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Insanity Defense: A Fundamental Issue in the Criminal Justice System of Bangladesh

Mehrab Hasan[*1]

[1]*Dept. of Law and Justice, Southeast University, Dhaka*

Abstract: Criminal Law Legal System is one of the most ancient legal systems which comprises of substantive law and procedural law. The substantive law deals with crimes and elements of crimes whereas procedural deals with trial, procedure, examination of a witness, defense, and punishment of the wrongdoer. Criminal law is enacted to protect human's wrongful behavior and to keep peace in society. It defines criminal acts and also protects the human against violence to his body and property. Law entitles a person to do anything to protect his life and property. Even law denotes some exceptions and exemptions for the accused, those are called defense. Some defenses are private defense, alibi defense, and insanity defense, etc. Using this defense, an accused may easily escape his criminal liability. This work emphasis on the insanity defense. When the accused is insane and cannot realize the consequence of his work, he cannot be held liable for his criminal activity. This paper would address its history, standard, legal provisions on the insanity defense, existing principles, how it can be faked and some landmark cases, common questions and finally seek for reforms of insanity defense to uphold its purpose to be fundamental in Criminal Law Legal System.

Keywords: *Insanity defense; Mental illness; Mental incapability; Criminal defense; Faking insanity.*

Introduction: Criminal justice system is the procedure to prosecute an accused considering the existing laws and evidence provided before the court and management of the criminals. It also deals with the fundamental individual right provided to the accused by Article 35 of the Constitution of the People's Republic of Bangladesh, private defenses provided under sections 96-106 of the Penal Code, 1860, etc. This system provides multiple opportunities to the accused to defend him from criminal liability. The Criminal Law Legal System aims to ensure justice. Section 84 of the Penal Code, 1860 denotes insanity defense. It states no act of any person of unsound mind is a crime. A person of unsound mind cannot be held liable for his criminal activity. This section exempts person like idiot, lunatics, drunkard and person unsound through disease of mind. This work is on the person unsound through disease of mind as insane person.

These defenses may encourage wrongdoers to act lavishly and do harmful work as they can use this defense in the court as a weapon. Long history and some famous cases denote that it was abused many times. Author has searched for its origin, objective use in the court and other related issues. The author has documented some cases, where the defense was used as a weapon to defend the wrongdoer, to show how it can be abused. The author highly thought that insanity defense needs to be amended to uphold its objective and purpose in the criminal law legal system. By going through all the existing principles to decide over insanity defense, the author has tried to set a complete procedure to deal with the case related to the insanity defense. The author has suggested some amendments to ensure its actual purpose and most of them weren't his own, the author has summarized some scholarly recommendations.

Literature Review: Insanity defense is being used as a criminal case defense from ancient times. But it is a matter of regret that there is no notable book on this. However, there are huge research, writings, comments supporting and against the defense.

In his book, Mr. Ellsworth Lapham states a huge study on psychopaths and their behavior. It would be effective to find out the actual insane person [1]. In another book, the writers denoted a famous case that has shuffled the insanity defense called the Trial of John W. Hinckley [2] Rita James and David E. Aaronson described the evaluation of the defense after the post Hinckley Era in their book [3].

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Corresponding author details: Mehrab Hasan
E-mail address: mhk.seu@gmail.com
Tel: +880 1681824083

Mr. Harlan M. Goulett at the ancient time described the trial process in the court [4]. In the book, he denoted that jury system was effective to solve the dispute, but in recent times as the case has increased; it has become more difficult. An effort to reform the Insanity Defense was taken by the Canadian Government. Mr. Sidney J Tillim described that in his research titled “Mental Disorder and Criminal Responsibility [5].

Another research titled “Empirical Research on the Insanity Defense and Attempted Reforms: Evidence toward Informed Policy” was completed by Mr. Randy Borum and Mr. Solomon M. Fulero. There the authors have noted some procedural issues to reform the insanity defense [6]. Mr. Valerie P. Hans in his work named “An Analysis of Public Attitudes toward the Insanity Defense” described how people’s attitude is being changed to this defense with social, economic, and political change [7].

Jay Kat showed numerous reasons to abolish the defense in his writing “Abolish the "Insanity Defense"-Why Not?” He denoted loopholes of the defense at large [8]. Richard H. Kuh in his review “The Insanity Defense-An Effort to Combine Law and Reason” supported operating the defense with some reforms [9].

“Neonaticide and the Misuse of the Insanity Defense” here Mr. Megan C. Hogan discussed some cases and issues where and how this defense is being abused [10]. Richard Lowel Nygaard has a complete work named “On Responsibility: Or, the Insanity of Mental Defenses and Punishment [11].

Norval Morris, Richard Bonnie and Joel J. Finer Cleveland completed research for a long three years on the topic named “Should the Insanity Defense be Abolished - An Introduction to the Debate [12] which had helped the author at large. Daniel J. Nusbaum showed the way to reform the defense in the work titled “The Craziest Reform of Them All: A Critical Analysis of the Constitutional Implications of Abolishing the Insanity Defense [13] which was the latest work seeking reforms.

