MENTAL DEFICIENCY AND THE CRIMINAL LAW

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One of the ever recurring problems that arise before those who have to formulate, apply or administer the criminal law, is concerned with the mental capacity of the alleged offender. Did he possess the mental capacity to commit the crime? Was he mentally competent to incur criminal responsibility? Should he be regarded as a person deserving punishment, having regard to his mental level?

Relevance of the state of mind in criminal law

The questions posed above, which deal with the mental maturity, normalcy or health of the alleged offender, are not questions that society poses to itself on more humanitarian grounds. They are questions vitally connected with the essential rationale of, and justification for, punishment. "Punishment" (in the context of criminal law), means the infliction of pain or suffering, for a contravention of the law for the time being in force.

Apparently and superficially, punishment takes the shape of infliction of bodily suffering, deprivation of personal liberty, monetary loss or proprietary loss or (in extreme cases), deprivation of life, but that is only the external aspect. The pain or deprivation, inflicted through the medium of punishment, is really intended to act on the mind of the offender, so that he may become disinclined to repeat the offence or he may feel remorse for what he has done. Even where retribution (by the society against the erring individual) or general deterrence, i.e., deterrence of members of the society as a whole is the object regarded as relevant, one cannot totally rule out the state of mind of the individual offender, who is being punished. The reason is, that no civilised society would like to formulate its penal laws merely on the basis of inflicting vengeance on the offender or preventing other members of the society from criminal conduct.

Relevance of mental element

A consideration of the mind of the actual criminal is thus necessarily

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relevant. In fact, the state of mind of the alleged offender becomes relevant (in criminal law), in the context of the concept of *mens rea* etc. also. Of course, when dealing with *mens rea*, one is usually concerned with the state of mind of a person who is not mentally abnormal or deficient – a feature which distinguished the theme of *mens rea* from that of mental abnormality. The former is concerned with the moment of crime, while the latter is concerned (generally) with a more expansive period of time. But both demonstrate the validity of the assumption about the general approach of the criminal law, namely, that it must take into account the functioning of the mind, and cannot limit itself merely to the physical conduct of the criminal.

The defence of insanity

It is against this background, that one should approach the defence of insanity in criminal law. Formulations of this defence vary from jurisdiction to jurisdiction. Even in the same jurisdiction, they have changed from time to time as happened in the United States with regard to the Durham rule. The doctrine of irresistible impulse adopted was in 1954 in *Durham* v. *U.S.C.A.D.C.*[1] but was rejected in 1972 by the same court.[2]

Reason for variation

This variation from time to time and from place to place, primarily owes itself to the fact, that in formulating one or other test, the law makers or the judges have been adopting a selective approach and have preferred to concentrate on particular aspects of the mind. Advances in psychology in future may tell us, that the mind is one and indivisible and cannot be compartmentalised or divided into fractions. Until that proposition comes to be established, the law makers are likely to adhere to an approach which concentrates on particular facets of the mind.

The Indian Law

Section 84 of the Indian Penal Code, 1860 contains the law relating to the defence of insanity in criminal law. It confers immunity from criminal liability, for an act done by a person who, by reason of disease of the mind does not know the nature and quality of the act or (though he knows the nature and quality of the act), does not know that the act is either wrong or contrary to law. It will be seen, that the selection

1. 214 F 2d 862, 875.
2. Court of Appeals for the District of Columbia in *U.S.* v. *Brawner* 471, F2d, 969.

concentrates on the cognitive faculty, by stressing the element of knowledge. However, it should also be noted that in the second limb of the section, while the verbal formula speaks of "knowledge", what the latter half really contemplates, is knowledge of the act being "wrong or contrary to law". Thus, the concept of ethical awareness is brought in, as also the concept of legal literacy. Incidentally, this is one provision of the Code which does not fully accept the maxim – "*Ignorantia juris non excusat*". If such ignorance is due to a mental disease, then section 84 does grant immunity although it is not always easy to prove, that the ignorance was caused by a disease of the mind.

The element of knowledge

The element of knowledge, as incorporated in the first half of section 84 of the Penal Code, needs some elaboration. It is enough, if the defence proves, that the accused did not know the nature and quality of the *particular act* that is charged against him. General ignorance of reality need not be proved. This means, that if a person does not (for example) know that he is committing theft, he is excused from a charge of theft, even though he may have a full knowledge about acts involving violence. These sophistication do not come to surface in case law, because, in practice, it is mostly against homicide, that the plea of insanity is put forth.

The A.L.I. Test: Capacity to conform or inability to appreciate criminality

The Model Penal Code of the American Law Institute, section 401, adopts a different approach. It provides as under – "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."

The test has been adopted (with slight modifications) in many states and also in most federal courts.[3] It will be seen that the test adopted in the Model Penal Code, (besides adding the situation of mental defect) contains three other modifications of the traditional rule. First, it adds the word "substantial" – thus expecting the court to assess *the degree of mental disease* or defect. Secondly, it substitutes the word "appreciate" in place of knowledge. One shade of meaning of this word is "understand" or "realise" – thus bringing in an element of *intelligent judging.*

3. See 18 U.S.C.A., 4241.

Thirdly, it goes beyond mere knowledge or understanding and allows the alternative test of lack of substantial capacity to conform one's conduct to the requirements of law.

