 *Psychiatric Quarterly* 209.

⁴ *Ibid.* at 1128.

⁵ Suresh Bada Math, Channaveerachari Naveen Kumar and Sydney Moirangthem, "Insanity Defense: Past, Present, and Future" (2015) 37 *Indian Journal of Psychological Medicine* 381.

<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4676201/>>. accessed March 23, 2021.

⁶ Homer D Crotty, "The History of Insanity as a Defense to Crime in English Criminal Law" (1924) 12 *California Law Review* 105 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/calr12&ion=18>. accessed March 23, 2021.

⁷ *Ibid.* at 115

⁸ *Parker v. State*, 4 Md. App. 62, 241 A.2d 185 (Md. Ct. Spec. App. 1968) <<https://casetext.com/case/parker-v-state-713>>. Accessed March 23, 2021.

⁹ *Supra note 7.*

¹⁰ Tony Holt, "Infamous Insanity Cases through History" (www.news-journalonline.com January 18, 2014) <<https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.news-journalonline.com/news/20140118/infamous-insanity-cases-through-history&ved=2ahUKEwjv4dqB2qPhAhVA6XMBHS3cDD4QFjAEegQIBBAB&usq=AOvVaw2imNy3roszvueKoxn v1PzB&cshid=1553737403441>> accessed March 23, 2021.

¹¹ *R v. Bowler* (1812) 1 *Collinson Lunacy* 673.

¹² *R v Hadfield*, (1800) 27 *St. Tr.* 128.

¹³ *R v M'Naghten* (1843) 8 (E R). <<https://www.lawteacher.net/cases/r-v-m-naghten.php>>. accessed March 30, 2021.

the code of criminal procedure, Sir James Stephens suggested tests to determine insanity. The Law commission rejected the test, rather they have uplifted McNaughton tests.¹⁴ Most countries use this rule to adjudicate cases where the accused is claiming an insanity defense.

4. Insanity in Bangladesh

Like most of the countries, McNaughton Rule is also highlighted in the Indian Penal Code, 1860, and The Penal Code, 1860 in section 84. A mentally sick accused cannot be punished for his crime as he doesn't have the intention or motive. Criminal law doesn't operate to punish the accused rather it aims to ensure justice. The accused cannot perceive the consequence of his criminal act. The defense must prove that the accused is insane. The prosecution is also responsible to prove otherwise. The prosecution needs to prove his case beyond reasonable doubt and only then the plea of insanity of mind can be entertained. If the case cannot be proved then the accused is acquitted.¹⁵

Medical insanity and legal insanity are different. A person may be medically insane where the person is suffering from a disease or disorder of the mind. Legal insanity rather an emphasis on a person's consciousness whether he can differentiate right or wrong and perceive the consequence of his act. So, a mentally insane person may not be legally insane.¹⁶ It depends on the evidence provided before the court during the trial.¹⁷

There are some landmark decisions on an insanity defense by the court. Under section 84, the Penal Code, 1860 the defense is to prove that the accused was of unsound mind at the time of occurrence. The plea of insanity or unsoundness of mind of the accused at the time of occurrence is to be clearly and distinctly proved, the accused thus can get the benefit of the defense.¹⁸ An act of a person of unsound mind, who at the time of doing it, because of unsoundness of his mind, is incapable of knowing the nature of the act, is not an offense. The burden to prove insanity lies upon the defense.¹⁹

The prosecution must prove the case against the accused beyond all reasonable doubt that he was capable of knowing the nature of his act when he committed the crime. If the prosecution fails, the accused is entitled to the benefit of such doubt, and as such, the accused is consequently to be acquitted.²⁰

5. English Law on Defense of Insanity

English criminal law legal system also depends on the McNaughton Rules. The author has discussed this rule earlier. These rules are not concerned with medical insanity but with legal insanity. To prove McNaughton, the defense must consider two things²¹: The court presumes

¹⁴ Irving Kaufman, "Criminal Procedure in England and the United States: Criminal Procedure in England and the United States: Comparisons in Initiating Prosecutions Comparisons in Initiating Prosecutions" (1980) 49 *Fordham Law Review* 26 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/flr49&ion=20>. accessed March 30, 2021.