Michael L. Perli tried to solve the myth of the defense as worked on “The Insanity Defense: Nine Myths That Will Not Go Away” and finally concluded to seek reforms [14]. Lisa Callahan and Pamela Clark Robbins denoted the origin and use of the defense in their work named “The Volume and Characteristics of Insanity Defense Pleas: An Eight-State Study [15].

David S. Cohn in his work of “Offensive Use of Insanity Defense: Imposing the Insanity Defense over Defendant’s Objection” discussed cases where this defense was used offensively [16]. Justice A. Dunlap in the year 1997 completed research titled “What’s Competence Got to Do with it: the Right not to be Acquitted because of Insanity [17] where the author described a huge reform to be done with the insanity defense. There are several writings on this topic online. The author has gone through and worked on those, and added those as references.

Insanity Defense: It was believed that an insane person lacks *mens rea* and motive which are basic elements of the crime. Moreover, as a result of mental illness he fails to control his activities, hardly perceives the consequence of his activities either. So, the civilized society is not eager to punish an accused where he doesn't know what he had done and its consequences, he has no control over his activities as well.

Fitness to Stand Trial: Fitness to stand trial and insanity are two different things. Here insanity means the condition of accused mind at the time of committing crime and fitness to stand trial means assistance to the prosecutor who seeks immunity of the accused. If the accused can do that, he is fit to stand trial.

Conceptualizations of Insanity: There are two types of concepts of insanity, cognitive insanity and irresistible impulse. Cognitive insanity means that the defendant has mental illness and couldn't understand the wrongful act, he committed at that time. On the other hand, irresistible impulse means that the accused, bearing mental illness, can differentiate right and wrong act; but he was unable to control psychologically himself from doing the wrongful act. However, this concept varies from country to country.

Insanity in Court: Insanity in court is a different thing. It depends on evidence, comments of experts, report of psychologist and so on. The person, claiming insanity defense, receives two type of verdict “Not guilty because of insanity (NGRI)” or “guilty but mentally ill (GBMI)”. NGRI means defendant is not found guilty as he is mentally sick, while GBMI means defendant is found guilty but he requires psychological treatment. The defendant is not released in public. Both the defendants are sent to custody for psychological care.

History of the Insanity Defense: Insanity defense has long history. Some argue that it was first denoted by the King Edward 1(1271-1327) [18]. Before that period, no such exception was permitted. The author couldn't find any history before that period. At the time, it was being used as an exception from crime. During the reign of King Edward ii (1307-1321) and King Edward iii (1326-1327), insanity was being used as a complete defense [18]. The first documented case regarding defense of insanity was documented in 1505 [18] and other huge examples of similar acquittals can be found up through the eighteenth century. Until 18 century, insane convict was released on public and no question arose. Time passes and more cases were filed where the accused claimed defense of insanity. Several accused were granted verdict 'not guilty for the reason of insanity'. And people started to think about it and its abuse.

No topic in the criminal law has arisen more discussion than the question of the responsibility of the insane for crime. The discussion breaks out with renewed violence every time that this defense is raised in a criminal case. It has long been the cause of a war of great feeling between the medical and legal professions. The doctors refer to the bench and bar as judicial murderers. In reply, the lawyers shift the blame to the medical profession. In all of these discussions, the chief difficulty seems to lie in the fact that there is either a failure to recognize at all, or at least to recognize sufficiently, the fundamental principle underlying mental incapacity. The defense of insanity is not a question of law more than it is a question of fact and medical science. Question is that how we can find the reasoning of the accused [19].

Recent tendencies indicate that a development towards a recognition of insanity not as a question of law, but as one of fact. It was not until the late eighteenth and early nineteenth centuries that the medical profession began to study insanity with any degree of thoroughness. Before that time, few of the psychoses were known and recognized insanity as a disease. It did not get recognition until the last century. It seemed absurd to all but a few medical men that the insane person should be treated as a sick person [19].

The subject of mental aberration may be grouped under two great heads; mental insufficiency and mental perversity. The first, those whom the law knows as idiots, and the second, those whom the law knows as lunatics [20]. The king at the time maintained these two insane persons and their property. Common law legal system has provided exemption to insane and promoted insanity defense. It denoted that an accused who had become insane before trial and even if after the judgement he became insane, he would not be punished or prosecuted. Blackstone in his Commentaries has a chapter relating to the treatment of persons capable of committing crimes. He speaks of the defect of idiocy and lunacy. The summary is that in a criminal proceeding, idiots and lunatics cannot be charged for their harmful act if they undergo of incapability; not even for treason [20].

Parker's case [20] in 1812 set another regime. In the case, Parker was working in the army and was prosecuted for desertion. He became mentally ill during the trial. The court found that he was able to perceive right or wrong while committing treason and so found him guilty. The next case of importance is that of Rex v. Lord Ferrers [21] in 1760. This case highlighted partial insanity. He was accused of murder and was suffering from several unfounded delusions. Doctor and psychologist told against him. They described that murder was committed with coolness and care. So, it is appeared that the accused was able to realize the consequences of his activity. He was found guilty and punished.

