



RESEARCH PAPER**Insanity, Insanity Defense, and the Elements of Crime: A Review**

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ABSTRACT

Insanity, insanity defense, and the elements of crimes are closely related to each other. An insane person cannot be punished for the crimes committed by him. However, insanity is a concept that has different connotations across academic disciplines. The law is interested in the legal insanity of an accused. Actus reus and mens rea, in most cases, are the essential components of a crime. The defense of insanity, which is an excuse defense against criminal liability is more relevant to the mens rea. Whereas the defense of automatism is more concerned with the actus reus. This paper analyzes the concepts of insanity and insanity defense in the context of elements of crime employing doctrinal legal analysis. The findings of this paper suggest that there is a need to interpret the concepts of insanity, insanity defense, and the elements of crimes, and the relationship among them when the accused is suffering from mental disorders by adopting multidisciplinary approaches.

KEYWORDS

Insanity, Insanity Defense, Automatism, Mens rea, Actus reus

Introduction

People Legal insanity is different from medical insanity. The insanity defense, which is an excuse defense, is one of the many other defenses available to an offender against a crime committed. In an insanity plea, an offender admits that he has committed an offense, but he is not liable for the crime committed because he is suffering from a mental condition/disorder that made him behave in such a way as either he was not able to differentiate right from wrong and/or to control his behavior (Renteln, 2001).

The defense of insanity is based on legal insanity which is determined based on medical insanity (*Jeewan Shah v. Muhammad Shah*, 2006). It is at the core of criminal law that there shall be no offense without a will. Physical act (Actus Reus), and in most cases mental element (Mens Rea) are the two essential elements of a crime. To establish an offense there must be a proper will, concurrent with a guilty act (Ormerod & Smith, 2021). The relationship between a crime committed, the elements of crime, and the mental condition of an offender is complex particularly when such an individual is suffering from a mental condition/disorder.

Literature Review**Insanity**

Insanity is a concept deeply embedded in the history of mankind. Since the time of reported history, insanity, and the struggle of societies to tackle it with all its ill-conceived concepts and stereotypes have been there (Foerschner, 2010). Insanity is a wide and

controversial subject that has different connotations across the fields. It has no precise definition and criterion; thus, it carries different meanings in different contexts (*Hari Singh Gond v. State of Madhya Pradesh*, 2008). Moreover, insanity is a legal rather than a medical standard. The lawyers usually refer to legal insanity. Whereas mental health professionals prefer to speak of insanity in terms of mental disorder (Overholser, 1954).

The term insanity is a relatively new construct as the earlier legal authorities spoke of the idiot and the madman instead of the insane. However, with the advancement in medical science, even the term insanity has also become obsolete to refer to mental conditions (Perkins & Boyce, 1982). With the advancement in mental health science, insanity is now being defined mostly in terms of mental disorders. Insanity is any mental disorder grave enough to halt a person from having legal capacity and excuse him from civil and criminal responsibility (Black's Law Dictionary, 1999).

As far as mental disorder is concerned, the International Classification of Diseases Edition 11 (2019) defines mental disorder as a condition with a significant disturbance in cognition, emotion, and/or behavior which brings disability and dysfunction in different areas of a person's life and is usually associated with distress. DSM-5-TR (2022) defines mental disorder as a condition with significant disturbance in cognition, emotion, and/or behavior that brings disability and dysfunction in many areas of life and is usually associated with distress. However, culturally appropriate responses to common stressors and socially deviant behavior without clinical symptoms cannot be categorized as mental disorders.

The Mental Health Act (2007) of the United Kingdom defines mental disorder as a disorder or disability of the mind. In India, the Mental Healthcare Act (2017) section 2(1) (s) defines mental disorder as an illness that significantly and adversely affects many fundamental human functions. In Pakistan, the Punjab Mental Health (Amendment) Act (2014) defines the term mental disorder as a mental illness which includes mental impairment, severe personality disorder, severe mental impairment, and any other disability of mind. Pakistan Penal Code (1860) does not define insanity, but it indirectly refers to insanity in section 84 in terms of unsoundness of mind which renders a person unable to know the nature of the act, or that what he is doing is prohibited by the law (Section 84, Pakistan Penal Code 1860).

Insanity can also be defined in terms of abnormality and abnormal behavior. The criterion that differentiates abnormal behavior from normal is based on distress, dysfunction, disability, and violation of social norms. Mental disorder is characterized by the presence of these features (Durand & Barlow, 2016). Anything either perpetual or transitory, which affects the rational judgment of right and wrong and the normal cognitive functioning of a person is insanity (*Anayat Ullah v. The State*, 2011). Insanity is any condition or mental disorder that renders a person unable to control his/her behavior because of the unpredictability of his/her behavior with impending danger (Mehmood, S., & Mehmood, N., 1898). However, one fundamental aspect of insanity and the insanity defense is that not every abnormal act or disease of mind can exempt the accused from criminal responsibility; there need to be certain prerequisites met before an accused can be exempt from criminal liability (Gaur, 2009).

