What changes did the Coroners and Justice Act (2009) make to the defence of diminished responsibility? Did these amendments change the law in this area for the better?

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The Coroners and Justice Act (1957) was amended in 2009, to make changes to the law relating to homicide. The changes were made so the law was in accordance with current definitions that are also consistent with medical practice (House of Commons General Committee, 2009). Section 52 changed the definition of partial defence to murder of diminished responsibility. Diminished responsibility is a partial defence to murder within the S.2 Homicide Act (1957). This refers to a person or persons who kills someone and is convicted of voluntary manslaughter instead of murder, due to an abnormality of mental functioning. However, diminished responsibility is only a partial defence if this abnormality arose from a recognised medical condition which substantially impaired the defendant's ability to understand the nature of their conduct, form rational judgement and being able to exercise self-control (Homicide Act, 1957). Diminished responsibility relies on medical evidence within court to be a defence. The three biggest amendments within S.2 Homicide Act (1957) were abnormality of mind which is was amended to 'abnormality of mental functioning', condition of arrested or retarded development, which was changed to 'recognized medical condition' and substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing, which is now 'substantially impaired D's ability to do one or more of the things mentioned in subsection (1A)'. Subsection 1A refers to understanding their own nature of conduct, being able to perform rational judgement and exercising self-control.

Abnormality of mind was effective within the Homicide Act (1957) for the time it was in place. While the definition is now out of date and lacks clarity it was used as a half insanity plea, meaning, less responsibility in turn, meant lesser punishment (V. & Keating, 1998). Furthermore, in the case of R v Byrne (1960), the judge defined abnormality of mind, setting forth a slightly clearer precedent for future diminished responsibility cases. However, according to V. & Keating (1998), despite the slight clarification it was still imprecise, as it was quasi-medical formula which was quasi-legal and satisfied no one. In addition to this, the Butler Committee on mentally abnormal offenders recommended that diminished responsibility be changed, as it was not a medical fact and they pushed for abnormality of mind be reformed so that it was clearer (Elliott & Quinn, 2008). This demonstrates why the legislation regarding abnormality of mind needed to be changed. The abnormality of mental functioning is regarded as more specified version of abnormal mind, as the results of this defence stays the same. The difference between the two is that abnormality of mind does not specify as to what requisites a person must have to be deemed substantially impaired (Ministry of Justice, 2010). This is an advantage of the amended version, as subsection 1A clarifies this by providing what constitutes as abnormality of mental functioning. Through providing this subsection, the legislation stops offenders from using the vague abnormality of mind version as a loophole, to get a murder charge dropped to voluntary manslaughter, thus decreasing their sentence.

Many words have been deemed unacceptable in modern day. One of those words is retarded, which is considered hateful, and is often used as an insult. Retarded is short for mental retardation, which was introduced as a medical term for people with intellectual disabilities (Special Olympics, 2022). Condition of arrested or retarded development refers to a person's developmental immaturity as mentioned in R v Golds (2016). In the case of R v Byrne (1960), it was argued that this Byrne's ability to control his sexual impulses and desires were hindered, due to a condition of arrested or retarded development. However, it was deemed that Byrne could not claim a condition of arrested or retarded development, as it did not constitute of abnormality of mind, but rather of someone who is vicious and depraved (Williams, 1961). Retarded is a word which people do not use nowadays, and it can be inferred that due to the changes within society, that a condition of arrested or retarded development, was changed to a recognized medical condition. A recognized medical condition allows for less people like Byrne, to take advantage of the legislation in order to get a less harsh sentencing. Through the changes made to the Coroners and Justice Act (2009), specifically regarding the switch

to a recognized medical condition, the defendant relies heavily on medical expertise and evidence. This allows for less exploitation of the system, allowing for justice to be served in a fair way. Not only is justice easier to obtain, but it creates clearer guidelines as to what a person may suffer from so that they can use diminished responsibility as a defence regarding their actions. Even so, if someone is not diagnosed with a medical condition that they are suffering with, they cannot use this defence, meaning people may slip through the cracks. According to Princeton Public Health Review (2017), "*Worldwide, about 450 million people have a mental illness – this is equal to 1 in 4 people. Most of these people, about 400 million, are not receiving the treatment that they need*". This demonstrates how there could be offenders who are or were suffering from a substantial impairment, but were not aware of it.

Within the original version of the Coroners and Justice Act (1957), "substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing", does not include what may pertain as to what the substantial impairment of a defendant's mental responsibility may include (House of Commons General Committee, 2009). If the jury is not satisfied with the defendant's level of suffering from substantial impairment they will be charged with murder(Court of Appeal, n.d.). This means that the defence was entirely place upon with what the jury considered to be substantial, which may have been unfair. The updated version has included a subsection as to what is required to be substantially impaired: "substantially impaired D's ability to do one or more of the things mentioned in subsection (1A)". Within subsection 1A it is stated that the defendant needs to understand the nature of their conduct, be able to perform rational judgement and exercise self-control. This provides a clear framework for what substantially impaired is, allowing for defences to be made under those guidelines. This illustrates how now, there is a higher threshold for psychiatric evaluation, which the defendant must rely on in order to qualify for substantial impairment (Wake, 2021).

The amendments made to the Coroners and Justice Act (1957) were made so the new legislation was in accordance with more current definitions and updated medical practice (House of Commons General Committee, 2009). Diminished responsibility refers to a person or persons who kills someone and is convicted of voluntary manslaughter instead of murder, due to an abnormality of mental functioning. Defendants need to prove that abnormality arose from a recognised medical condition which substantially impaired the defendant's ability to understand the nature of their conduct, form rational judgement and being able to exercise self-control (Homicide Act, 1957). Further recommendations regarding the Coroners and Justice Act (2009) would be that juries are educated in matters regarding substantial impairment as "*between 2005 and 2011 just under half (43 per cent) of all substantial impairment cases were heard by jury while 18 per cent were heard by judge alone*" (Wake, 2021). Furthermore, in cases where there is a homicide, in order to determine if diminished responsibility is a potential, defendants should be seen by a psychiatrist for evaluation. This is due to the wording "pre-existing medical condition", as it may be that the defendant is indeed suffering from an undiagnosed pre-existing medical condition that they were unaware of. Diminished responsibility allows for defendants to receive a lesser sentence, which allows for justice to still be served, while taking circumstances and the individual themselves into consideration.

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