

Short Communication

Title-Medical Proof of Insanity is not Legal Proof for Acquittal-Pros and Cons

Singh R^{1*}, Singh H², Kumari S¹ and Rajput A³

¹Department of Forensic Medicine & Toxicology, King George's Medical University, India

²Department of Anatomy, King George's Medical University, India

³Consultant Neuropsychiatrist, Nur Manzil Psychiatric Center, India

*Corresponding author: Raghvendra Singh, Department of Forensic Medicine & Toxicology, King George's Medical University, Lucknow, 226003, India

Received: August 04, 2016; Accepted: October 27, 2016; Published: October 28, 2016

Short Communication

Human mind and personality are integrated as to the cognitive, volitive and affective capacities, and that these elements may not be compartmented [1]. Cognition and volitional compartment are major players in a crime. Since long time there is a lot of discussion on acquittal of accused person in a crime on the basis of its mental illness. Some countries consider only cognitive areas while other takes consideration of all three compartments for deciding criminal responsibilities of an insane person. Criminal convictions are spread widely through society and even more widely among people with mental disorders [2,3]. Although it may be hazardous to consider emotional aspects of crime as basis for acquittal, as every criminal will plead them as defence but we should not look only at this small number of cases. Though some criminals might be acquitted wrongly but no innocent should be punished.

McNaghten rule was based on the outmoded language, which gives rise to problems of interpretation” and that the rules were “based on the now obsolete belief in the pre-eminent role of reason in controlling social behavior. In most countries like India where section 84 incorporated McNaghten rule, basically based on whether person knows the nature of his crime at the time of committing the act. This section only deals with incapacity of mind which is a result of ‘unsoundness of mind’ and the term unsoundness of mind is not clearly defined by the law. There is fluidity in the term unsoundness of mind so there are more chances of abuse and it also hampered the dialogue between medical and legal discipline [4]. As we know that unsoundness of mind is variable and broad term so mere considering the unsoundness of mind equivalent to insanity is not adequate. In other word we can say that there is no medical equivalent term for unsoundness of mind. Various conditions like depression, bipolar disorder, post partum psychosis, obsession & compulsive disorders may lead to subnormal control over the act done by a person. In majority of cases crime happened as a result of fit of anger, mental instability and impulse. In which person may realize that he has done wrong after committing the act. In Indian scenario if we take an example of a depressed person we know that

he may kill his dependent relatives like wife and children before the act of suicide. And if he is caught before committing the suicide or unable commit suicide, then he can't plead under section 84 because he knows the nature as well as legal status of his act. In above scenario there is a possibility that person was suffering from nihilistic or cotard delusion at the time of crime but unable to get defence as this will be decided on the basis of how he explains the crime at the time of counseling. So pre act situation is also not well considered in this McNaghten rule. Similarly a mutilomaniac well knows that what he is doing is wrong, but still he can't control himself from mutilating a man because of lack of control over his act. By McNaghten rule, he is guilty. But actually he should not be [5]. Similarly a mother after delivery may have an overt presentation of bipolar disorder that is timed to coincide with tremendous hormonal shifts after delivery [6] and during this phase if she kills her child the he will also be punished in Indian law. In all these cases cognitive functions may be normal but there is surely a defect in areas of will and emotion, which might affect his working to such an extent that he might lose control over his actions. So these people have medical proof of insanity but their insanity is not legally considered. It is a question of utmost important that when a person is medically unfit then how anyone can assume them legally fit. Some other important questions are capacity of a person to overcome his aggression and how he/she dealt with a situation is beyond easy understanding because they lie buried in his sub conscious mind into which no expert can enter. So there is a greater need of wider concepts like emotions, pre act situations and individual mental capacity of a person etc. On one hand since 1843, law makers of around the world has realized about flaws present in McNaghten rule so many attempt had been done to overcome these shortcomings. Many test like irresistible impulse test, Durham's rule, Currens rule are developed but failed due to their own shortcomings and extreme diversion from McNaghten rule. Several states of United States has adopted American law institute test, which included volitional aspect but removed many shortcoming of its predecessor [7]. In some countries like India, they didn't do much in this area since incorporation McNaghten rule in their constitution. In country like India, a non medical person decides that what kind of insanity is benefitted under section 84. Even in United Kingdom several changes have been done since incorporation of McNaghten Rule. According to recent discussion paper of the Law Commission on law reform, they recommend to abolish the common law defence of insanity and replace it with a statutory defence of “not criminally responsible by reason of recognized medical condition”. This defence would be available where a person totally lacked capacities to make a judgment rationally, to understand that they are doing something wrong and to control their actions [8].

Despite a lot of criticism and long battle between medical and legal proof of insanity, there are some points which favours legal proof of insanity over its rival. As we can see in past when we diverted

towards medical proof of insanity, there was very much dependency over psychiatrist and there was sharp increase in percentage of trials pleading mental disease or defect as defence. At that time it was said that psychiatrists were given a blank check, while not leaving much in hand of judge or jury [5]. So equation should be balanced like recent law reform in United Kingdom, where they abolished the requirement of evidence from two medical practitioners, one of whom must be a psychiatrist, to support a defence of insanity. They propose to retain the requirement for two experts, but only one of them need be a medical practitioner [8]. Another concept is public anger related to acquittal of criminals on the ground of insanity. If we accept the medical proof of insanity over legal proof then obviously there is an increase number acquittal and which may lead to increase public anger towards judiciary. Knowledge and awareness toward civil and criminal responsibilities of an insane person is the best way to deal with the outrage of public in this kind of situation also in some cases, Doctrine of diminished responsibility is better way against complete acquittal to control public anger.

Although section 84 in Indian Scenario, which incorporate McNaghten rule tries to deal fairly with mentally ill offender but sometimes there may be false acquittals or convictions. So, areas of legal insanity are to be widened to incorporate some more aspects of medical insanity. There should be focus on proper mental state examination of the patient. We should be stressed on removing

the crime and not the criminal. In most cases these criminals are emotionally unstable and their mental health may worsen by punishments so care should be taken to improve and support them and not to punish them.

References

1. St. John's Law Review. "Criminal Responsibility and Proposed Revisions of the McNaghten Rule", St. John's Law Review. 2016; 32: 8.
2. Wallace C, Mullen P, Burgess P, *et al.* Serious criminal offending and mental disorder. Case linkage study. British Journal of Psychiatry. 1998; 172: 477-484.
3. Taylor PJ, Gunn J. Violence and psychosis: The risk of violence among psychotic men. British Medical Journal. 1984; 288: 1945-1949.
4. Freeman M, Pathare S. WHO Resource Book on Mental Health, Human Right and Legislation. 2005; 23.
5. Anil aggrawal. Textbook of Forensic Medicine and Toxicology. 1st edn. India: APC. 2015; 501.
6. Sit D, Rothschild AJ, Wisner KL. A Review of Postpartum Psychosis. Journal of women's health (2002). 2006; 15: 352-368.
7. Lockey CJ, Bloom JD. The evolution of the american law institute test for insanity in Oregon: focus on diagnosis. J Am Acad Psychiatry Law. 2007; 35: 325-329.
8. 13th programme of law reform.