Insanity Defense

The insanity defense, which is a legal construction, is an excuse defense against the criminal responsibility of an individual suffering from a mental condition/disorder. There

is a widespread misperception that one can get away easily with the crime committed by taking an insanity defense and the insanity can be feigned (Ajmal, 2023). There is another misperception regarding the frequent invocation of the plea of insanity in the court of law as the insanity defense is rarely used and the success rate of this defense is also very low (Hans, 1986).

One reason for the unsuccessful insanity defense is the lack of training of relevant stakeholders i.e., mental health professionals, lawyers, judges, and police (Ajmal et al., 2022). The insanity defense is an excuse defense proposing that some mental disorder caused the person to commit the offense (Black's Law Dictionary, 1999). In Pakistan, the insanity defense is nowhere defined in the Pakistan Penal Code (1860) rather this subject is dealt with in section 84 of the Pakistan Penal Code in terms of unsoundness of mind. Accordingly, if a person is not capable of knowing what he is doing and/or is not able to control his behavior because of his mental state, there would be no offense in the case of such a person (Mehmood, S., & Mehmood, N., 1898).

In India, section 84 of IPC lays down the criteria for the insanity defense. This section also defines insanity in terms of unsoundness of mind. The courts in India treat the expression unsoundness of mind as insanity on the same criteria as in Pakistan (Section 84 of the Indian Penal Code, 1860). The defense of insanity as an excuse defense is also recognized in English criminal law (Pollock & Maitland, 1899). The law in England and Wales incorporated McNaughten's rules for the insanity defense in its criminal law. In the UK, the defense of insanity against the criminal act of a person has a long history of development which started from McNaughten's rules and developed so far to the Insanity and Unfitness to Plead Act 1991 (Ormerod & Smith, 2021).

In the US, the law recognized the insanity plea and is well-developed on the subject. Each state has its own laws on insanity defense which are not in harmony with each other. In the past, a few of the U.S. states i.e., Montana, Idaho, Kansas, and Utah have banned the insanity defense and adopted different approaches to deal with the accused suffering from mental disorders. However, the Model Penal Code, which is a model legislation, attempted to bring the laws on insanity defense in harmony across the states (Neville, 2010).

The fixing of criminal responsibility is a contentious issue across criminal jurisdictions particularly when a person is suffering from a mental condition/disorder (Schuessler & Cressey, 1950). For declaring a person guilty of an offense there must be an illegal act with a corresponding will as there be no offense without an intention. There must be all the requisite elements of crime present to declare an act a crime (Ormerod & Smith, 2021).

The Elements of Crime

“Actus non facit reum nisi mens sit rea”. This Latin maxim literally translated as an act does not make one guilty unless there is a criminal intent. Fundamentally, there are two components of a crime i.e., actus reus and mens rea. Actus reus is the physical component and mens rea is the mental element. In most cases, the actus reus must be concurrent with the mens rea (Coke, 1797). However, taking the fundamental components of a crime in the context of insanity and insanity defense in the overall scheme of criminal law makes different spectrums and variations of interpretations.

Actus Reus

Actus reus means guilty act and it refers to the physical or external component of a crime. It is an essential component of a crime. If there is no actus reus, there would be no crime. Contrary to mens reus, actus reus can survive alone in the absence of mens reus. In *Deller's Case (R v. Deller, 1952)*, it was held that even if an accused has mens rea, there would be no offense in the absence of actus reus. The principle was also upheld in *Dadson's Case (R. v. Dadson, 1850)*.

There are certain criteria for an act to be the actus reus of a crime. Uncontrollable movements of an accused are out of the scope of actus reus. The action of an accused to be actus reus of a crime must be intentional and must be a product of his/her deliberate will. A person must be able to control his/her conduct contrary to automatic involuntary motion which is viewed as an involuntary action and not an act with intention or free will (Kenny & Turner, 1962). Generally, there can be three different categories of Actus Reus i.e., commission, omission, and possession (Baker, 2012) and it can consist of three basic elements i.e., a conduct, a consequence, and a circumstance. The conduct is a willful motion, the consequence is something that prompts some forbidden result, and the circumstance is usually a situation that makes the action of an accused unlawful (Mughal, 2000).

Mens Rea

Mens rea is the component of crime whose actual meaning varies according to the different interpretations; however, it is nearly interpreted as guilty mind. A person may have mens rea of an offense with either of these mental states i.e., knowledge, recklessness, negligence, and purpose (Ormerod & Smith, 2021). Mens rea for different crimes is different. It is not a static concept, rather it varies from category to category of crime. For statutory crimes and crimes of strict liability, proof of mens rea is not necessary (*R v. Hibbert, 1869*).