¹⁵ HWV Cox and others, *Medical Jurisprudence and Toxicology* (Law Book Company (P) Ltd 1998) 516–519.

¹⁶ Dr. Prateek Rastogi, "Section 84, IPC: An Analysis" (*expydoc.com* 2006) <<https://expydoc.com/doc/4026416/section-84--ipc--an-analysis>> accessed March 30, 2020.

¹⁷ Chandrachud YV. Ratanlal and Dhirajlal's, *The Indian Penal Code* (Wadhwa & Company Law Publishers 2001) 87–96.

¹⁸ *State vs Abu Hanifa* (Criminal), 73 DLR (AD) (2021) 144-152.

¹⁹ *State vs Nazrul Islam*, 57 DLR (HCD) (2005) 289-290.

²⁰ *Doulat Khan vs. The State* (Criminal) 7 ALR (HCD) 30-39

²¹ Andrew Ashward, *Principle of Criminal Laws* (Oxford University press 2009) 320-321.

everyone is sane and thus he is responsible for his crime, until and unless the opposite is proved. To gain it as a defense the accused his insanity during the commission of the crime. He has to prove that he was undergoing such sickness, disease of mind for the reason that he failed to control himself, or didn't know the consequence of his act.

The Model Penal Code 1962

English Court follows provisions of the Model Penal Code, 1962 to decide over the case with the insanity defense. Article 4 holds the provisions titled responsibility and stated as follows: A person is waived from his criminal liability if the conduct is the result of his mental illness, mental disease, for that he cannot differentiate his conduct, or control his activity. In this Article, mental illness doesn't include abnormality only doing criminal activity repeatedly.

6. Some notable principles of Insanity Defense

McNaughton Defense²²

The McNaughton insanity defense is called the right or wrong test. It was created in English in 1843. The defense is named after Daniel McNaughton. He was suffering from extreme paranoid delusion that the then prime minister of England, Robert Peel was trying to kill him and appointed an agent to kill him. The only way he could survive is to kill Robert Peel. He was in extreme fear of losing his life. While trying to shoot President Sir Robert Peel, Daniel McNaughton shot his secretary instead. Through trial, the defense was found not guilty because of insanity. The decision raised a storm in England. The then British Court introduced a criterion/ test for an insanity defense and that remains useful till now.²³ The test is called McNaughton Rule.

As per the rule, the defense requires two elements. First, the accused was suffering from mental defects at the time he commits the act. Second, he couldn't understand the nature of his act, or that the activity was wrong and punishable.

"Irresistible Impulse" Defense²⁴

It is a supplement to McNaughton's insanity defense. It is easier to prove irresistible impulse insanity defense than McNaughton Rule. So most of the states have rejected this defense. It emphasizes on defendant's will other than his mental sickness or understanding right or wrong. To establish this rule a defendant must prove two things -

The accused was suffering from mental illness.

The accused couldn't control his conduct for that aforesaid mental illness.

Well, the rule doesn't emphasize right or wrong tests. It emphasizes the capacity of the accused to control himself. Even the defendant may understand that his activity is wrong but he wasn't able to control his criminal act as a result of mental illness. In short, we can tell that this rule deals with conduct that can be controlled and conduct that cannot be controlled.

The Substantial Capacity Test

The substantial capacity test was created by the model penal code in 1962. It describes that a person is not responsible for criminal conduct if at the time of such conduct as a result of mental

²² *Queen v McNaughton (1843) 10 (HL)*

<http://users.php.ufl.edu/rbauer/forensic_neuropsychology/mcnaughten.pdf> accessed April 04, 2020.

