
POST-TRAUMATIC STRESS DISORDER AND THE M'NAGHTEN RULE - REASSESSING THE SCOPE OF INSANITY DEFENCE IN INDIAN CRIMINAL LAW

Neev Agarwal, LLB, Jindal Global Law School, OP Jindal University

ABSTRACT

This paper aims to examine the possibility of inclusion of PTSD, a mental illness first recognized in DSM- III,¹ as a defence under Section 22,² or within the scope of insanity defence. It aims to argue if the episodes of dissociative flashbacks associated with PTSD, could impair the cognitive ability of an individual in a way that aligns with the conditions of the M'Naghten Rule, which is an established rule for the test of insanity in India, to use it as defence. Further, the research would also compare cases in the jurisdiction of the USA, where the aforementioned rule applies and PTSD has been argued as a defence. This comparison will help establish the legal challenges and interpretations of cognitive impairment and control of will, which could suggest ways to increase the scope of Insanity as a defence in India, along with the inclusion of PTSD in the scope.

¹ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3rd ed., 1980).

² Bharatiya Nyaya Sanhita, s 22.

Introduction

In India, an individual is allowed to use insanity as a defence under Section 22 of the BNS.³ According to the section, any individual would be absolved from criminal liability, if that person is incapable of understanding the nature of their act due to unsoundness of mind.⁴ If an offense is committed by an individual of unsound mind, we assume that they do not have *mens rea*, i.e. guilty mind, which is required to create any criminal liability.

In Hazara Singh v State⁵ the concept of “*furious nulla volunta est*”, i.e., a madman has no will was established, which meant a man of unsound mind could not be expected to form their own will or have a guilty intention of committing a crime. Further, in the case of Bapu Singh v State of Rajasthan⁶, the court held that “medical insanity” would not be enough to use insanity as a defence, the accused would have to prove “legal insanity”. This was reiterated in the case of Surendra Mishra v State of Jharkhand⁷ where it was stated that the accused has to prove legal insanity, and mental disease would not absolve them of liability. To prove legal insanity, the accused has to establish that during the commission of the act, they were not in control of their reasoning faculties. There are, again, specific tests to prove the absence of such control on the faculties.

To prove “unsoundness of mind” to allow defence under Section 22⁸, the Court established the use of the M’Naghten Rule. In Amrit Bhushan v Union of India,⁹ the Court clarified that the test of the M’Naghten Rule would be used to prove insanity in the Indian Courts, according to which an individual, while committing a crime, is unable to understand the nature and quality of their actions and is unaware that what they are doing is wrong, due to their mental condition.

Post World War 1 and 2, there has been an exponential growth in the number of veterans and other individuals suffering from trauma-related stress. This stress results in episodes of dissociative flashbacks, where one feels as if they are reliving their trauma from a third-person point of view, and they are not in control of their environment. Such episodes can be triggered by various external stimuli, especially when the conditions of the patient’s environment are similar to the traumatic event. This stress was therefore recognized as post-traumatic stress

³ Bharatiya Nyaya Sanhita, s 22.

⁴ Bharatiya Nyaya Sanhita, s 22.

⁵ AIR 1958 PUNJAB 104.

⁶ AIR SC 2007 (SUPP) 1314.

⁷ AIR 2011 SUPREME COURT 627.

⁸ Bharatiya Nyaya Sanhita, s 22.

⁹ AIR 1976 SC 608.

disorder (henceforth: PTSD) in DSM-III.¹⁰ Given the expanding understanding of mental health, the inclusion of PTSD in the scope of the insanity defence needs consideration.

PTSD and Cognition

Post Traumatic Stress Disorder is a psychiatric disorder characterized by the development of intrusive systems and negative alterations in cognition and mood.¹¹

A study where 21 papers were analyzed shows that patients with PTSD, particularly veterans, show signs of higher cognitive impairment as compared to individuals exposed to trauma who don't have PTSD.¹²

PTSD and M'Naghten Rule

With the introduction of the M'Naghten rule, the burden of proof shifted to the accused. This implies, that compared to the previous cases where the defendant had to merely present the mental illness while using insanity as a defence and the prosecution had to prove the absence of such unsoundness, the defence has to now prove such unsoundness. To be able to use insanity as a defence, the accused now has to prove that due to his mental condition, he was unable to understand the nature and quality of his actions, and was unaware that what he was doing was wrong.

