International Journal of Research
Available at https://edupediapublications.org/journals
e-ISSN: 2348-6848
p-ISSN: 2348-795X
Volume 05 Issue 7
March 2018

The Insanity Defense: The New Loophole to Criminals

Ankush Mittal
L. L. M.

Dhrav Gupta
L.L.M. (Pursuing)

Abstract: Sane defendants are subject to the imposition of sanctions by the criminal justice system for reasons of punishment, "just deserts" deterrence, protection of society, and rehabilitation. In most other states, defendants found not guilty by reason of insanity are diverted to the mental health system, from which they are usually released within a relatively brief time, often unsupervised and on heavy doses of psychotropic medication. They have rarely gained any insight that would reduce the probability of a repetition of criminal conduct, given the same circumstances that precipitated the earlier criminal act. Present paper focus on the concept of Insanity Defense and its historical development in the present context. Also there is a suggestion that Relevance ratio is ideal for 'Evidentiary relevance" and there should be a quality control on expert testimonies. With progress in neuroscience, the law may need to abandon or alter some of its current assumptions about the nature of voluntary conduct, which underlies various defenses.

Keywords: Insanity defense, Assessment, Clinical application

Introduction: A mentally ill prisoner "responded to the stress [of hearing another prisoner's murder] by cutting himself, and was subsequently given a disciplinary report and placed in an isolation cell for 'destruction of state property'. Examples such as this illustrate that the treatment of mentally ill offenders is a debated issue in criminal law because of the danger posed to society by those inflicted with mental illness and because of the significant number of mentally ill offenders in our correctional system today. In fact, this debate over how the criminal justice system should handle mentally ill offenders has been present since the insanity defense came into existence. Despite recent legislative action targeted at non violent mentally ill offenders, the

judicial system must be improved in order to deal more effectively with all mentally ill offenders, regardless of the degree of crime for which they stand accused.

The insanity defense is a topic that seems to garner a lot of attention even though it is rarely used and only a few cases that invoke are actually successful. So why is this topic so popular considering its rarity? The answer could be a combination of highly publicized cases that use it and the public's misunderstanding of exactly what happens when someone is found "not guilty by reason of insanity". It is because of cases like John Hinckley and Andrea Yates where the defendants are found NGRI coupled with the public's misunderstanding that causes the public to become so outraged with the insanity defense. The public has this common misconception that someone found NGRI is just let go and is not punished for his or her crimes, but in reality a person found NGRI is almost always civilly committed and often for a longer time then if the defendant had gone to prison. Public outcry can have a big affect on a state's insanity defense laws ranging from changing the rule of law used to abolishing the defense altogether.

Tests for checking the insanity of criminals

1. **Wild beast test**

It was the first test to check insanity that was laid down in the case of Arnold in 1724. Justice Tracy, a 13th century Judge in King Edward's court, first formulated the foundation of an insanity defense when he instructed the Jury that it must acquit by reason of insanity if it found the defendant to be a madman which he described as "a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute or a wild beast, such a one is never the object of punishment."

2. Good and evil test

This test was laid down in the case of R vs Madfield. The test laid down in this case is 'the ability to distinguish between good and evil." In this case, the accused was charged for treason for

attempting to kill the king. The defense pleaded that he was not able to distinguish between good and evil and "wild beast test" was unreasonable. He was acquitted.

3. Other defenses

1. Insanity defense (section 84 IPC) which is adopted from McNaughten Rules
2. Durham Rules (diminished responsibility)
3. American Law Institute test (ALI) (diminished responsibility).

Only legal insanity (mental illness at the time committing the crime) and not medical insanity falls within the purview of section 84 IPC. Unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused and it is sufficient if this plea is established by preponderance of probabilities and not by proof beyond reasonable doubt. Such a plea can be established from the circumstances which preceded, attended and followed the crime. A dichotomy of section 84 IPC reveals the following ingredients.

