



## Historical background of insanity defence

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### Abstract

Every commission and omission of act which is contrary is made punishable under penal laws. In every offensive act the mens rea and actus reus is necessary element. But the person who are unsound mind, did not possess such mens rea because they lack such cognitive behaviour to determine what he is doing. The Mc. Naughten rules, the irresistible impulse test, the Durham test and several reforms are responsible for development defence of insanity in laws. These rules and laws are responsible for development of insanity laws.

**Keywords:** Commission, omission, mens rea, unsoundness of mind

### Introduction

Every commission and omission of act which is contrary to law is punishable. The alleged or the criminal act which violates law made punishable under the penal code. For establishing the criminal intention and criminal liability the mens rea is necessary. The law of insanity is avail to protect the person from criminal responsibility for the person of unsound mind. In a crime, the intention and act both are taken as necessary constituents of elements of crime. Therefore in which it is believed and presumed that, every sane being possessed some degree and responsible for acts done by him, unless the contrary is proved, but a person of unsound mind cannot be said to possess this basic norm of human behavior. The law insanity provides a protection to insane persons and it plays a great role in protecting the person from criminal liability for such person who cannot understand the nature of their act due to insanity. In this area see about defence of insanity development.

### Background for development of insanity laws

The four formulated standard forms to determine the criminal responsibility for insanity defence in courts, which are M' Naghten rules, the irresistible -impulse tests, the Durham rule, the test recommended by the American Law Institute's Model Penal Code. The insanity defence can be seen in Hammurabi's code which around dates back of 1772 BC and it is recorded as first usage of insanity defence which should be some sort of insanity defense <sup>[1]</sup>. In period of Roman Empire, the government found that most of the convicted people to be non-compos mentis, meaning without mastery of mind and not guilty for their criminal actions <sup>[2]</sup>.

There are some important phases of insanity defence before the emergence of famous M'naghten case.

### Good and Evil test

It is considered to be first step of insanity defence the Good and Evil test, which is to be originated as a biblical and religious concept. Those who are unable to distinguish between the good and bad are considered insane.

### Wild Beast test

The next major step of insanity defence is emerged in the wild Beast test. In the 1724 British case of "*Rex v. Arnold*,"

the judge ruled for the defendant to be acquitted by reason of insanity because he did not know what he was doing, and was doing no more than a "wild beast" could do <sup>[3]</sup>

### Hadfield's trial

In 1800 the further more advancement was made for insanity as a defence with Hadfield's trial. The Hadfield fired a pistol at the King during play and he missed the target but he missed the target and it was tried in court. He was charged with treason and he pleaded insanity.

Until this time, if a defendant was not being deemed as guilty by reason of insanity, then the defendant would go free. In this particular trial when the defendant was under some kind of "delusion" during the time of the crime, they would be excused of their crime if the delusion was supposed to be true. He was found to be insane, and hence was acquitted. However, this led to the passing of the Criminal Lunatics Act of 1800 <sup>[4]</sup>. This required a set procedure for defendants who were acquitted because of insanity. They were then required to be held in detention after trial until deemed alright to be released back into society. In 1840, the standard for insanity was further made clear, by the case of *Regina Vs Oxford* <sup>[5]</sup>. In this particular case, that was seemed to defendant suffered due to mental disease or mental disorder and he does not know nature, character, and consequences of the act that he was committing. This ruling redefined insanity, and it set the judgment for the major rules on insanity.

### The m'naghten's rules

In 1834, Edward Drummond shot dead by Daniel who was a Principal Secretary of Britain Prime minister Sir Robert Peel, and believing that Robert Peel had killed by him. Due to this Drummond died and M'Naghten also shows the illusion and delusion as previous history. In a previous case, *Regina Vs. Oxford* (1840), Edward Oxford, which he had a previous history of insanity, he had shot at Queen Victoria, and the jury was charged in the following terms: "If there is some controlling disease was in truth and if the person does not have capacity to understand the nature of the act, the person is not responsible for his conduct or act <sup>[6]</sup>. The fifteen Judges of the common law courts, these judges were called upon by the house of Lords for providing information about the case and they provided answers to five questions

and their six answers which constitutes the M'Naghten's rules for development of insanity and based on the answer provided by the English judiciary, it formulated a standard for determining for whether a person is insane and this form of standard is known as M' Naghtens Rules.