²³ *Ibid.*

²⁴ R Simon, "Was Lorena Bobbitt's Act 'an Irresistible Impulse'" *The Baltimore Sun* (January 12, 1994) <<https://www.baltimoresun.com/news/bs-xpm-1994-01-12-1994012071-story.html>> accessed April 04, 2021.

disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law (Model Penal Code § 4.01(1)). It is also called the model penal code defense or ALI defense. The difference has two elements. First, the accused must have mental sickness or disorder like irresistible impulse insanity defense and McNaughton rule of the insanity defense. Second, it merges the cognitive standard with violation.

Under this substantial capacity defense, it is easier to establish insanity. Like other rules, it is more flexible to establish right or wrong tests.

***The Durham Insanity Defense*²⁵**

The Durham insanity defense sets that an accused is not criminally responsible if his criminal act was the product of mental illness or mental defect. The principle was set in New Hampshire in 1800. The principle was set by the circuit court of appeal for the district of Columbia in the case *Durham v USA* 214 F.2d 862(1954). The court at the time failed to define a product, mental disease, or mental defect. The Durham Insanity Defense became insignificant to apply. For the reason that there was no specific definition of mental disease or mental defect, several accused were acquitted using this defense lavishly. Generally, the principle relied on two elements. First, the accused must have a mental disease or defect. As the court did not define mental disease or mental defect it was really difficult to apply in another case. Second, the criminal act must be the result of a mental defect or mental disease. The federal court also did not furnish any definition for the aforementioned term.

7. Misuse of Insanity Defense

Suppose, a community knows a person for being a good and prudent human for a long time but suddenly he committed a heinous crime. After committing, the crime he started acting insane. The expert will exclaim that the person became insane within a day or week. The accused had no mental insanity history either. There are plenty of cases that lead to the question: can a criminal get away with faking insanity? Here, the author has discussed some landmark cases where insanity was fake and thus was rejected by the court.

***Dan White Case*²⁶**

In the case, the accused was charged with two counts of first-degree murder for the killing of the mayor and city supervisor of San Francisco. The accused was sentenced to manslaughter on the case. But the verdict of the jury was different and they did not hold him liable for the murders. The accused strongly manipulated the Juris and just played with their emotions. But in the psychiatric report, there was no sign of insanity or mental illness. This case earned huge attention.

***Prosenjit Poddar Case*²⁷**

This case was tried in India. Here the accused was charged with the murder of Tatiana Tarasoff. The accused Poddar pleaded not guilty because of insanity. The defendant produces

²⁵*Durham v US* (1954) 214 (FC) < http://scholar.google.com/scholar_case?case=1244686235948852364&hl=en&as_sdt=2&as_vis=1&oi=scholar> accessed April 04, 2021.

²⁶ Donald H. J. Hermann, *He Insanity Defense: Philosophical, Historical, and Legal Perspectives* (Springfield 1983) 987 987, 1006.

<https://www.google.com/url?sa=t&source=web&rct=j&url=https://kb.osu.edu/dspace/bitstream/handle/1811/65271/OSLJ_V44N4_0987.pdf&ved=2ahUKEwIj_4W11OXhAhXRAnIKHXZoB2kQFjAKegQIAhAC&usg=AOvVaw02Shz4gmSz7Wi179cTRT07> accessed May 15, 2021.

²⁷ *Ibid.* at. 1009.

psychological evidence that the accused were suffering from a mental illness called Paranoia and he was not incapable to control his activities during the commission of a crime. While the prosecution appointed a psychologist who reported that the defendant had the requisite mental state for murder at the time of the commission of the crime. In this case, the author has made an important inventory that the court should that rely on any of the psychiatrists appointed by other parties. The court must appoint a psychologist of its own.

Leonard Smith Case²⁸

It is another famous case that has gained public attention. The accused was disappointed by failure not only in marriage but also in employment, and he believed that he was a victim of racial prejudice. In the first trial of the accused, the court decided on the verdict but in the second trial, the accused was found not guilty for the reason of insanity. Experts were appointed in the first trial to evaluate his mental condition. One decided that he was insane and the other reported that he was sane. In the second trial, another psychologist was appointed. He took several interviews and testified several relatives of the accused and reported that Smith was suffering from long-time insanity.