In Bowler's Case [21] in 1845, the defendant asked for insanity defense on the ground of epilepsy while shooting and wounding victim. Epilepsy was not considered as mental illness moreover he was able to realize the fact. A commission was sent to investigate the crime. They found that the accused was practicing shooting for a long time. He was found guilty and prosecuted [22]. The most famous case of this time was Hadfield's Case [23] Hadfield was indicted for high treason in shooting at King George III. He had been a soldier and was severely wounded in the head in battle. He was suffering from delusions and it was discharged from the army. He was not found guilty for the reason of insanity. This case has established another criterion that insanity needs to be for a long time and recognized.

The landmark in the history of insanity as a defense to crime comes with McNaughton's Case [24]. In the case, the accused killed Edward Drummond mistaken him for Sir Robert Peel. He had a long delusion that Robert Peel was after him and was going to kill him. In this case, the court had raised five questions to insanity as a defense. These

questions are relating to dilutions, right and wrong test, and testimony of expert or doctor. Judges stated that insanity wouldn't be e taken as a defense if all the questions are against the accused. The delusions must be for a long time. The accused would not have proper consciousness regarding his activity whether it is right or wrong. Expert or doctor needs to be called to testify after examination of the accused.

While drafting the code of criminal procedure, Sir James Stephens suggested tests to determine insanity. The Law commission rejected the test; rather they have uplifted McNaughton tests [25]. Most of countries use this rule to adjudicate the case where the accused is claiming insanity defense. Well, there are certain cases where insanity defense was used in Bangladesh. Section 84 of The Penal Code, 1860 holds the provision of insanity defense, but the court depends on judicial precedent for procedures to adjudicate the case related to insanity defense.

The court considers insanity at trial and insanity while committing the crime separately. Insanity during trial doesn't help the accused [26]. The case State v. Balashri Das Sutradhar [27] set some principles as follows-

-If the accused raises any plea of the insanity defense, he must prove it himself according to section 105 of the Evidence Act, 1872.

-The defendant must prove his insanity beyond reasonable doubt.

After examining of the entire evidence if the court finds its opinion that there is a reasonable possibility that the accused may have mental Insanity during commission of crime, this will entitle the accused to the benefit of doubt [28].

In another case [29] it was pronounced that to get the benefit of the section 84 of the Penal Code, 1860; the crucial point of time is the time of the commission of the offence. The court shall consider the state of mind of the accused at that specific time only. If the accused had a pre-plan to commit the crime, tried to escape and used force to prevent the arrest by the police the defense of insanity can't be sought by him. It is believed that an insane person never tries to hide his crime [30].

Insanity and Law

Insanity Defense in India and Bangladesh: Section 84 of the Penal Code, 1860 holds the provision about insanity defense. As per the section, a person isn’t responsible for his criminal conduct if it is the result of his mental illness. A mere commission of act cannot hold a person liable unless with his wish and free will. The accused must have a motive for a criminal act. As the accused plea for insanity defense lacks free wish and motive, he cannot be held liable. Criminal law doesn't operate to punish the accused rather it aims to ensure justice. A mentally sick accused cannot be punished for his crime as he doesn't have intention or motive. He cannot perceive the consequence of his criminal act. The defense must prove that the accused is insane. The prosecution is also responsible to prove otherwise. The case is to be proved by prosecution beyond reasonable doubt and then only plea of unsoundness of mind is entertained. If a case cannot be proved then accused is acquitted [31].
There are certain expansions to establish insanity defense as follows-

Unsoundness of Mind: Medical insanity and legal insanity are different. A person may be medically insane where he is suffering from disease or disorder of mind. Legal insanity rather emphasis on person's consciousness whether he can differentiate right or wrong and perceive the consequence of his act. So, a mentally insane person may not be legally insane [32].

Unsoundness should exist at the time of the Act: As per the law, the insanity must be existed while committing the crime, not before or after that. Insanity at the time of trial will not be considered as insanity defense [32].

Nature of the Act: Another important criterion is that capability of understanding the nature of the act. If the accused does not know the nature of his activity right or wrong, he is not liable for his crime [32]. Similarly if the accused knows the nature of his activity but cannot understand the consequence of his activity, he is not liable for his act. It depends on the evidence provided before the court during the trial [33].

English Law on the Defense of Insanity: English criminal law legal system also depends on the McNaughton Rule. The author has discussed this rule earlier. These rules are not concerned with medical insanity but with legal insanity. In the case of McNaughton, the judges had stated the principles relating to insanity as follows [34].

1. Everyone is presumed sane and to possess a sufficient degree of reason to be responsible for their crimes until the contrary is proved.

2. To establish the defense of insanity, it must be proved that at the time of committing the act, the accused was laboring under such a defect or reason, from the disease of the mind, as

(a) Not to know the nature and quality of the act he was doing, or

(b) If he did know it, not to know what he was doing was wrong.