The first question which is mentioned asks for the position of law regarding the person with insane delusion committed a crime. The response was that if the person committed a crime who is only partial insane delusion then the person is punishable and if he knew previously that the act should be contrary to the law.

The second and third questions relates to what form of issue should be presented to a jury. The principles which are guiding formulated in their response to their questions which follows:

For establishing the insanity defence on grounds of insanity defence that the accused was under mental defect, from the result of disease of mind or disorder or defect of mind, so he unaware about the nature and quality of the act, the act done by him or, he does not know the act which was done by him was wrong. From response, he presumed to be sane until it is proved and that the defendant's knowledge of right and wrong in general also included.

The next fourth question relates to whether a person commits a crime under an insane delusion is excusable- Reply for the question is that the person is considered that though the facts which respect to the delusion exists were real.

The fifth one deals about the expert testimony, and the response for the question is where in matter of convenience for jury or need of opinion of expert necessary <sup>[7]</sup>.

#### **The principles which underlined in the M'Naghten's case** <sup>[8]</sup>:

The following proposition which are sum up of the replies that given up by the judges

1. Every person is presumed as sane which is established in law, and the person responsible for their act as sane as and have sufficient degree of reasoning power until the contrary is proved for the satisfaction a jury.
2. For establishing insanity defence, the accused must be insane at the time of commission of offensive act, he is incapable to understand the nature and quality of the act, act was done by him and therefore he criminally irresponsible for his acts.
3. The judges said, as to to the his knowledge of wrongfulness of act: 'whether accused was conscious at that time if not the act which was contrary to the law and he is punishable for the acts done by him.
4. if a person under an insane delusion as to the existing facts he commits an offence and consequence thereof, and based on the nature of delusion judges replied that, by assumption that accused was under partial delusion only and he is not insane in other respects, due to the delusion and he suppose took another person in the act of attempting to murder and he exempted from liability or exemption from, responsibility that.,what he was doing.

There is general acceptance of the phrase which is to know the nature of the act refers the person aware about the act done by him, he is able to know the true nature of the act. It

also included to understand the ability of act's harmfulness in the knowledge of the act or quality of the act.

The capable to distinguish what is right or wrong which is discusses as second one. The M'Naghten rule focus on a person is completely damaged as much extent to inefficient to understand the right and wrong from the act.

The M'Naghten rule also faces the criticism which includes the critics for too restrictive a full or complete lack of capacity to understand the act for what the person was doing was wrong. This M'Naghten rule is mainly focused on the cognitive function of the mind and it is also contradict to the modern physiological thought <sup>[9]</sup> The M'Naghten rule is mainly based on intellectual awareness and cognition and this rule does not provide any defence or any support to the person who does the act wrong but in which they cannot control their actions.

#### **The irresistible impulse test**

Because of the result of criticism of M'Naghten's rules the irresistible impulse test arises, which may expand the M'Naghten's rule by adding the third element to the test which includes mental illness affects the power of determination or free will. This rule to be known as irresistible impulse test, and the jurisdiction made no phraseology. It is a apparently that a person may loss his control over his action due to the mental illness which affected although he knows the nature and quality of that act which was done by him. The examination of the test which includes the following which are: Even though defendant knows the right from wrong, but he acted from an irresistible impulse; the defendant has lost the power to choose between the right from the wrong, the defendant's will and his free agency to avoid performing the act was completely destroyed and so his actions are beyond his control.

For example certain schizophrenics, some are entirely cognizant of the act what they are doing, and they have an absolute awareness of the consequences of their act which is criminal in nature and they have complete awareness of criminal wrongfulness of their act. Infact certain persons of this type, the knowledge of the act, nature and quality of their act done by the person should be very considerate and careful planning. There are many such other cases, in spite of such knowledge the individuals who did not have any control over his actions, because they are suffering from acute mental illness in which of such nature as to deprive them of free responsibility. Hence it seems to be lacuna in the M'Naghten's rule, which it can cover the case of lack of capacity due to insanity, hence it needs a supplementation by an additional test or rule, This rule fills the lacuna.