Tex Watson Case²⁹

In this case, the was convicted of 7 counts of first-degree murder and one conspiracy to commit murder. The case is popularly known as the Mansion murders. Watson was given a death sentence. No jury would have sent him anywhere but death row. They didn't want to ever see him on the streets again. The jury even failed to provide a chance to the defendant. This case arose a question, what if the accused is insane but too dangerous to set free. How does the court deal with this type of case?

John Hinckley Case³⁰

The final case is that of John Hinckley's case who was charged with an attempt at assassination of the president of the United States and assault on a federal officer. The case of John Hinckley shows how jury members are manipulated not only by psychiatrists but also by one another. So the court needs to find the answer to three questions to decide over the defense, the legal standard of insanity, the standard of burden of proof, and a report prepared by an expert on legal insanity.

This case has highlighted two problems also, the insufficient standard of ascertaining legal insanity and determining the condition of the mind of the criminal during committing crimes. Most of the countries lack education on the bottom of insanity. there's hardly any institution to review mental disease, its effect, and consequences, to take care of insane people and their treatment, either physical or psychological.

In 2007, *Stuart harling* was accused of the murder of a nurse. During the trial, the accused acted very weirdly and claimed for insanity defense as The accused was suffering from a personality disorder. His behavior in the court was really weird that included shouting threats to everyone and throwing papers everywhere. But in the psychiatric report, The accused was a healthy man.³¹ In 1996, James Lindsay was accused of the murder of 15 years old girl. The accused was going through the trial and pleaded for an insanity defense. During the trial, he

²⁸ Ibid. at 1011.

²⁹ Ibid. at 1014.

³⁰ Ibid. at 1022.

³¹ Ibid.

wrote to his friend that he had a very good plan to get into Carstairs, a mental hospital, and be released very soon.³²

Probably the Kenneth Bianchi case is the classic case of a criminal faking mental disorder. Here the accused committed a dozen murders of young women in California. During the trial, he claimed that he was suffering from several personality disorders. The accused had an unpleasant alter ego 'Steve' and it made him do the murder. Moreover accused appointed psychologist supported his claim. The court-appointed another psychologist to know the actual truth. Psychologists reported that a person suffering from a mental personality disorder generally has three personalities at least. Alas! The accused invented another personality called "Billy". Accordingly, he invented another one during interviews.³³

The above cases teach us that the accused may fake an insanity defense to exempt himself from criminal liability. While investigating the crime, the investigator must check the history of the accused. Mental illness doesn't develop overnight. So it is a duty to know if the person has been suffering from a mental disorder for a long time.³⁴ Surveys show that every year roughly 60000 cases seek insanity defense and 8% to 17% of the suspects are found to be faking it.³⁵

8. Reforming the Insanity Defense

Some legal scholars are not happy with the insanity defense so they have tried many times and proposed to amend the insanity defense. While examined empirically most of them were found to have a little impact on the proper objective and success of the difference. A summary of the research on this impact of reforms is presented below.

Revising the Substantive Test of Insanity

Study shows that most of the person deciding over the insanity defense doesn't understand the mental illness of the accused. For that reason, deciding over a case related to the insanity defense is very poor. Many states had started applying an ALI(American Law Institute) standard instead of McNaughton Rule and have found several accused got acquittal for the reason of insanity.³⁶ Like other countries, California changed ALI(American Law Institute) standard to more strictly McNaughton rule in 1982. It aims to reduce insanity acquittals.³⁷

Changing Mental Health Professionals' Expert Testimony

In 1984, The Federal Insanity Defense Reform Act recommended expert testimony by psychologists or psychiatrists on the question of insanity. But it was found that the experts were easily manipulated and acted emotionally impulsive.

Changing the Burden of Persuasion and/or the Standard of Proof

³² Ibid.

³³ Douglas Starr, "Can You Fake Mental Illness?" (www.theopennotebook.com August 7, 2012) <http://www.slate.com/articles/health_and_science/science/2012/08/faking_insanity_forensic_psychologists_detect_signs_of_malingering_.html> accessed May 1, 2021.