The Model Penal Code, 1962: English Court follows provisions of Article 4 of the Model Penal Code, 1962 to decide over case with insanity defense. Article 4 of the Model Penal Code, 1962 holds the provisions titled RESPONSIBILITY and stated: 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 substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law. As used in this Article, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
Subsection (1) contains the basic standard for determining when an individual is not responsible for conduct that would otherwise be criminal because he was suffering from a mental disease or defect. Subsection (2), the section does not define mental disease or mental defect, those terms being left open to accommodate developing medical understanding.

Existing Principles on Insanity Defense

McNaughton Insanity Defense: The McNaughton insanity defense was created in England in 1843 [24,35]. The defense is generally called right or wrong test. It means checking the ability of the accused if he can differentiate right or wrong act and perceive the consequences of his act. This defense was named after the accused Daniel McNaughton. He was suffering from extreme paranoid delusion that the then prime minister of England, Robert Peel was trying to kill him and appointed agent to kill him. The only way he could survive is that to kill Robert Peel. He was in extreme fear of losing life. One day, while he was trying to shoot Sir Robert peel from behind, he shot his secretary Edward Drummond who died thereafter. Through trial the defense was found not guilty because of insanity. The decision raised a storm in England. Then the British House of Lords developed a test for insanity that remains relatively intact today.[35] The test is called McNaughton Rule.
As per the rule the defense requires two elements. First, the defendant must be suffering from a mental defect at the time he or she commits the criminal act. The mental defect can be called a “defect of reason” or a “disease of the mind,” depending on the jurisdiction. Second, the trier of fact must find that because of the mental defect, the defendant did not know either the nature or quality of the criminal act or that the act was wrong. The terms “defect of reason” and “disease of the mind” can be defined in different ways, but in general, the defendant must be cognitively impaired to the level of not knowing the nature and quality of the criminal act. Some common examples of mental defects and diseases are psychosis, schizophrenia, and paranoia.

Irresistible Impulse Insanity Defense: It is a supplement to McNaughton insanity defense. It is easier to prove irresistible impulse insanity defense than McNaughton Rule. So most of the states has rejected this defense. It emphasizes on defendants will other than his mental sickness or understanding right or wrong. To establish this rule a defendant must prove two things first, he was suffering from mental illness. Second, he couldn't control his conduct for that aforesaid mental illness [36]. Well, the rule doesn't emphasis on right or wrong test. Even the defendant may understand that his activity is wrong, but he wasn't able to control his criminal act as a result of mental illness. In short, we can tell that this rule deals with conduct which can be controlled and conduct which cannot be controlled.

The Substantial Capacity Test: The substantial capacity test was created by the Model Penal Code in 1962. It describes that 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 substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to

conform his conduct to the requirements of law (Model Penal Code, 1962, Article 4.01(1)). It is also called the model penal code defense or ALI (American Law Institute) defense. The difference has two elements. First, the accused must have mental sickness or disorder like irresistible impulse insanity defense and McNaughton rule of insanity defense. Second, it merges the cognitive standard width violation.
Under this substantial capacity defense, it is easier to establish insanity. Like another rule, it is more flexible to establish right or wrong test. The defendant needs to prove lack of substantial capacity not total. The "wrong" in the substantial capacity test is "criminality," which is a legal rather than moral wrong. In addition, unlike the irresistible impulse insanity defense, the defendant must lack substantial, not total, ability to conform conduct to the requirements of the law. Another difference in the substantial capacity test is the use of the word "appreciate" rather than "know." As stated previously, appreciate incorporates an emotional quality, which means that evidence of the defendant's character or personality is relevant and most likely admissible to support the defense.

The Durham Insanity Defense: The Durham insanity defense sets that an accused is not criminally responsible if is criminal act was the product of mental illness or mental defect [37]. The principle was set in New Hampshire in 1800. In fact, the principle was set by the circuit court of appeal for the district of Columbia in the case Durham v USA, 214 F.2d 862 (1954). The court at the time failed to define the product, mental disease, or mental defect. The Durham Insanity Defense became insignificant to apply.
Generally, the principle relied on two elements. First, the accused must have a mental disease or defect. As the court did not define mental disease or mental defect it was really difficult to apply in another case. Second, the criminal act must be the result of the mental defect or mental disease. The federal court also did not furnish any definition for the aforementioned term.

Faking and Misuse of the Insanity Defense: Law doesn't provide a specific procedure to identify insanity. Rather it depends on report by experts or psychologists. They may be easily bribed or manipulated. So, there is a chance to fake insanity and use it as a shield to defend criminal activity. Here, the author has discussed some landmark cases where insanity was fake and thus was rejected by the court.

Dan White Case: In the case the accused was charged with two counts of first-degree murder for the killing of the mayor and city supervisor of San Francisco. He was accused for manslaughter on the case. The accused strongly influenced the jury emotionally that he was insane. The jury became divided to take the decision which would award the accused diminished capacity [38]. Diminished capacity defense doesn't require absolute decision of the jury. The accused needs to make reasonable doubt. But psychiatrist reported that he was a normal person.