For PTSD to be allowed as a defence, the accused has to prove that he was in a state of disassociation during the commission of such an act. He further has to prove that such a symptom was a result of the trauma and that the symptom was the direct cause of such an act.

It would be difficult to prove insanity due to PTSD when under the scrutiny of this rule. For one to have a lack of knowledge of the wrongfulness of the act, or the nature of the act, the defendant would have to be in a state of delusion or so out of touch that he would not be in control of his judgment. Even if PTSD is associated with multiple symptoms, one could only argue the lack of such control to exist in the episode of dissociative flashback. Such episodes are rare and require a high degree of arousal from external stimuli. However rare, if such an offense is committed during the flashback, the accused can argue that he was unaware of the quality of his act and is therefore not liable for the offense. It is difficult to prove episodes of

¹⁰ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3rd ed., 1980).

¹¹(Oct. 27, 2024, 10:19 PM)

<https://www.sciencedirect.com/science/article/abs/pii/S0025712522000530?via%3Dihub> .

¹² Qureshi, S. U. et al. 'Does PTSD Impair Cognition Beyond the Effect of Trauma', The Journal of Neuropsychiatry and Clinical Neurosciences (2011).

such flashbacks in retrospect because such episodes are not only rare but also fleeting and unverifiable.

Comparative Analysis- Jurisdiction of USA

A search on Lexis Nexis revealed the following cases in the Courts of the USA relevant to the paper. However, these cases are restricted to the ones that were appealed, as only those judgments are usually published.

United States v Duggan¹³ was one of the first cases in America to be tried after the establishment of M'Naghten rule. In this case, the appellant was held to be unable to provide ample evidence of his insanity and was therefore held liable. However, before this case, certain cases allowed the admissibility of PTSD as a defence for insanity. In the case of State of New Jersey v Cocuzza,¹⁴ the defendant, a Vietnam veteran, assaulted a police officer but was held not responsible for the offense. At the time of the incident, he was under the view that he was attacking enemy soldiers. This was further backed up by the police officer, who testified that the defendant was holding a stick like a rifle. Further, in the case of State v Wood,¹⁵ the defendant, again a Vietnam veteran, was held not guilty of shooting the foreman in the factory where he worked. With the help of expert testimony, it was proved that the defendant was suffering from PTSD, and he was acting in a state of disassociation, which was triggered by his environment.

After United States v Duggan, there were numerous cases where PTSD was denied as a defence. In the case of United States v Whitehead,¹⁶ a federal case, the defendant, a Vietnam veteran was charged with bank robbery. While he presented expert testimony proving that he had PTSD, the district court held that such proof was not enough and he was guilty of the crime. The appellate court held that based on the evidence presented by the defence, it could not be established that he was unaware of the nature or wrongfulness of his actions, or that he was severely affected by his mental illness. Similarly, in the case of Gentry v State¹⁷, Mr. Gentry was charged with first-degree murder of his wife. He contested PTSD, saying that after he made the first shot, he entered into a state of shock and the second shot fired was out of his control. The jury found him guilty of first-degree murder, rejecting his insanity defence. The court of

¹³ F.2d 59, 81, 743 (1984).

¹⁴ N.J. SC No. 1484-79 (1981).

¹⁵ Ill. Cir. Ct. 80-7410 (1982).

¹⁶ F.2d 432, 896 (1990).

¹⁷ Tenn. Crim. App. 2738 (1984).

appeals upheld this decision, stating that he did not have a mental disorder allowing him to take the defence based on the standards of M’Naghten rule. In the case of *State v Angel*,¹⁸ the defendant pleaded not guilty to the murder of his wife because of insanity due to the disassociation caused by PTSD. The court of appeals held that there was sufficient evidence to reject his plea for insanity defence.

