P-ISSN: 2790-6795	Annals of Human and Social Sciences	Oct-Dec 2023,Vol. 4, No. 4
O-ISSN:2790-6809	http://doi.org/10.35484/ahss.2023(4-IV)06	[67-73]

Annals of Human and Social Sciences
www.ahss.org.pk

RESEARCH PAPER

Evolution of Modern Insanity Defense: A Critical Review

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ABSTRACT

The defense of insanity, which is an excuse defense against the criminal liability of a person, went through different phases of evolution before coming to its modern form. During different phases of history, the insanity, and the insanity defense were interpreted differently. The objective of this study is to review the evolution of the defense of insanity employing the doctrinal legal analysis approach. The findings of this review suggest that a critical phase in the evolution of the insanity defense started with the introduction of McNaughton rules. Moreover, different standards of insanity defense such as the Irresistible Impulse Rule, the New Hampshire Product Test, the Durham Rule, the ALI rule, etc. were also introduced. There is still a need for a better standard of insanity defense. The defense of insanity is still evolving and must be studied by adopting multidisciplinary approaches.

Keywords: ALI, Durham, Evolution, Insanity, McNaughton, Modern

Introduction

Insanity defense is an excuse defense against the criminal liability of a person. The defense of insanity determines that a person meeting the criteria of legal insanity cannot be punished for the crimes committed by him. The doctrine of the defense of insanity, in one way or the other, is implemented in every jurisdiction across the world. Modern-day defense of insanity is based on McNaughton Rules laid down in 1843 (Ajmal et al., 2022). However, the insanity defense in its modern form went through different phases of evolution. The historical development of the modern insanity defense and the adoption of different approaches to deal with the concept of insanity throughout history are closely related to each other (Maeder, 1985).

Literature Review

Insanity Defense in Early History

The defense of insanity against a crime can be found far and deep-rooted in the history of mankind. The history of insanity as a defense against a criminal offence can be traced back to ancient times. The ancient philosopher-jurists gave significant thought to the idea of different treatment for a person suffering from a mental ailment in case a crime is committed by him, thus consequently the mentally unsound accused were treated differently from the very beginning of the history. The first record of the use of the defense of insanity is found in Hammurabi's code. Moreover, the evidence of the use of the insanity defense shows its use in ancient civilizations such as the Talmudic, Greeks, and Romans (Maeder, 1985).

The evidence of the defense of insanity can also be seen in the writings of Plato (Stimpson, 1994). He suggested that persons with mental disorders should not be punished at par with normal persons. Plato was of the view that if a crime is committed by an insane

person, there must be less severe punishment for such a person because of his/her insanity (Simon, 1983). Plato devised a comprehensive strategy for the punishment and the management of the accused with an unsound mind. It was suggested not to send an insane accused to confinement as a punishment rather the responsibility of such an accused be entrusted with the relatives and in case of reoffence, the relatives given the responsibility of such accused should be held accountable for the illegal acts of the accused and must be penalized with a fine (Jowett, 1892).

Development in the Islamic Era

The defense of insanity was further developed during the Islamic era. The law under the Islamic regime considered lunacy as a defense against a criminal act of an accused. Law during the Islamic Era primarily recognized two kinds of insanity i.e., permanent, and occasional. Both kinds of insanity were treated differently as the acquittal of an accused with permanent lunacy could be seen more prevalent than the accused suffering from a kind of impermanent lunacy. In the later era of Islam with the dominance of the Shariah law and with the emergence of four schools of thought in Islam, the concept of lesser punishment in case an accused is lunatic was also there like in the early years of Islam (Bassiouni, 2013).

However, there was a little difference of opinion among the four schools of thought in Islamic law over some peripheral issues about the insanity defense, but all agreed on the central feature of the issue that a person with lunacy cannot be treated like a normal person. Furthermore, there is consensus among all the schools of thought of Islamic Shariah law that if the conviction of an insane person largely depends upon his/her confession rather than on any other kind of evidence, then there shall be no conviction based on such confession as the confession of a lunatic person is null and void (Rashid, 1975).

Insanity Defense in Modern History

The principle of insanity defense can be seen in the 13th century in English kings' courts which used to pardon the persons suffering from mental disorders for the crime committed by them (Melton et al., 2018). The historical evidence of the development of the insanity defense is found in England as in 1265, a British Lord Bracton suggested a test of legal insanity known as the 'wild beast test' to ascertain the severity of insanity. Although this criterion was not comprehensive enough and was limited only to the realm of permanent insanity of an accused, indeed, this was a step forward towards the development of modern-day insanity defense (Biggs, 1955). This concept was further developed by William Lambarde in 1582 (DiMento & Geis, 2005).