Prosenjit Poddar Case: This case was tried in in India. Hair the accused was charged with the murder of Tatiana (Tanya) Tarasoff. The accused Poddar pleaded for not guilty because of insanity [38]. Poddar, a college student from Bengal, India, fell in love with and became obsessed by the deceased, whom he eventually shot when she rebuffed his advances. The defendant produces psychological evidence that you are suffering from mental illness call Paranoia and he was not incapable to control his activities during commission of crime. While the prosecution appointed psychologist who reported that the defendant had the requisite mental state for a murder at the time of commission of the crime. In this case, the author has made an important inventory that the court should that rely on any of the psychiatrist appointed by other parties. The court must appoint its psychologist of own.

Leonard Smith Case: It is another famous case that has gained public attention. In this case the accused was charged with killing Lyman Bostock. The victim was a baseball player and the accused did not know him personally. The accused was disappointed by failure not only in marriage but also in employment, and he believed that he was a victim of racial prejudice. In the first trial of the accused, the court decided on verdict but in the second trial the accused was found not guilty for the reason of insanity. Experts were appointed in the first trial to evaluate his mental condition. One decided that he was insane and other reported that he was sane. In the second trial, another psychologist was appointed. He took number of interviews and testified number of relatives of the accused and reported that Smith was suffering from long time insanity [38].

Tex Watson Case: In this case the accused was convicted for 7 counts of first-degree murder and one conspiracy to commit murder. The Case is popularly known as the Mansion Murders. Watson was dangerous and the court pronounced the death sentence. No jury would have sent him anywhere but death row. They didn't want to ever see him on the streets again. The jury even failed to provide chance to the defendant [38]. This case arose a question, what if the accused is insane but too dangerous to set free. How the court deal with this type of case.

John Hinckley Case: The final case is that of John Hinckley case. He was charged with the attempt of assassination of the president of United States and assault on a federal officer. The case of John Hinckley shows how jury members are manipulated not only by psychiatrists but also by one another.[38] So, the court needs to find answer of three questions to decide over the defense, legal standard of insanity, the standard of burden of proof and report prepared by expert on legal insanity.
Well, this case has highlighted two problems as well, the insufficient standard of ascertaining legal insanity and determining the condition of the mind of the criminal during committing crimes. Most of the countries lack education on the ground of insanity.

The Defendant Does Not "Look Crazy", Or Defendant is Fake or Dangerous?
Sometimes, while living a pleasant and normal life, the accused sought for the insanity defense. After committing crime, the accused starts to act insane where he has no history of insanity. So, there question rises whether his defense is fake or if this type of activity is dangerous?

Medical experts and psychologists are working on this part for a long time. They rely on their experience and the history of the accused to find out the answer. There are certain cases where are the accused try to fake sanity defense. When the accused finds that his plan isn't working, he stops being insane.

In 2007, Stuart harling was accused for the murder of a nurse. He was sent to jail. During the trial, he acted very weird and claimed for insanity defense as he was suffering from a personality disorder. His behavior, in the court, was really weird that included shouting threats to everyone and throwing papers everywhere. But in the psychiatric report he was a healthy man [38]. In 1996, James Lindsay was accused of murder of 15 years old girl. He was going through the trial and pleads for insanity defense. During the trial, he wrote to his friend that he had a very good plan to get into Carstairs, a mental hospital, and be released very soon [38].

Probably the Kenneth Bianchi case is the classic case of criminal faking mental disorder. Here, the accused committed a dozen murders of young women in California. During trial, he claimed that he was suffering from several personality disorders. He had an unpleasant alter ego 'Steve' and it made him do the murder. Moreover, the accused appointed psychologist to support his claim. The court appointed another psychologist to know the actual truth. Psychologist reported that a person suffering from mental personality disorder generally has three personalities at least. Alas! The accused invented another personality called "Billy". Accordingly he invented another one during interviews [39]. While searching the house of the accused, the police find that Bianchi recently read textbooks on psychology, behavioral science, and police procedural law. He had watched the movies 'Sybil' and 'Three Faces of Eve'. Both the movies deal with multiple personality disorder. Sentencing Bianchi, the judge said: "In this Mr. Bianchi was unwittingly aided and abetted by most of the psychiatrists who naively swallowed Mr. Bianchi's story hook, line, and sinker [39]. The above cases teach us that the accused may fake insanity defense to exempt him from criminal liability. If the state wishes to prevent this, it must develop its psychological education sector. While investigating the crime, the investigative must check the history of the accused. Mental illness doesn't develop overnight. So it is a duty to know if the person has been suffering from mental disorder for a long time [40].

Then come one or more long, rambling interviews-the longer the better, because after a few hours, some suspects begin to lose track of their symptoms or grow weary of the con. Phillip J. Resnick, professor of psychiatry at Case Western Reserve University, says that he asks the suspect to talk at length about his history before saying a word about the crime, to lessen the chance of "retrofitting" a pattern of alleged illness to the deed. He and his colleagues listen carefully for signs of particular mental illnesses. An actual schizophrenia (a chronic brain disorder that causes hallucination, unstable speech, thinking trouble. A patient loses control over his activity and forgets everything) patient has a long history. He cannot resist him from doing any act and fails understand the consequence of his act. He doesn't know what he has done and he doesn't make excuses. While faking, the accused make excuses like "It's