1. He was insane at the time of the crime and not merely before or after the act and

2. As a result of unsoundness of mind, the accused was incapable of knowing the nature of act or he was doing what was really wrong or contrary to law.

Issues related to current insanity standards

1. Going by the current understanding of neurological evidence of compulsion and lack of impulse control, rationality tests without the inclusion of lack of control, seem to be outdated.
2. Separate "Control determination" than the "Rationality determination" by the jurors may improve the accuracy of Juror's categorizations.
3.Relevance ratio is ideal for "Evidentiary relevance" In case of assessment of "legal insanity," any description of past mental state is closer to a story than a depiction of an observable event. Conclusion about past mental state with available present mental state findings is criticized by

some as interpretation of reality rather than identifying objective reality. The difference of past mental status from assessment of conduct can be explained by "Relevance ratio" (a pioneering work by Thomas D. Lyon and Jonathan J. Koeheler).

Relevance ratio is the ratio between the proportion of cases in which a symptom is observed in the population of interest and the proportion of cases in which the same symptom is observed in the rest of the population.

For example, 60% of murderers with Schizophrenia suffer from X, Y, and Z symptoms and 20% of schizophrenics without crime history suffer from X, Y, and Z symptoms, and the relevance ratio in this case is 3:1 (60%:20%) meaning that a schizophrenic has these 3 symptoms and it has significant value in the commission of the crime. If relevance ratio is >1, the evidence has some tendency to prove a fact at issue. Lyon and Koeheler argued that the relevance ratio is the most efficient way to think about evidentiary relevance, 4. The second problem is matching the defendant variable. A person with a persecutory delusion commit more crime than the control group and this information tells us very little about whether the former group experience stronger urges or more cognitive impairment at the time of their offence. Analog research is the most fruitful line of scientific enquiry into past mental state, but it too has significant problems. This research might investigate the extent to which people with psychosis feel "compelled" or are "confused" about reality in noncriminal situations, compared to a matched control population. Admissibility of clinical testimony requires consideration of four issues: (1) Materiality, (2) probative value, (3) helpfulness, and (4) prejudicial impact. It is better to analyze under 1st and 4thcomponents of admissibility analysis, namely, Materiality and Prejudicial impact than as an aspect of Probative value.

Psychiatrist's explications about past mental state should be based on the knowledge on research using controlled populations, adequate samples, and meaningful criterion variables. Psychiatric report should have "criterion validity" (those who receive a particular diagnosis have the same traits) and "construct or discriminant validity" (whether a diagnosis avoids significant overlap with other diagnoses). In Indian scene, the opinion about mental status from the psychiatrist is sought after a long period after the commission of the crime and in this

regard, Prof. O. Somasundaram recommended for a mandatory pretrial observation in suspected offences by the mentally ill.

5. Lack of control on type of mental disorders that qualify for Insanity defense.

6.Quality standards on expert testimony with Reliability and validity

The Insanity Defense Defined

All state and federal courts find criminal liability only when the defendant's conduct fulfills every element of the charged offense. The United States Constitution requires that the prosecution prove each element beyond a reasonable doubt.8 Even when the prosecution has met this burden of proof, the insanity defense serves as an affirmative defense for the defendant. By pleading the insanity defense, the defendant acknowledges that he committed the crime, but asserts that he is nonetheless "not guilty" due to his mental illness. More specifically, a plea of not guilty by reason of insanity (NGRI) claims that due to an extenuating circumstance (mental illness), the defendant should not be held morally blameworthy for the crime.

History

The insanity defense has a long history, dating all the way back to Hebrew law, which was further developed by Plato and Aristotle (Stimpson 1994). The beginning tests were mostly focused on mens rea or “guilty mind” as the main component to evaluate whether or not someone meets the requirements of criminal responsibility. In order for someone to be found guilty of a crime they must have actus reus or “guilty act” and mens rea. When dealing with the insanity defense, the guilty act is not usually in question, but it is whether or not the defendant knew wrongfulness of his crime.