³⁴ Matt Vogel, Katherine D Stephens, and Darby Siebels, "Mental Illness and the Criminal Justice System" (2014) 8 *Sociology Compass* 627 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/soc4.12174>>. accessed May 1, 2021.

³⁵ "Mental Health and Criminal Justice Issues" (www.mhanational.org) <<https://www.mhanational.org/issues/mental-health-and-criminal-justice-issues>> accessed May 1, 2021.

³⁶ R Arens, D Grandfield, and J Susman, "Juries, Juror Charges, and Insanity" (1965) 14 *Catholic University Law Review* <<https://scholarship.law.edu/lawreview/vol14/iss1/1/>> accessed April 15, 2021.

³⁷ Ibid.

In 1982, at the time of John Hinckley's trial for shooting President Reagan and the subsequent NGRI verdict, the federal courts, and other states agreed to bear the burden of proof in insanity case the standard to be "Beyond a reasonable doubt".³⁸ Here, the question raises that both the parties should prove their case on that standard. And the defendant denied doing so as it is easier to create reasonable doubt than to prove reasonable doubt.

The "Guilty But Mentally Ill" (GBMI) Plea

The primary objective of guilty but mentally ill provision was to reduce the number of infinity acquittal and to ensure proper treatment for the accused which was not been achieved.³⁹

There is a slight difference between the concept of not guilty because of insanity (NGRI) and guilty but mentally ill(GBMI). In short, both of them is an affirmative defense to a crime. It is a verdict, not a defense where the accused can be confined in a mental treatment institution for an unspecific time maybe till death.⁴⁰ The term 'Guilty But Mentally Ill' only denotes the mental sickness of the accused at the time of committing a crime but it doesn't decrease his criminal activity and culpability. If the accused is found GBMI, he may be subject to an appropriate sentence including the highest punishment.

9. FINDINGS & RECOMMENDATION

Findings of this research paper and recommendations for those findings accordingly are as follows :

- If the accused is entitled to an insanity defense but is extremely dangerous for the community people, then the expert must predict the future behavior of the accused before he is released on bail or acquitted on the defense. To decide over the issue the court needs to depend on the reports of experts, psychologists, and medical jurisprudence. The past behavior of the defendant must be taken into consideration.
- Psychologists, doctors, and other persons to provide treatments and meditations to the accused and the convicted person with insanity should be properly trained and have adequate experience for maintaining the person with insanity. This aims to protect the insane person from doing a further criminal act. The court should not forget that they require proper care and attention.
- Except developed countries, LDC(Least Developed Countries) and developing countries lack proper mental health service in jail and custody.
- When a person with insanity commits a crime not gracious in nature, it should not be brought to a criminal trial in court. Rather it should be sent to the mental or psychological health system. The Psychologist or the doctor will counsel the wrongdoer and try to make understand his activity to prevent him in the future.
- Whether the accused is competent to gain the defense or not, may be determined by the medical report provided by both parties. Either of the parties may have the right to ask a question on the report.

³⁸ Richard A Pasewark, Barbara Parnell and Jane Rock, "Insanity Defense: Shifting the Burden of Proof" (1994) 10 Journal of Police and Criminal Psychology 1.

³⁹ Eric Silver, "Punishment or Treatment? Comparing the Lengths of Confinement of Successful and Unsuccessful Insanity Defendants." (1995) 19 Law and Human Behavior 375
<<https://link.springer.com/content/pdf/10.1007/BF01499138.pdf>> accessed April 15, 2021.

⁴⁰ James RP Ogloff, "A Comparison of Insanity Defense Standards on Juror Decision Making." (1991) 15 Law and Human Behavior 509 <<https://link.springer.com/content/pdf/10.1007/BF01650292.pdf>> accessed April 25, 2021.