Thus, a defect of the will (resulting from mental disease or defect) is also allowed to be taken into consideration. The pre-occupation with knowledge (as in section 84 Indian Penal Code, 1860 (IPC)) is not to be found here.

A person who is fully aware of the nature and quality of his action can still plead insanity under the Model Penal Code, if he can prove lack of substantial capacity to conform his conduct to the requirements of the law. However, mental disease or defeat must be the cause of the destruction of free will or of the power of choice, on the part of the offender.

M. Naghten Rule

Under the M'C Naghten test in force in England, an accused is not criminally responsible, if, at the time of committing the act, he was labouring under such a *defect* of reason from disease of the mind, as not to know the nature and quality of the act he was doing or (if he did know it), that he did not know that he was doing what was wrong.[4].

This test (like the test in section 84 I.P.C.) emphasises mental capacity of knowledge. It does not concern itself with the will, but is preoccupied with cognition. Further, the defect of reason must arise from a disease of the mind.

Whether Section 84 exhaustive

With reference to section 84, Indian Penal Code, (and similar formulations prevailing in other countries), the question can arise whether such formulations are exhaustive or whether, in circumstances other than those covered by such provisions in express terms, it is possible to claim immunity from criminal liability, on the basis of some other circumstance which might have temporarily affected the mind – such as, *automatism and somnambulism.*

For example, the situation of automatism, i.e. behaviour performed in a state of mental unconsciousness or dissociation, without full awareness. The classical example is that of a man suddenly stung by a bee, who loses control for a moment and, during such moment of loss of control, commits an offence. The situation fall outside the traditional formulation of insanity (as a defence to criminal liability), since there is *no mental disease* or defect. Nevertheless, it is unthinkable that the person so stung by a bee

4. *M. Naghten's* case [1843-60] All ER (Rep.) 718.

would be convicted by a court. He can be excused, on the wider philosophical ground that the "act" is not his; and that the will does not accompany the act. In India, provisions like section 81 of IPC may also become relevant, (depending on the facts).[5]

In the United States, automatism may be accepted as a defence to negate the requisite mental state of voluntariness for the commission of a crime.[6] Somnambulism also seems to stand on the same footing. Such purposeless and irresponsible wandering from place to place can be taken as manifestating a dissociation of personality. It is, therefore, easy to agree with the view that it is a defence to criminal liability.[7]

Hypnotism

Take, again, the situation of hypnosis. Hypnosis is usually understood as denoting a state of trance or sleep, induced by the (aggressive) suggestive action of the hypnotiser. On a common sense view, the totally hypnotised individual is (during the state of hypnosis) not fully a master of himself or herself. His or her real personality is, for the time being, superseded by the personality of the hypnotiser; and it would be unfair to hold him guilty of any crime "committed by him" during such hypnosis. The dissociation of mind and body, temporarily brought out by hypnosis, should be viewed sympathetically.

Exhaustiveness of the Code

If a Code is regarded as exhaustive such cases which are out side the *literae scriptae* (literal text) of the Code would not be covered. The wider question then arises, whether the Code (i.e., the Indian Penal Code) is exhaustive. It is, of course, well accepted that (barring offences like contempt of court), the Indian law will not regard, *as punishable*, an act not falling within a section of the Indian Penal Code or a special or local law. In fact, after the commencement of the Constitution, this is the clear position, resulting from Article 20(1) of the Constitution, which places, on the pedestal of *a fundamental right*, the maxim "*nullum crimen sin lege*" (There can be no crime, if there is no statute punishing it).

But the question that one has to examine in the present context is this – Does the Indian law recognise a defence, which is not provided in the Penal Code (Chapter on General Exceptions) in express terms?

It is submitted that while, in the vast majority of cases, the answer

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5 One may undertake a comparison of the American case of *Fian* v. *Com* 78 Kent; 183 *Black, Law Dictionary* (1990), p. 1396 (Kentucky).

6 Section 2.01, Model Penal Code.

7 *Fian* v. *Com*, 78 Kent; 183 *Black, Law Dictionary* (1990), p. 1394.

would have to be in the negative, yet, extraordinary situations may compel one to take a different view in this regard. The exhaustiveness of the Penal Code (as regards offences) is reasonably clear from sections 2, 3 and 4 of the Code. Not so clear, is the question whether the Code is exhaustive *as regards defences*. It will be noted that the Code does not contain any provision, expressly excluding defences which are not provided for in Chapter 4 (sections 76-106) of the Code. It is further submitted that this question cannot be answered exclusively by emphasising the (obvious) proposition, that we are dealing with a "Code". It is true, that the essence of a Code is to be exhaustive, but only on matters, which *it purports to deal with.*

Article 21 of the Constitution

Finally, one has also to take note of Article 21 of the Constitution. An interpretation, which totally rules out defences arising from situations of the nature mentioned above, may not fully satisfy the "due process" philosophy, which is implicit in Article 21 of the Constitution. One can anticipate that Article 21 will not be necessarily construed as confined to *procedural due process.*