one thing to say ‘God told me to kill my mother to save all mankind.” It’s quite another to say, “God told me to kill my mother so I could get money to buy more drugs.” So how do we measure the faking, where preliminarily we perceive that he is lying [40]. There are also standardized tests that trip up malingerers. A preliminary, 10-minute test, called M-FAST (Miller Forensic Assessment of Symptoms Test), presents a series of 25 questions that intermix phony and real symptoms. It’s almost impossible to pick the right combinations if you’re not mentally ill or a highly trained forensic psychologist. A more thorough series of questions, called SIRS (Structured Interview of Reported Symptoms) takes about an hour. A person suffering from amnesia is also subjectable to test. An amnesia patient generally forgets his activities. So forensic psychologist may arrange memory test that a person with amnesia easily can pass. The test only fails if the accused does it on purpose [41]. Surveys show that of the roughly 60,000 “competency to stand trial” referrals forensic psychologists evaluate each year, anywhere from 8 percent to 17 percent of the suspects are found to be faking it [42].

Attempt to Reform the Defense: Some legal scholars are not happy with the insanity defense so they have tried many times and propose to amend the insanity defense. However, while examined empirically most of them were found having a little impact on the proper objective and success of the difference. A summary of the research on this impact of reforms is presented below.

Revising the Substantive Test of Insanity and Jury Instructions: There have been several research medical or legal took place. Still they could not find a possible conclusion. Study shows that most of the jurors and person deciding over insanity defense don't understand the mental illness of the accused. For that reason, deciding over case related to insanity defense is very poor. If jurors cannot understand instructions on insanity, it would be hard for them to apply them accurately to a case. While the mock jury studies are important, they are perhaps somewhat less salient for policy decisions than studies of actual impact in legal cases. Many states had started applying an ALI (American Law Institute) standard instead of McNaughton Rule and have found several accused got acquittal for the reason of insanity. Likewise, in 1982, California changed from the ALI standard to the more restrictive McNaughton rule in an attempt to reduce insanity acquittals [43].

Changing Mental Health Professionals' Expert Testimony: In 1984, the Federal Insanity Defense Reform Act was enacted to reform the federal rules of evidence regarding insanity defense that prescribed “ultimate issue”. It is generally recommended for expert testimony by a psychologist or psychiatrist on the question of insanity. But it was found that the experts were easily manipulated and acted emotionally impulsive.

Changing the Burden of Persuasion and/or the Standard of Proof: In 1982, at the time of John Hinckley's trial for shooting President Reagan and the subsequent NGRI (Not Guilty for the Reason of Insanity) verdict, the federal courts and other states agreed to bear the burden of proof in insanity case the standard to be “Beyond reasonable doubt” [44]. Here, the question raises that both the parties should prove his case on that standard. And the defendant denied to do so as it is easier to create reasonable doubt than to prove beyond reasonable doubt. No state currently requires the defendant to prove his sanity beyond reasonable doubt (BYRD), where the burden of proof rests with the state, the prosecution is still required to prove the defendant's sanity (BYRD) did not reduce the frequency or success rate of the insanity plea [45].

More Drastic Proposals: The "Guilty But Mentally Ill" Plea: It was very praised all over the world while Michigan enacted the first law regarding guilty but mentally ill (GBMI) in 1975. During that time 12 States had adopted the provisions. But regarding the time in 1980 the wave of adopting guilty but mentally ill provision surprisingly stopped. Still, in 1985, Weiner predicted that "it is likely to be revived in those states where a crime occurs which enrages the public when the defendant raises and/or succeeds with the insanity defense".[46] Despite its initial popularity, it lost its appeal very soon and raised a huge number of debates and criticism. The primary objective of guilty but mentally ill provision was to reduce the number of infinity acquittal and to ensure proper treatment for the accused which was not been achieved [47].

In addition, the GBMI verdict has been severely criticized on both legal and conceptual grounds. After a certain period, the institutions like the American Bar Association's Criminal Justice Mental Health Standards, the American Psychiatric Association's Statement on the Insanity Defense, the National Mental Health Association's Commission

on the Insanity Defense, the American Psychological Association, and the National Alliance for the Mentally Ill and other scholars who had research on this topic strongly opposed or recommended against the adoption of GBMI.

Definition of GBMI: There is a slight difference between the concept of not guilty because of insanity (NGRI) and guilty but mentally ill (GBMI). In short, both of them are an affirmative defense to a crime. It is a verdict, not a defense, where the accused can be confined in a mental treatment institution for unspecific time or maybe till death [48]. The addition of the term "guilty but mentally ill" only denotes a finding that the defendant had a mental disorder at the time of the offense and sentencing, but it does not lessen his or her legal guilt or criminal culpability [17]. If found GBMI, the defendant may be subject to any appropriate sentence, including the death penalty [49].