The irresistible impulse test, which has been supplement to the M'Naghten's rule and it is deliberately enlarges the area of mental illness or mental deficiency and by recognising the

established the phenomena of psychological and psychiatric, the law will consider the area of non responsibility by illegally. According to them the insanity does not only affect the man's belief but also emotions and will. According to the medical expert the uncontrollable impulse also considered to be a species of insanity in such cases even if they knew the quality and nature of the act, that he is expelled from criminal liability for what he did the act on irresistibly impelled. In America Shaw, J. that he accepted the irresistible impulse test as a good test and he framed the

rule to insanity proved that accused had to prove his insanity and that he lack of power of control of his moral or intellectual power which were insufficient that he lack of sufficient will or else he done the act on irresistible impulse or uncontrollable impulse. The legislation introduced the irresistible impulse test in 1884, by 1976 the test is majorly used in 18 states of U.S.A. and it is widely adopted as the M'Naghten irresistible combination test.

Likewise the M'Naghten rule, the critics also evolved for the irresistible impulse test, it was criticised for the compartmentalization for thought process. And they also argued that its reasoning was essentially circular, because it only the measure of

Irresistibility of impulse was resisted. The other critics also argued that and the test is irregularly widely broadened the insanity defence, focused only on the area of sudden, impulsive loss of control, gradual loss of control of defendant. The few states used the irresistible impulse test which had fallen into disfavour and the certain few states only followed the combination of M'Naghten-irresistible impulse test<sup>[10]</sup>.

The irresistible impulse test was rejected by Royal Commission on Punishment based on the following

- a. Uncontrollable impulse does not be accompanied with the unimpaired knowledge of right and wrong.
- b. There is no clear distinction between the resistible impulse and irresistible impulse.
- c. Such distinction is difficult to prove before a jury as they cannot form a fine distinction on insanity which is known to medical science.
- d. The adoption of this test is endangered to society because it is favored as a rich man's defence.
- e. There is possibility to misuse the test more

The Royal commission on Capital Punishment discredits the irresistible impulse concept and it concludes that concept is inadequate and inefficient<sup>[11]</sup>. For the exemption of responsibility the M'Naughten rules was fit which is recommended by the committee. It is rejected by many countries.

The Supreme Court of West Virginia has observed<sup>[12]</sup>: Indulgences in evil passions weaken the restraining power of the will and science and the rule suggested would be the cover for the commission of crime and its justification. In doctrine which a criminal act may be excused upon the idea of an irresistible impulse to a commission of act where the accused was aware his legal and moral duty with respect to the act which is done by him, has no place in the law.

### **The durham test**

The M'Naghten and Irresistible-Impulse test was criticised, the Durham rules established by the judge David Bazelon. In district of Columbia. In appeal for the District of Columbia held that "there is a powerful trend in opinion of modern psychiatric and legal opinion adopted to widen the area of test for criminal liability and offence committed by person", with the various mental defects or mental disorders which could severely damage the capacity of understanding. In United States, the court declared the test as follows, "the defendant was not responsible for his criminal act, and if the act done by him was unlawful, and the act was result of mental defect. There is difficult to establish the link between the offensive act and the mental disease of a person.

In the Durham's case the facts reveal that he had a previous history of imprisonment and hospitalization. The Durham at the age of 17 he was discharged from the Navy due to that after psychiatric examination, which it had shown that he had suffered from a very deep personality disorder, resulting in him being unfit for naval service. In 1947, he pleaded guilty for the violation of the National Motor Theft Act, for the act he placed in, probation for one to three years. He tried attempted to suicide, thus he taken to Gallinger hospital for observation and after that he transferred to St.Elizabeth hospital and he was discharged after two months from that hospital. In January 1948, the District court revoked probation and commenced service for his sentence for the motor theft as the result of conviction in the district court of Columbia. His conduct in the jail leads to enquiry of lunacy in the District Municipal Court, the jury found that he was unsound of mind, with the commitment to St.Elizabeth, he was diagnosed that he was suffering from Psychosis with Psychopathic personality. After providing treatment for fifteen months, he was discharged from the hospital after he recovered in July 1949 and thus he was returned to jail to serve the remaining sentence. He was conditionally released in July 1950, thereby by leaving the district he violated the condition and therefore he came to know about the warrant for his arrest as violation of condition as a parole violator, he fled away to the other places such as south and midst America and thus he obtained money from a number of passing cheques. After that he was traced and returned back to district. The board of parole referred to him for inquiry for lunacy in the court, he was found again that he was of unsound mind and he again admitted in the St.Elizabeth In February 1951, the diagnosis was 'without mental disorder psychopathic personality and he was discharged in may for third time. The appeal took place later in July 1951. As per his mother and the psychiatrist who examined him, the Durham was suffered in hallucinations, in may 1951 he was discharged from St. Elizabeth hospital and after that, the accusation which is following in october 1951, by the affidavit of two psychiatrists he was adjudged to be unsound mind that he was suffered from Psychosis with psychopathic personality. For the fourth time thus the Durham was commuted to treatment sub shock insulin therapy in St. Elizabeth. This treatment is remained for sixteen months until February 1953 and by the certificate of Dr. Silk who was acted as superintendent in St. Elizabeth hospital, he was released in custody for jail thus he able to consult counsel for his own defence properly.