However, the significant development of insanity defense was seen in the 16th and 17th centuries in England based on the works of legal scholars Sir Edward Coke and Sir Mathew Hale. Both were the proponents of the approach of lack of understanding as the criterion of insanity. In 1723 Justice Tracy in England also advocated the approach of lack of understanding as the criterion of legal insanity. Justice Tracy applied the lack of understanding approach in terms of the good and evil test; accordingly, to avail the benefit of the defense of insanity the accused must lack complete mental capacity and thus would be unable to differentiate between good and evil (Morris, 1968). Later, the criterion of lack of understanding in terms of the wild beast, which was originally proposed by Lord Bracton in 1265, was continued to explain the legal insanity (*Rex v. Arnold,* 1724). This concept was further significantly developed in the case of *Rex v. Hadfield* (1800).

Material and Method

The doctrinal legal analysis was used to review the evolution of the defense of insanity.

Results and Discussion

McNaughton Rules and the Development of Insanity Defense

The introduction of the McNaughton rules was significant in developing the doctrine of legal insanity. Modern-day defense of insanity took its precedent from the McNaughton rules. Before these rules, different tests and criteria existed to tackle the insanity defense in criminal matters, but none of these were comprehensive enough to tackle the intricacies of the issue. Although the McNaughton rules were variations of the earlier criteria, indeed it was the first comprehensive and elaborative standard of insanity defense in criminal matters. The earlier criteria of insanity were primarily based on the distorted cognitive faculty, pathological malfunctioning, and deprivation of reasoning (Siddique & Sarkar, 1983).

The standard of insanity defense which was set in the case of Daniel McNaughton (1843), who was accused of the assassination of Edward Drummond whom he mistakenly killed considering him England's Prime Minister Robert Peel, specified that to establish the defense of insanity, it must be proved that at the time of the commission of an offence, the accused was suffering from a mental disorder that made him incapable of knowing the nature of the act and/ or to know what he was doing was wrong. Moreover, it was further concluded that every person is assumed to be normal until proven otherwise and an accused person would only be absolved if he/she was unable to distinguish right from wrong by the reason of his mental illness (*R v.* M'Naghten*,* 1843). It is obvious from the criterion set in McNaughton's case that not every kind of mental defect would be considered sufficient to avail the defense of insanity rather there is a certain standard of legal insanity (Marfatia, 1972).

Criticism of McNaughton Rules

McNaughton's rules were criticized for being ambiguous, dubious, and procedurally flawed. A few of the concerns regarding McNaughton's rules were addressed and resolved in Windle's Case (*R v. Windle,* 1952). One of the main concerns about the criteria of legal insanity adopted in McNaughton's rules was its extraordinarily stern standard of insanity. The standard of a complete lack of sense due to profound mental ailment and nothing less than that adopted in McNaughton's rules was criticized for being too high. Furthermore, McNaughton's rules were criticized for ignoring the defects of feelings and the involvement of emotional factors in the legal insanity of an accused as it considered cognitive aspects over affective and emotional aspects in the determination of the legal insanity of an accused (Wechsler, 1955).

McNaughton's rules were also criticized for taking a narrow view of mental illness. Another concern regarding the criteria of legal insanity set in McNaughten's rules was that it was unduly focused on the inability of rational understanding of an accused while ignoring the control part which is the ability of an accused to control his behavior (Melton et al., 2018).

Development of Insanity Defense In the USA

The US, which first followed the jurisprudence on the insanity defense developed in England, later developed its own comprehensive jurisprudence on the subject. In 1844, the Chief Justice of the Massachusetts Supreme Court proposed irresistible and uncontrollable impulse criteria as the standard of legal insanity (*Commonwealth v. Rogers,* 1844). However, the criterion of irresistible impulse was comprehensively elaborated and adopted in the case of *Parsons v. The State* (1887). It was decided that a person who is not able to control his behavior because of his mental disorder cannot be said to commit a crime. Thus, the irresistible impulse and uncontrollable behavior of an offender because of his mental

disorder can be dealt with at par with the inability to know right and wrong criteria in case of determining the legal insanity of an offender (*Parsons v. The State,* 1887).

The irresistible impulse criterion was heavily criticized by both the fields of law and medical science for being vulnerable to being misused and for adopting too rigid and narrow approach (Glueck, 1962; Weihofen, 1954). Later, in 1871, while showing concerns over the different criteria of determination of legal insanity the New Hampshire Product Test was put forth. According to this standard, the determination of the legal insanity of an accused is a matter of fact and must be determined considering the various aspects of a case at hand rather than determining it solely based on any single criterion such as McNaughten's rules, irresistible impulse test, etc. (*State v. Jones,* 1871).

Different views and interpretations of the concept of legal insanity continued throughout the last quarter of the 19th century and the first quarter of the 20th century, but none of these could significantly settle the criteria of legal insanity. Different jurisdictions across the US were relying on the different criteria of legal insanity such as the original McNaughton standard, the McNaughten standard broadened by interpretation to include the irresistible impulse standard, the McNaughten standard supplemented by explicit irresistible impulse rules, and the New Hampshire product test (Crotty, 1924).