The first formal insanity defense that was used by a court of law was the wild beast test named by English judge, Judge Tracy 1724. The wild beast standard states “ for someone to be insane he must be totally deprived of his understanding and memory, and not know what he is doing anymore than an infant, a brute, or a wild beast” (Huss 2009). The wild beast standard was the rule of law in England for about 100 years, until the M’Naghten case. The M’Naghten rule

came from a case where Englishman Daniel M'Naghten killed the secretary of the prime minister because he thought Robert Peel, the prime minister was leading a conspiracy against him. After he couldn't escape this supposed conspiracy against him he decided to kill Peel, but instead killed his secretary. (Wrightsman & al. 2002). M'Naghten was found to be insane by nine expert witnesses because he could not tell right from wrong (Huss 2009). The M'Naghten rule has three prongs, first that there must be a mental illness present, second is the inability to know the nature and the quality of the act, and the last prong is the knowing right from wrong (Huss 2009). It is often pointed out that M'Naghten is too narrow, so several states have included an irresistible impulse test that suggests even if a person knows the nature and quality of the act and that such an action is wrong, he still may not be able to stop himself (Huss 2009). In 1962 the American Law Institute (ALI), came up with a slightly different standard in its Model Penal Code. The Model Penal Code states: A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks the substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law (Section 4.01) (Huss 2009) In 1984 Congress passed Insanity Defense Reform Act, which removed the volitional prong of ALI from federal cases and focused on the cognitive and affective components. Hinckley Trial: The Hinckley Trial is important because it was one of the catalysts for so many states changing their insanity defense laws. John Hinckley tried to assonate the President Ronald Regan in order to impress actress Jodie Foster, who he was in love with. On March 30, 1981 he shot the president and wounded and killed others around him. It was not surprising that he would try to use the insanity defense. "All of the government psychiatrists concluded that Hinckley was legally sane—that he appreciated the wrongfulness of his act—at the time of the shooting" (Linder 2008). The three defense psychiatrists said Hinckley was legally insane and further evidence to support his lack of mental stability came when he tried to kill himself twice, once with an overdose of Valium and the other hanging (Linder 2008). Two of the psychiatrists said that he suffered from psychosis and that he thought he was acting out the script from the movie Taxi Driver; in fact, a complete showing of the movie closed the defense case (Linder 2008). John W. Hinckley was found "not guilty by reason of insanity on all thirteen

counts. After the case Congress shifted the burden of proof of insanity to the defense. “Joining Congress in shifting the burden of proof were a number of states” (Linder 2008). Within three years after the Hinckley verdict, two-thirds of the states placed the burden on the defense to prove insanity, while eight states adopted a separate verdict of "guilty but mentally ill," and one state (Utah) abolished the defense altogether” (Linder 2008). Throughout the history of civilization there has been some form of an insanity defense, even though the first formal use and naming of it did not occur until 1724. Even though the different rules of law followed for evaluating have not changed since ALI, various case such as the Hinckley case have caused states from time to time to reevaluate what rule of law they use.

Public Misconceptions Regarding the Insanity Defense

The public receives a substantial amount of information regarding the insanity defense from the media, and the portrayal is not always accurate. This inaccuracy is largely a result of high profile cases, which the public uses to form generalizations about the insanity defense. The media gave large amounts of attention to recent cases in which the defendant has invoked the insanity defense, such as the Lee Boyd Malvo trial, the Andrea Yates trial, the Unabomber case, and the John Hinckley Jr. trial. These cases renewed the insanity defense debate, regardless of whether the defendant was actually mentally ill or whether the insanity plea was ultimately successful. The widespread public belief that defendants frequently use the insanity defense to avoid punishment is largely attributable to high profile cases and the attention the media gives them. The public also believes that the availability of the insanity defense will result in the opportunity for those faking mental illness to avoid punishment. These inaccurate concerns are largely attributable to the public's suspicion of mental illness due to its perceived "invisibility.",