On the accusation the Durham is brought before the court and his counsel argued that the prevailing test which is right and wrong test supplemented by the irresistible impulse test for determining the criminal responsibility in which it is found that he is insufficient to ascertain the criminal responsibility. The objection for right and wrong test, it is not the criminal irresponsibility is made upon the inadequate, invalid or indeterminable symptom, but the criminal irresponsible is made upon a particular symptom.

Thus the rules formulated by the court, the accused is not responsible for the acts done by him, thus acts were unlawful because of mental disease or mental disorder. The Durham standard is greater improvement of defence than both test which is used to determine the insanity, which makes the permissible of medical testimony on mental disability in which there is limitation on medical witness by

the application of M'Naghten rule for the defendant's capacity to make a moral judgment. However this test also had been rejected in other courts of the United States appeal court and its accuracy of the Durham rule was also suspicious in case Aderson and US and Saver vs US. Mostly the frequent objection was that it lacks meaning due to its critical terms 'products', disease and defect are undefined.

In widely the durham rule is not accepted, but its history which is followed in the court is of great interest. To make better the meedical expert testimony the attempt made by Durham rule is failed. There are three difficulties which mainly emerging. It causes confusion in functions of jury and experts and it also causes interferences of communication between expert and jury.

The lack of acceptance amounts to confusion due because there is no clear definition of product, aversion to the notion that a mental disease can "cause an act", and it deals the psychiatric testimony and its conclusory effect. Instead of failure of Durham test in court, there is a support for Durham test, which it is break from the traditional M'Naghten rule and encourages of other approaches of insanity<sup>[13]</sup>.

### **Proposal of american law institute (the ali model penal code)**

The American Law Institute in its Model Penal code, Draft 1962<sup>[14]</sup> it suggested the following two tests. The model penal code which states that following

1. the person is not responsible for offensive act at the time of occurrence he must have some mental disease so he lacks capacity that is either to appreciate the criminality and wrongfulness of his act which is done by him to meet the requirements.
2. it does not include an abnormality such as repeated criminal or otherwise antisocial conduct.

For the requirement of mental disease arise the crucial point to decide if the mental disease cause the volitional capacity of a person damaged, and to what extent was impaired due to the disease or defect. If the impairment was quietly more, the person had more defence. If the person had no impairment or if the impairment was not substantial and beyond the reasonable doubt sanity of person is described.

For example, a paranoid test which forms as basis of insanity defence, whether it independently affects the person ability to prevent him from performing the wrongful act.

The test describes of cognitive elements and volitional aspect. Although the defendant lacks the substantial either it appreciates the wrongfulness from his conduct, in which the requisition of law, the model penal code different from M'Naghten rule and irresistible impulse test which describes about the total incapacity of a person. The distinction that signifies between the Model Penal test and the M'Naghten rule, it recognizes mental illness, and it affects an individual's capacity for choice and impairs his behavioral controls

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The supporters also contend that the model penal code test is consistent with testimony of medical expert regarding the insanity which is flexible or less rigid, and it is jury for application and it can understand than other tests. The Model Penal Code has a wider acceptance and within two decades, it was adopted in half of the regions one of the federal circuits. Even though, the model penal code has also criticized and it objected to 'unduly broad and indistinct phrase' 'lack of substantial capacity and this also criticized for its volitional prong due to raising doubt on psychiatrists or medical experts that can reliably determine a volitional capacity of person.