- A psychologist should be appointed to assess the accused in any potential claim on the insanity defense. If the judge may presume that there is slightly any merit to getting the defense, the defendant may be provided extra benefit. This benefit of presumption can be provided to the prosecution as well.
- If the accused claims mental disorder as his defense, a board of mental health experts must be formed. The board shall retain the accused for a certain period to examine his insanity, behavior, and incapability to commit a crime. The court will appoint the expert with his own accord and the cost may be paid by the government or either of the parties. The process of examination will be kept secret until the experts decide on a result. If the court appoints the experts itself there shall be no question of partiality and biasness. It will save the time of the court and upheld justice and the objective of the insanity defense.
- When the experts take interviews of the accused, it should be e videotaped. Any test interviews examinations taken the result and the score should be provided to the opposite party.
- When the accused lacks physical and mental ability to stand before trial before the report of expert and psychologist, the court may the prosecution *Suo moto*. No appeal shall be allowed on the decision.
- Well, the court should not pronounce its verdict solely based on the report of the experts. The opposite party should be permitted to introduce evidence on his side.
- All the states should adopt an insanity defense to ensure justice in appropriate cases for that we cannot punish a man for his actions that he has done without any sound mind and he has no motive at all. we should not punish an insane person without proper knowledge and perceiving the consequence of his act.
- The legislature should enact another principle of “Guilty but personally responsible”. It will reduce the punishment of the insane person in cases where the accused's capability was compromised.
- If the accused and the criminal are found insane and dangerous for the community, they should be forced to take treatment under-skilled expert or psychologist. If the defendant refuses to go through the medication and pay for it, the court must force it with a judicial order.
- Every state must enact written and published law to the standard of competency. The state must enact the standard for eligibility for insanity defense very high, We all know a man is prone to crime from the time being immemorial. Through this defense, we can't encourage them. Earlier the author showed in different cases this defense was abused.
- The court will decide through a judicial hearing on the competency of the accused entitled to insanity defense or not. The judge and the expert must show proper and clear reasoning behind the decision. Reasoning shall be furnished in written form point to point. Parties of the case must have a chance to raise questions on the decision of the court.
- The state should make a list of independent mental health experts and psychologists to examine the accused when claiming insanity as a defense. The group of experts will act against the accused when he is an abnormal sex predator. Mentally ill sex-offender must not be provided any advantages under this defense. This issue must be followed without any other option and enforced strictly. We must remember the name of Pakistani killer Javed Iqbal who killed 200 children in a year during his medication and counseling.
- A person acquitted on the ground of insanity must be kept under observation for a certain period. If he is found dangerous still for his mental disorder he must be retained in custody by the orders of the court.

- The expert or the psychologist must not be allowed to decide over the issues in the case. They will solely be allowed to decide over the insanity of the accused and jurisdiction must be confined on the decision if the accused is medically insane or not. The court shall decide upon the legal issue in public court in the adversarial process.
- No appeal shall be allowed against the order of the court. it'll save time and be convenient for the accused.

If all the states enact this type of provision in the legislation to adjudicate cases with the insanity defense, it would be more convenient and effective. A person shall be entitled to an insanity defense if he can prove that he had such mental impairment to – understand the consequence of his act; control his or her actions; or know that his activity would comprise a crime. The accused shall be presumed sane by the court until he proves that he is suffering from mental illness.

10. Conclusion

Mental disorder has a significant role in criminal justice as we cannot hold liable a person who doesn't know the consequence of his activities and cannot stop him from doing something wrong as a result of mental illness. It also must be noted that it has a long history from the time being immemorial. It is so useful that the defense is being used as a weapon to defend an insane accused from his criminal liability. There was always the fear of faking the defense and there will always be. Still, we cannot abolish the defense as it would be unjust to the person insane. But we can amend the procedures to find out and check the actual person with insanity. The defense has a valuable purpose in the criminal law legal system. All the states should take measures to prevent its faking and develop psychiatric studies accordingly. Every case related to the insanity defense shall be assisted by an expert psychiatrist.

The author has suggested several recommendations to update the legal proceeding in the case related to the insanity defense. Our country should update its legal system as recommended to end the serious discussion of the insanity defense. Moreover, the government should provide better health services including addiction treatment and rehabilitation which must be available for the community. It is the only way to ensure the real purpose of the insanity defense.