In 1954, in *Durham v. United States*, by adopting the product test which was originally proposed in *State v. Jones* (1871), the US Court of Appeals of the District of Columbia devised a comprehensive standard of insanity defense which was subsequently known as the Durham Rule. According to this standard, an accused shall not be liable for the act if that act was the product of his/her mental disorder (*Durham v. United States,* 1954). The rules laid down in Durham v. United States were largely appreciated by the relevant medical professionals with a mixed kind of expression by the legal fraternity. Later, the US courts started applying this test of insanity with little interpretational variations as one worth mentioning noted in *McDonald v. United States* (1962). However, in *United States v. Brawner* (1972) the court adopted a different approach and the Durham rule as a standard of legal insanity was replaced by the standard given in the Model Penal Code drafted by the American Law Institute (ALI). Accordingly, a person is not liable for an offense if he/she was suffering from a mental disorder at the time of the commission of the crime and consequently, he/she does not possess the capacity to know the wrong in his/her action or to adjust it according to the prerequisites of law (Ajmal & Niazi, 2022).

The ALI test as a criterion of legal insanity was adopted by many states across the United States. However, this test was later criticized for its heavy focus on the medical model of insanity. Many critics were of the view that the ALI standard gave mental health professionals too much control over the determination of legal insanity (Bazelon, 1976). The volitional component of the ALI rule was more heavily criticized than its appreciation component. After the verdict of the Hinckley Case, the American Bar Association (ABA) recommended the elimination of the volitional component of the ALI rule, while it continued its support for the appreciation component of the rule. The American Psychiatric Association also shared the same view on the subject (American Bar Association, 1984; American Psychiatric Association, 1983). This criticism led the further modification in the standard of insanity defense in the form of the Insanity Defense Reform Act of 1984 which adopted the stricter criteria of legal insanity and the standard of proof of evidence in case of an insanity plea (Insanity Defense Reform Act, 1984).

Currently, the ALI test as a standard of legal insanity is used in 14 states in the US. Twenty-eight states have adopted different variations of the McNaughton rule, three states subscribed to McNaughton plus the irresistible test criteria. Product test is being used in New Hampshire while the states of Kansas, Idaho, Montana, and Utah have abolished the insanity defense (Robinson, 2014).

The Doctrine of Diminished Capacity and the Defense of Insanity

The introduction of the doctrine of diminished capacity played a significant role in the evolution of the modern insanity defense. Although diminished capacity and the defense of insanity are two different concepts, the introduction of diminished capacity explained the scope of the defense of insanity. The principle of diminished capacity brought a significant addition and tackled legal propositions where the mental condition of an accused is impaired but not to that extent as to get the benefit of insanity defense but to mitigate the criminal responsibility (*State v. Shank,* 1988). Similar kinds of concerns also led to the introduction of the concept of diminished capacity in the Homicide Act (1957) in England. Moreover, the introduction of the two different kinds of verdicts i.e., guilty but mentally ill (GBMI) and not guilty by the reason of insanity (NGRI) is a significant legal development in the evolution of the modern-day defense of insanity (Ajmal & Niazi, 2022).

In countries like Pakistan and India jurisprudence on the defense of insanity is developing following the footsteps of first-world countries like the US and the UK (Ajmal & Rasool, 2023). The jurisdictions on the defense of insanity across the world have evolved differently keeping in context the judicial systems and judicial realities of each country across the globe. However, the jurisprudence on the defense of insanity evolved in the US represents the most sophisticated and the most developed form of insanity defense (Ajmal et al., 2023).

Conclusion

The defense of insanity went through different stages of its evolution before coming to its modern form. This defense has been invoked against the criminal liability of a person since ancient times. Different interpretations of insanity, insanity defense, and criminal responsibility in the context of the insanity standard were dominated in different phases of the evolution of insanity defense. The insights provided by scientific inquiry into the phenomenon of insanity played a significant role in the development of the insanity defense in its modern form. The introduction of McNaughton rules was an important milestone in the development of the insanity defense. Furthermore, different approaches such as the Irresistible Impulse Rule, New Hampshire Product Test, Durham Rule, ALI Rule, etc. were also employed to set criteria of legal insanity at different times. The introduction of the doctrine of diminished capacity and the adoption of two kinds of verdicts i.e., guilty but mentally ill (GBMI) and not guilty by the reason of insanity (NGRI) when the mental capacity of an accused with a mental condition is involved also shaped the modern-day defense of insanity. Passing through different stages of development, the defense of insanity has evolved and is still evolving across the globe. Following the footsteps of first-world countries, the jurisprudence on the defense of insanity is developing in countries like India and Pakistan. The jurisprudence on the defense of insanity evolved in the US represents the most sophisticated form of jurisprudence developed on the subject so far. There is a need to comprehend this very legal concept by adopting interdisciplinary approaches. Mental health professionals and legal scholars must adopt an interdisciplinary approach to deal with the theoretical and practical issues revolving around the defense of insanity.

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