The Model Penal Code provides comprehensively five different elements that may comprise mens rea in any of the situations, and at least one of these elements must be present there to prove mens rea. These elements are strict liability, negligence, recklessness, knowledge, and purpose. If a person is engaged in strict liability crimes his mental state is irrelevant. It is enough to prove that an accused is guilty of the crime to prove the crimes of strict liability. As far as negligence is concerned, the requisite mens rea will be present if a person is unaware of the dangers presented by the situation which a reasonable person would be aware of. In the case of recklessness, the criterion is that a person is aware of the consequences yet chooses to engage in an act that a reasonable person would not. The criterion in case of something done knowingly, in the perspective of mens rea, is that a person is certain that the action will produce the criminal result (Wright, 1869). Purposefulness, in the context of the mens rea, suggests that the illegal result was the desired objective of engaging in conduct (Samaha, 2010).

Ascertaining mens rea is a relatively arduous task in comparison with the proof of the presence of actus reus. The presence of mens rea of a crime is determined based on the surrounding circumstances i.e., the conduct, the (attendant) circumstances, and the result (Baker, 2012; Samaha, 2010). However, ascertaining the mens rea for a crime committed by a person suffering from a mental disorder makes this task complicated.

Material and Methods

The research method used in this study is doctrinal legal analysis. The black letter approach was employed. Doctrinal legal analysis was used to analyze the concepts of insanity and insanity defense in the context of elements of crime.

Findings and Analysis

Mens Rea and Insanity Defense

The mens rea of a crime and the insanity of an accused are relevant to each other (White, 2016). The relationship between mental disorders and the elements of crime, particularly mens rea is complicated and needs to be addressed in the light of the advancements in the fields of mental health and criminal jurisprudence. The mens rea and insanity defense are two different issues, yet these are related to each other as an insane person, in most cases, cannot be said to possess mens rea of a crime. Offenders suffering from mental disorders are not fully devoid of rational thinking even in extreme cases, yet they cannot be said to possess mens rea for a crime on this basis, because their reasons may be based on distorted thoughts and perceptions. Consequently, it can be inferred that a crime committed by a person meeting the criteria of legal insanity does not fit into the traditional scheme of mens rea, considering the crime, the mens rea principle, and the mental disorder. Even in the cases of strict liability crimes where the proof of mens rea is not required, an insane person does not possess such a mental acumen to hold him/her liable for the crimes committed by him/her. The insanity of an accused is beyond the concept of mens rea because of the mental condition of the offender (Morse & Hoffman, 2007).

Actus Reus and the Defense of Automatism

The defense of insanity must not be confused with the defense of automatism. There may be some apparent similarities, but the insanity defense is different from the automatism defense. In many jurisdictions, automatism is dealt with in two ways i.e., sane automatism and insane automatism which is a reason for misunderstanding for the scholars from the jurisdictions where this distinction of automatism does not exist. The defense of automatism is concerned with the actus reus. It is a defense based on the negation of the actus reus of a crime committed (*R v. Quick*, 1973). In *Regina v. Charlson* (1955), it was held that if a person does something when his brain has no control over his muscular movement such an act cannot be an actus reus of a crime.

Likewise, a person who did something when he was having an epileptic fit cannot be said to commit a crime like someone who did something in a normal condition with deliberate body movements. The defense of automatism and the defense of insanity is also different in terms of the conditions in which the law allows these defenses. The states of unconsciousness and sleep are considered automatism (*Hill v. Baxter*, 1958). Automatism also includes the states of sleeping walking, hysteria, metabolic disorders, and convulsive and/or reflexive disorders (Schoop, 2008). An act done in any of these situations would not make a person guilty of a crime because his body was not in control of his brain (*State v. Caddell*, 1975). However, being in a state of hypnosis does not absolve a person from culpability (Bonnema, 1993). Likewise, if someone did something illegal when he/she was under the influence of some intoxication and where the intoxication was self-administered such a person cannot take the defense of automatism (Ormerod & Smith, 2021). If a person is involved in an activity that he/she knows to be dangerous because of his/her known

medical history, such a person would be responsible for the acts committed and the defense of automatism cannot be availed by such a person (*People v. Decina*, 1956).

Conclusion

The concepts of insanity, insanity defense, and the elements of a crime are related to each other. There are different connotations of insanity across the academic fields, which makes it necessary to interpret the concept of insanity in terms of legal insanity. In this regard, it is suggested to adopt a multidisciplinary approach involving the latest trends in mental health science to interpret the concept of insanity in terms of legal insanity which can give sufficient insights into the insanity defense and its relationship with the elements of crime particularly with the mens rea. It is further suggested to interpret these interlinked concepts in such terms that can meet the criteria of the principles and the yardsticks of criminal law and thus, can solve the practical issues revolving around these concepts in the courts of law.

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