The Current System of Treatment

Mentally ill offenders do not receive the most beneficial rehabilitative treatment available. The current system of treatment is best described as "anti-therapeutic". This characterization is supported by the President's New Freedom Commission on Mental Health's **2003** Final Report, which states that "any people with serious mental illnesses remain housed in

institutions, jails, or juvenile detention centers. These individuals are unable to participate in their own communities." Studies documenting the harshness of mentally ill offenders' prison sentences state that because of the perception that mentally ill offenders are more dangerous than sane offenders, mentally ill offenders receiving prison sentences often serve longer sentences than similarly situated sane offenders. While serving prison sentences, mentally ill offenders usually receive little, if any, rehabilitative treatment, but instead are targets of abuse and cruelty by sane offenders. Due to the unavailability of adequate mental health treatment, mentally ill offenders are sent to the penitentiary or state correctional facility to serve their sentence among the general prison population. At the end of their prison sentence, mentally ill offenders are often still dangerous when they return to society because they have not received psychiatric treatment in prison. Unlike the danger posed by sane offenders returning to society after serving their sentences, the cause of the danger posed by mentally ill offenders could have been medically treated during their sentences.

Appropriate Solutions to Improve the Insanity Defense System

The current insanity defense system must be improved in order to appropriately address its deficiencies and the justified public concerns. Two improvements can substantially impact the current system: the adoption of a guilty-except-for-insanity (GEI) verdict and the creation of a mental health sentencing board to determine the treatment of offenders found by a jury to be GEI. When combined, these two solutions will constitutionally ensure that mentally ill offenders are sentenced appropriately and receive the treatment necessary for them to return to society as productive members.

Adoption of a GEI Verdict

Presently, there is no uniform insanity test used across the nation. Although the 1984 federal test is used by all federal courts, state courts use different verdicts employing varying insanity tests,"' all of which have displayed flaws upon implementation. The resulting increase in uniformity of insanity determinations as more states adopt the insanity standard this Note recommends would have two benefits.

First, notions of equity and justice will be enhanced, since similar offenders will be treated in the same manner. Second,, since an insanity determination serves as a prerequisite to receiving an effective treatment as part of the sentence, more offenders in need of this treatment will be given the opportunity. The superior insanity standard that should be adopted is based on Oregon's GEI verdict. Determination of insanity under this standard asks whether "as a result of mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of the law". Under this insanity test, defendants would be found guilty of commission of the underlying crime except for insanity if they were unable to conform their conduct to the law (volitional impairment) or appreciate the criminality of their conduct (cognitive impairment) due to a mental illness or defect present at the time of the offense. By taking into account both the volitional and cognitive abilities of the offender, the **GEI** verdict avoids the flaws of exclusively cognitive or volitional insanity tests." The GEI verdict appropriately takes into consideration offenders with volitional incapacities that are amenable to treatment in mental health facilities" as well as offenders with cognitive incapacities.

Additionally, the **GEI** verdict does not unnecessarily narrow the definition of insanity, thereby forcing the criminal justice system to ignore blameworthiness in order to protect society. The

GEI verdict supports the premises underlying both the criminal justice system and the insanity defense. The basic requirement of criminal responsibility, free will, is not disregarded. The policy goals of the insanity defense are furthered because there is a greater probability that the offender will receive rehabilitative treatment through a finding of GE than through a finding under another insanity standard resulting in a strictly punitive prison sentence".

Benefits of Adopting the GEI Verdict

Every state should look at and consider adopting the **GEI** verdict. As previously stated, all other insanity tests currently in use by one or more states are flawed. The GEI verdict is a superior approach to these flawed insanity standards. Thus, one practical benefit of widespread adoption of the **GEI** verdict is the assurance of greater uniformity in the ultimate result of insanity determinations, which presently does not exist even among jurisdictions that use the

same insanity rule. Offenders in need of medical treatment would be appropriately found to be GEI, rather than being sentenced to prison without receiving any treatment or being acquitted by reason of insanity.