### **The federal insanity defence reform ACT**

The Model Penal Code and the insanity defence is generally criticised increased massive in the following as a result of John Hickley's attempted to assassination of the President Ronald Reagan and following that he is acquittal on the ground of insanity<sup>[15]</sup>. more than forty bills were introduced within the year of 1982 before the congress to annul or considerably reform the insanity defence, including the President Reagan introduced one to abolition of insanity defence upto the maximum extent of constitution. In 1983, the American Bar Association (ABA), the American Psychiatric Association (APA) and the National Commission on the Insanity Defence issued a separated a position for insanity defence. The AMA advocated approach of abolishing insanity defence in favour of mens rea. The AMA and APA, which it was favoured in hold up the insanity defence, but without volitional prong and APA, it had also proposed the insanity defence allowed only in the case of severe mental disturbance. To restrict the use of the insanity defence by the procedural changes which was designed as to restrict it, it was restricted by NCID and such other groups In 1984, congress amended the federal insanity law, which enacted the Insanity Defence Reform Act (IDCR) of 1984, which it was a part of the Crime control act of 1984. It remove the volitional prong of the inanity test which is already advocated and it also shifts the burden of proof of insanity is upon the defendant. In statute the relevant part provided that if an affirmative defence to a prosecution, at the time of commission of offence he must be incapable to understand the nature and the consequences of the act because of the mental defect or disorder otherwise it is not a defence. In federal statute, a defence of volitional insanity may no longer assert to the defendant (inability to ascertain the conduct to meet the requisition and it is not stand defence.

The IDRA, is seperated from the Model Penal Code test to a M'Naghten standard, it requires a mental disease which is severe and it is an affirmative defence the burden of proving insanity is upon the accused, The anti-insanity defence movement, it was enacted and limited the scope of insanity defence by thirty three states. As per the insanity and its actions, the act which is a great deal diversity among the jurisdictions

For evaluation of the defendant that he is legally insane, jurisdiction of the United states follow a five different test

1. The IDEA of 1984 followed by federal court

2. The Model Penal Code test or some modification which is used by twenty-seven states and the district of Columbia
3. The Durham or Product test used by one country
4. Th four states followed the Durham or Product test.
5. The contribution of M'Naghten rule with the "irresistible impulse" test supplemented by five states

Several states in which have experimented with some variation of an experiment of a "guilty but mentally ill verdict, which is normally in addition to the traditions verdict of not guilty by reason of insanity<sup>[16]</sup>.

The combination of the M'Naghten rules and irresistible impulse which gives effect as a Model Penal Code formulation. The differences are more and the doubt raised respect to th improvement on the models in that replace

### **Defence of diminished responsibility in england under the homicide ACT,1957**

The provision of Homicide Act, protect the judge from passing a death sentence where in case of insanity covers outside the M'Naughten rules, it is a measure of recognition to mental abnormality or defect. This doctrine posses the reduction of culpability and punishment due to reduction of capacity for requisition of mental elements. The doctrine of diminished responsibility favourably impressed the members of royal commission. It could be applied for cases of murder. It seems to incorrect the application of diminished responsibility was extended only to the murder or homocide cases only in Scotland thought by commission. The 42nd Law Commission Report of India in its report it consider to incorporate the defence of diminished responsibility to in penal code, the report would desirable to have some provisions regarding the diminished responsibility, both limited to case cupable homicide or applicable to all offences, which is contributed to section 84, but the decisions were inconsistent with the report, mainly due to the complicated medico-legal issues arises in the court where in the insanity cases. In the code the provision which deals with murder cases the discretionary power also gives to the court and it is not necessary obligation to give death sentence to the murder case. Now the insanity defence in India which is placed under the section 22 Bharatiya Saksya Adhiniyam, 2023.

### **Conclusion**

The development of insanity defence is irreplaceable one in penal laws and the defence of insanity is provided to the person those who are unsound in legally. There is a need of futher development with respect to availability of insanity defence as to the at present medical and legal perspective.

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