Findings & Recommendations: In recent times, criminal activities are blindly imposed based on race, especially on Muslims. Race should not be taken as a ground to adjudicate a criminal offense. The court, the expert, and the parties to the dispute must remind them. If the accused is entitled to an insanity defense but is extremely dangerous for the community people, then the expert must predict the future behavior of the accused before he is released on bail or acquitted on the defense. To decide over the issue, the court needs to depend on reports of experts, psychologists, and medical jurisprudence. The past behavior of the defendant must be taken into consideration. Psychologists, doctors, and other persons to provide treatments and meditations to the accused and the convicted person with insanity should be properly trained and have adequate experience for maintaining the person with insanity. This aims to protect the insane person from doing a further criminal act. The expert shall decide how long the medication and counseling shall carry on and the court shall decide whether it would be self-paid or government-paid. Non-physician psychologists must also be trained to maintain and assist the person with insanity. The court should not forget that they require proper care and attention. Except for developed countries, LDC (Least Developed Countries) and developing countries lack proper mental health services in jail and custody. However, insane people need more care and medication. They likely can harm the other as well. So mental treatment provided in jail and custody should be e promoted according to prior need from time to time.

When a person with insanity commits a crime not gracious in nature, it should not be brought to a criminal trial in court. Rather it should be sent to the mental or psychological health system. The Psychologist or the doctor will counsel the wrongdoer and try to make understand his activity to prevent him in the future. Adequate medical treatment should be introduced by the government for this type of people where the doctor or the psychologist meets them after a specific period. This treatment will be free of cost, as it is to prevent the insane person from committing crimes. Competence determinations should be fully adversarial, with experts representing both sides. Both parties of the dispute shall prepare evidence in the question of determination of competency to the defense. Here the court can play a vital role; it would provide a neutral expert to determine the competency. A mental-health expert should be appointed to assist a defendant with any potential claim based on the mental disorder that bears on culpability and punishment. If the judge may presume that there is slightly any merit to getting the defense, the defendant may be provided extra benefit. This benefit of presumption can be provided to the prosecution as well.

If the accused claims mental disorder as his defense, a board of mental health experts must be formed. The board shall retain the accused for a certain period to examine his insanity, behavior, and incapability to commit a crime. The court will appoint the expert with his own accord and the cost may be paid by the government or either of the parties. The process of examination will be kept secret until the experts decide on a result. If the court appoints the experts itself, there shall be no question of partiality and biasness. It will save the time of the court and upheld justice and the objective of the insanity defense. When the experts take interviews of the accused, it should be e videotaped. Any test interviews examinations taken the result and the score should be provided to the opposite party. Moreover, interview can take place through the puzzle, oral and even practical like solving questions. Without causing any disturbance, the judge can be present at the interview if possible. When the accused lacks of physical and mental ability to stand before trial, prior to report of expert and psychologist, the court may stop the prosecution *sou moto.* No appeal shall be allowed on the decision. Well, the court should not pronounce its verdict solely on the basis of the report of the experts. The opposite party should be permitted to introduce evidence on his side. All the states should adopt an insanity defense to ensure justice in appropriate cases for that we cannot punish a man for his actions that he has done without any sound mind and he has no motive at all. We should not punish an insane person without proper knowledge and perceiving the consequence of his act. The legislature should enact another principle

of “Guilty but personally responsible”. It will reduce the punishment of the insane person in cases where the accused's capability was compromised. If the accused and the criminal are found insane and dangerous for the community, they should be forced to take treatment under-skilled experts or psychologists. If the defendant refuses to go through the medication and pay for it, the court must force it with a judicial order.

The standard for competence to be executed should be very high. Each and every state must enact written and published law to the standard of competency. We all know that man is prone to crime from the time being immemorial. Through this defense, we can’t encourage them. Earlier the author has shown in different cases how this defense was abused. The court will decide through a judicial hearing on the competency of the accused entitled to insanity defense or not. The judge and the expert must show proper and clear reasoning behind the decision. Reasoning shall be furnished in written form point to point. Parties of the case must have a chance to raise questions on the decision of the court. The state should make a list of independent mental health experts and psychologists to examine the accused when claiming insanity as a defense. The group of experts will act against the accused when he is an abnormal sex Predator. Mentally abnormal sexual-predator commitment laws should be repealed. This issue must be followed without any other option and enforced strictly. We must remember the name of Pakistani killer Javed Iqbal who killed 200 children in a year during his medication and counseling. A person acquitted on the ground of insanity must be kept under observation for a certain period. If he is found dangerous still for his mental disorder he must be retained in custody by the orders of the court.

The expert or the psychologist must not be allowed to decide over the issues in the case. They will solely be allowed to decide over the insanity of the accused and jurisdiction must be confined on the decision if the accused is medically insane or not. The court shall decide upon the legal issue in public court in the adversarial process.

Suggested Reform: Law And Court Procedure: If all the states enact this type of provision in the legislation to adjudicate case with insanity defense, it would be more convenient and effective.

The Jury: During trial, if question arises weather the accused is insane or not, the court must provide them chance to examine the accused and his behavior. It should direct the jury that if it finds the accused guilty or not guilty for the cause of insanity, it must write the reasons to decide such.

Mental Incapability: A person shall be entitled to insanity defense if he can prove that he had such mental impairment to –
(a) understand the consequence of his act; (b) control his or her actions; or (c)know that is activity would comprise a crime.
The accused shall be presumed sane by the court until unless he proves that he is suffering from mental illness

Wording of Special Verdict: That the words “not guilty by reason of insanity” should be replaced with the words ‘by reason of mental impairment’ and that must be proved by the medical expert provided by the court.