Conclusion:-

An increasingly popular alternative utilized in many criminal justice systems is mental health courts, which typically hear only cases of nonviolent offenders. Because a jury is not present, these courts face potential violations of the Sixth Amendment right to trial by jury unless the offender accepts transfer to a mental health court, thereby waiving his right to a trial by jury. 140 Additionally, since an offender must waive his right to a trial by jury, not all offenders in need of treatment will necessarily affirmatively choose to be tried in a mental health court. Because a jury determines the offender's guilt in the system proposed by this Note, however, this system would not face the potential constitutional violations of mental health courts. Receipt of proper treatment would not be dependent on the offender's affirmative choice to utilize this sentencing system.

References

- Asokan TV. Daniel McNaughton (1813-1865). Indian J Psychiatry 2007;49:223-4. [PUBMED]
- Bargh J. Free will is un-natural. In: Are We Free? Psychology and Free Will. New York: Oxford University Press; 2008. p. 128-54. Montague PR. Free will. Currbiol 2008;18:R584-5.
- Blueglass R, Bowden P, editors. Principles and Practice of Forensic Psychiatry. London: Churchill Livingstone; 1990. p. 103-9.
- Bohlander. Principles of German Law. Portland: Hart Publishing; 2009.
- Gerard JB. The medical model of mental illness. Its application to the insanity defense. International Journal Law Psychiatry 1999;22:65-78.
- Giorgi-Guarnieri D, Janofsky J, Keram E, Lawsky S, Merideth P, Mossman D, et al. AAPL practice guideline for forensic psychiatric evaluation of defendants raising the

insanity defense. American Academy of Psychiatry and the Law. J Am Acad Psychiatry Law 2002;30 2 Suppl: S3-40.

- Grant J. Determinism, neuroscience and responsibility. Int J Law Context 2006;2:221-31. Morse SJ. New neuroscience, old problems: Legal implications of brain science. Cerebrum 2004;6:81-90. (In: Garland B. Neuroscience and Law. p. 157-8).
- Grøndahl P, Ikdahl SE, Dahl AA. A study of forensic psychiatric screening reports and their relationship to full psychiatric reports. J Forensic Psychiatry Psychology 2007;18:331-41.
- Hirsch V. Proportionate Sentencing: Exploring the Principles. Oxford University Press; 2005.
- Huss, M. T. (2009). Forensic Psychology: Research, Clinical Practice, and Applications. Wiley-Blackwell.
- Indian Penal Code Manual.
- Linder, D. (2008). The Trial of John W. Hinckley, Jr. . Retrieved April 12, 2010, from http://www.law.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyaccount.html
- Marfatia JC. Psychiatry and law. In: Martindale D, Martindale E, editors. Mumbai: Popular Prakashan; 1972. p. 8109132.
- Melville JD, Naimark D. Punishing the insane: The verdict of guilty but mentally ill. J Am Acad Psychiatry Law 2002;30:553-5.
- Richard R, Shuman D. Conducting Insanity Evaluations. 2nd ed. New York: Guilford Press; 2000.
- Robinson. Criminal Law Defences. Vol. 2. St. Paul, MN: West Publishing; 1984.
- Simon RI, Gold LH. Textbook of Forensic Psychiatry. 2nd ed. 2010.
- Slobogin C. Proving the unprovable: The role of law, science, and speculation in adjudicating culpability and dangerousness. Ch. 1.: Oxford University Press; 2006. p. 15-8. [Amendment].

- Somasundaram O. The Indian lunacy act, 1912: The historic background. Indian Journal Psychiatry 1987;29:3-14 [PUBMED].
- Stimpson, S.C. State v. Cowan(1994) The Consequences of Montana's Abolition of the Insanity Defense. Montana Law Review. 55 Mont. L. Rev. 503
- United Kingdom House of Lords Decisions-Database.
- Wrightsman, L., Greene, E., Nietzel, M., & Fortune, W. (2002). Psychology and the Legal System (5th ed.). Wadsworth.