Therefore, across US jurisdiction, there have been multiple cases where the jury has allowed PTSD as a defence for insanity. However, it becomes difficult to establish such a defence when the stringent conditions of the M’Naghten rule apply.

Discussion- Applicability and Aptness of the M’Naghten Rule

In the Indian context, there seems to be a lack of discussion regarding the admissibility of PTSD as a defence for insanity. In the case of *Indeevarakshan Nair M P & Others v. Officer I C Records A S C Records MT & Others*,¹⁹ PTSD has been mentioned, but there is no actual consideration of it as a defence. While we mention increasing the understanding of mental illnesses and trauma, it is important to take into consideration such trauma-related illnesses, as these can be argued to cloud the judgment of victims of various forms of abuse.

Adhering strictly to the conditions of the M’Naghten rule, to prove insanity under PTSD, one has to prove the existence of trauma. This can be done through a psychiatric evaluation or by proving the existence of such situations that presented a threat to the life of an individual. Further, the defendant would have to prove that he was experiencing an episode of flashback, or that he was unable to form a guilty intention during the commission of the offense. This too would have to be evidence-based, for example, if there was no tampering of evidence or premeditation and there were clear signs of rash acts.

However, the M’Naghten rule could be an obsolete test for insanity in itself. Additionally, it might be important to increase the scope of legal insanity in Indian Criminal Law. There have been arguments made that the M’Naghten rule only focuses on the cognition of an individual, and not their ability to harness their own will.²⁰ Additionally, it is argued to be too stringent a rule, to not allow experts to give their personal opinion. They are restricted within the confines of determining if the accused would have been able to tell right from wrong, which constrains the realm of expert testimony. There have been amendments in the various courts of the USA,

¹⁸ N.C. 408 (1991).

¹⁹ (2009) Kerala HC 1327.

²⁰(Oct. 27, 2024, 10:24 PM)

<https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2758&context=mulr>.

including South Carolina to include other tests to supplement the M’Naghten rule to decide criminal liability, given the inadequacy of the rule. Such tests include the Durham test, which tries to establish if the act of the individual was a direct product of the mental illness, to ascertain liability.²¹

The present established rule requires evidence-based proving of the absence of information about the nature of the act, when one goes in and out of mental illness-based episodes. This is largely retrospective and might create ambiguity which could make it easy to evade at one end or difficult to prove in the other. On the other hand, the accused might have to prove complete loss of control due to mental illness, which restricts the scope of defence of insanity to cognitive illnesses.

Indian Criminal Law can, therefore, consider establishing the concept of diminished capacity while deciding liability. Diminished capacity means an abnormal mental condition that renders an individual unable to form the *mens rea* required for an offense but also does not lead to insanity.²² This does not need to absolve one of liability completely, but would lead to a decreased punishment. When the accused can prove diminished capacity during the commission of such an offense, he would be able to plead a lower sentence, about the fact that control was absent to a certain extent, if not completely.

Conclusion

As established, proving loss of control while committing such offensive acts which would result in criminal liability is challenging, given its retrospective nature and dependence on evidence. Further, because of the established rule, it becomes difficult to include expert testimonies because it restricts the admissibility of opinions. The present rule has been seen as a high threshold for proof of legal insanity. When other tests allow PTSD as a defence for insanity across US jurisdiction, M’Naghten rule remains restrictive in this regard. Therefore, to positively increase the scope of insanity as a defence, India could consider including other concepts to supplement the rule, such as diminished capacity. This would create a more balanced compromise, allowing fair trials and accurate sentencing based on the mental state of the individual during the commission of such an act.

²¹ (Oct. 27, 2024, 10:24 PM)

<https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2758&context=mulr>

²² (Oct. 27, 2024, 10:15 PM) <https://www.merriam-webster.com/legal/diminished%20capacity>.