Compulsory Custody Orders for Grievous Offences: If the accused, claiming insanity defense, had committed crime of grievous like homicide, rape, unnatural lust, grievous hurt and the court considered him as a dangerous person for the community; he must be kept in custody. To decide over the issue, the court may consider the question as follows-

1. Whether the accused is suffering from mental illness which is very dangerous for society?
2. Whether it is public interest to keep the accused in custody?
3. Whether there is sufficient evidence that the accused may be held liable for his criminal activity?
4. Whether the accused is insane but partially liable for his criminal activity?

Psychiatric Examination: Upon the application of the defendant or the prosecution, the court shall appoint expert on mental disease to examine the defendant. The expert will check whether the accused was undergoing some mental illness, what was his condition during the commitment of crime and incapability of the accused. The court would appoint expert its own psychiatric though it can negotiate with the parties in the case. The parties in the case may appoint their own psychiatric but the examination will be headed by the psychologist appointment by the court.

Psychiatric Report: Psychologists working in examining the accused will be encouraged to work together. They may be allowed to submit separate report. The report will be on defendant's mental condition. They will evaluate the impact of the mental disease on the accused behavior and activities. The report will not describe any legal issue you in the court. They can suggest mental treatment it for the accused.

Preliminary Matters for the Court: Regarding the report of psychiatrics, the court would proceed with criminal proceeding. If they find mental unless which have connection with criminal activity of the accused the court may pronounce treatment of the accused regarding not guilty for the reason of insanity. If there was no mental in less found and mental illness was found but not connected with criminal activity of the accused e court shall continue its trial. So if there was no concession as to the criminal act, the psychiatrists disagreed, or their reports were inconclusive, then the court would order a trial of these issues before it.

Admissibility of Evidence: In such type of trial, the report shall be admissible only if the psychologists are called during the criminal proceedings and questioned by opposite parties. Report, without any reasoning, shall not be taken into consideration. Evidence of prior convictions or of prior criminal acts that might bear on the defendant's mental health would be admitted. Since the conclusions of the experts would have been based on their inspections of other hospital reports, on the "histories" they would have received, and on their examinations of the defendant, hypothetical questions should be largely unnecessary.
In summary, the procedure would be held to find the truth about the insanity of the accused.

Roles of the Judge and the Experts: The expert will only evaluate the mental sickness of the accused, his incapability, mental history, condition of the mind during the commission of the crime and if the accused fits to stand trial. They will not deal with the decision of acquittal, conviction or any legal issue related in the case. The court will not share its view about acquittal conviction or adjudication of psychiatric offender with the psychologists. Off-the-record consultation between the court and the psychiatric witness might even be expressly made proper. After the close of the evidence and such informal consultation, the court might reopen the hearing, if need be, to admit such further expert testimony as these informal discussions indicated should appear in the record, as proper foundation for its contemplated decision.

Disposition of the Psychiatric Offender: Nowadays number of accused claim defense of insanity during trial. The decision of the court must be guilty, not guilty, or not guilty by reason of insanity. The court must pronounce its judgement with proper reasoning. Whether the defendant is entitled to insanity defence or not, it must be dependent on the report of the psychiatrist. If the psychiatrist reports that the accused is not insane, he must be prosecuted as the general procedures. The prosecution must proof his sanity beyond reasonable doubt. If the accused is dangerous to society for his mental illness he must be sent to the institution where he will be provided proper treatment and rehabilitation. If there is no cure of his mental illness he shall be isolated from society and kept confined in proper institutions higher you will be taken proper care and showed respect. In determining the proper disposition of each offender, the court would doubtlessly rely heavily upon the reports and testimony of the examining psychiatrists and his interviews with them. This information should be more complete and more carefully tested in a properly conducted psychiatric offender proceeding than in the presentence investigations which are used today in many jurisdictions.

Appeal: No appeal shall be allowed against the order of the court. It will save time and be convenient to the accused.

Conclusion: Mental disorder has a significant role in criminal justice as we cannot be held liable to a person who doesn't know the consequence of his activities and cannot stop him from doing something wrong as a result of mental illness. It also must be noted that it has a long history from the time being immemorial. It is so useful that the defense is being used as a weapon to defend an insane accused from his criminal liability. There was always the fear of faking the defense and there will always be. Still, we cannot abolish the defense as it would be unjust to the person insane. But we can amend the procedures to find out and check the actual person with insanity. The defense has a valuable purpose in the criminal law legal system. All the states should take measures to prevent its faking and

develop psychiatric studies accordingly. Every case related to the insanity defense shall be assisted by an expert psychiatrist. The author has suggested a huge number of recommendations to update the legal proceeding in the case related to the insanity defense. Our country should update its legal system as recommended to end the serious discussion of the insanity defense. Moreover, the government should provide better health services including addiction treatment and rehabilitation which must be available for the community. It is the only way to ensure that the real purpose of the insanity defense.

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