

Diminished responsibility

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The Coroners and Justice Act of 2009 significantly modified the diminished responsibility defence in two distinct manners. Initially, the scope of the term "abnormality of mind" was broadened to include any significant impairment of mental responsibility, rather than being limited to the definition of "abnormality of mind" as outlined in the Homicide Act (1957). Furthermore, the scope of the defence was expanded to include acts of "killing or causing significant bodily harm" rather than solely limited to murder, as stipulated by the Homicide Act (1957) (Legislation.gov.uk, 2010).

Diminished responsibility constitutes one of the three distinct defences that are exclusively applicable to the offence of murder. The provision in question is encompassed within the Homicide Act of 1957, as amended by the Coroners and Justice Act of 2009. When the defence of diminished responsibility is effectively invoked, it reduces a conviction for murder to that of manslaughter. The three specific defences of diminished responsibility, loss of control, and suicide pact exhibit distinctions from general defences in that they possess limited applicability to select crimes and, moreover, serve to mitigate criminal liability rather than completely absolving the defendant from such liability.

The legal notion of diminished responsibility is expounded upon in section 2 of the Homicide Act 1957, which has undergone amendments through section 52 of the Coroners and Justice Act 2009. To establish a defence based on diminished capacity, the defendant must demonstrate the presence of specific components: a cognitive impairment caused by a medically recognised condition that explains the defendant's actions or inaction in relation to the act of homicide, and substantially impairs their cognitive abilities to understand the nature of their behaviour, make rational judgements, or exercise self-control.

Several instances have been identified as indicative of an abnormality of the mind, such as: irresistible impulse *R. v. Byrne* [1960], jealousy *R. v. Miller* [1972], battered woman syndrome *R. v. Hobson* [1997], pre-menstrual tension *R. v. Smith* [1982], epilepsy *R. v. Campbell* [1997], chronic depression *R. v. Seers* [1984]. (Simple Studying, 2020).

In general, the revisions introduced by the Coroners and Justice Act (2009) were viewed as a positive development because they increased legal clarity and

predictability. In addition, they were viewed as more just and reasonable because they permitted a broader range of mental diseases and conditions to be examined when assessing whether decreased responsibility may be imposed. In addition to murder, it broadened the scope of the defence to cover other heinous crimes, such as manslaughter.

The Coroners and Justice Act (2009) updated and established new definitions for the crime of murder and the defence of reduced responsibility. The diminished responsibility defence was enlarged to encompass "abnormality of mental functioning that seriously hindered the defendant's ability to a) comprehend the nature of his behaviour; b) develop a reasoned judgement; and c) exercise self-control." This means that the defence can now be employed even if the defendant does not have a mental disease, but instead has a personality disorder or developmental disability, for example.

The enactment of the Homicide Act of 1957 can be understood as a legislative response to the increasing utilisation of the insanity defence by defendants during criminal proceedings within the jurisdiction of the United Kingdom (Koessler, 1960). The objective of the Act was to diminish the frequency of successful utilisation of this defence and to enhance the adaptability of the procedure concerning the issue of mental incapacity in instances of homicide. In the absence of this modification, it is possible for a defendant who has been deemed mentally ill during the commission of a crime, thereby absolving them of responsibility for their actions, to be acquitted of a murder charge instead of receiving a more suitable sentencing outcome (Koessler, 1960). Moreover, the Act seeks to promote enhanced uniformity in the process of judicial decision-making when the issue of insanity is brought forth.

In addition, the standard of proof for the diminished responsibility defence has been modified (Crown Prosecution Service, 2019). According to the Coroners and Justice Act (2009), the burden of proof for diminished responsibility lies with the defence and must be established by a preponderance of the evidence. This means that the defence must prove, through medical evidence, that the defendant's mental condition played a role in their acts.

Some have viewed the amendments as a positive development, as the new requirements for diminished responsibility evidence provide a clearer roadmap for

future cases; however, the increased requirements for medical evidence and the stricter criteria for diminished responsibility may limit the scope and access to the defence for those who do not meet the criteria (Crofts and Wake, 2021).

In general, it appears that the revisions to the diminished responsibility defence serve a constructive purpose, since they allow for a more individualised approach to establishing the proper sentencing for persons with mental health concerns (Peay, 2016).

Under the Homicide Act (1957) (gov.uk, 2011), reduced responsibility is proved when a homicide is the result of a defendant's "abnormality of the mind" and can be used as a partial defence to murder in England and Wales. Thus, the diminished responsibility defence requires proof that the "abnormality of the mind" at the time of the offence had a major impact on the defendant's mental responsibility (Smith, 2017).

The Homicide Act of 1957 (gov.uk, 2011) stipulated that the perpetrator must have suffered from an "abnormality of mind" at the time of the unlawful killing, which substantially lowered their mental culpability, to qualify for diminished responsibility. It must explain why they killed, not necessarily provide an excuse. It must also be sufficient to reduce murder to manslaughter to create a legal defence (Jade, n.d.). The jury must determine, based on the preponderance of the evidence, whether the abnormality can be proven.

The Homicide Act of 1957 was a response to the number of changes in homicide law preceding it. This included the decline in the use of the death penalty for murder and changes in the ways in which manslaughter was prosecuted. With the introduction of the Homicide Act, there was now a greater level of clarity in terms of the definitions of murder and manslaughter and the penalties for them. The aim was to create a more streamlined approach to criminal proceedings for acts of homicide. Furthermore, the Act also aims to reduce the risk of wrongful convictions by introducing the concept of diminished responsibility. This allows for those with mental health issues to be given less severe punishments than if they had been found to have had full mental capacity.

The Coroners and Justice Act (2009) amended the defence of diminished responsibility in England and Wales. The changes introduced a new definition of diminished responsibility that replaced the previous definition in the Homicide Act (1957). According to the new definition, the defence of diminished responsibility

applies when a person killed another due to an abnormality of mental functioning that arises from a “recognised medical condition” and “substantially impairs” their “ability to understand the nature of the act” or to form a “rational judgment”.

Furthermore, the defence will not apply if the defendant can be convicted of manslaughter by reason of diminished responsibility and a charge of murder. The amendments to the defence of diminished responsibility improved the law in this area by providing a clearer definition of the defence and a better understanding of the criteria required for it to apply. However, there is still room for further reform in this area. For example, the Act does not define what constitutes a “recognised medical condition” and the criteria for determining whether a person’s ability to understand the nature of their act or form a rational judgement is substantially impaired are also unclear.

Numerous scholars have proposed a series of modifications to the Homicide Act 1957 with the aim of enhancing its efficacy and contemporaneity. This is primarily due to the fact that a significant portion of the offences outlined in the Act were established several decades ago and have not undergone revisions to align with the evolving social and legal milieu. Several recommendations have been proposed in the literature. These suggestions encompass the need for a more explicit differentiation between various classifications of homicide, the inclusion of provocation as a factor to be considered in all homicide cases, the enhancement of safeguards for victims of domestic violence, and the implementation of more lenient penalties for individuals with diminished responsibility or mental impairment (Hodgkinson and Prins, 2011). Furthermore, there has been a growing demand for the establishment of a novel offence known as 'Corporate Killing', aimed at imposing liability on corporations for fatalities resulting from their negligent or reckless actions (Tombs, 2017).

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