

Introduction:

Criminal law has always been fascinating and has evolved tremendously over time. Though there have been numerous changes in law, offences against persons such as murder or grievous hurt get more notice than other offences as it directly affects the lives of the subjects of the state. In this paper, we discuss the requirements for diminished responsibility under the Homicide Act 1957, further, the changes brought about by s.52 of the Coroners and Justice Act 2009 and how these changes were interpreted in the court of law giving rise to judicial precedents that laid the framework to accessing the defence.

Diminished responsibility under the Homicide Act 1957:

The defence of diminished responsibility is a special (partial) defence given under section 2 of the Homicide Act 1957. Diminished responsibility can be raised as a plea for defence where the defendant is charged with murder. If successful, the act of murder will be changed to manslaughter¹ by reducing the culpability of the defendant and reducing the punishment. Under the section before the amendment, it states that “where a person kills... he shall not be convicted for murder if he was suffering from such abnormality of mind... as substantially impaired his mental responsibility in doing or being a party to the killing.”² It can be understood that with this defence the legislation draws a line where the person cannot plead for insanity but has committed murder due to a partial loss of mind. It is one of the special defences where the defendant is not exempt from the act but only regarded to be partially excused. Further, it must be noted that the defence is not available to attempt to murder.³

On perusal of the section, it can be broken down into three requirements. Firstly, there must be evidence of abnormality of mind at the time of the incident. The definition on abnormality of mind is laid out by Lord Parker, “Abnormality of mind ... means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal.”⁴ Secondly, such abnormality must be caused by inherent causes rather than external causes or induced by disease or injury. The abnormality can also be caused by a condition of detained

¹ S.2 (3) Homicide Act 1957

² S.2 Homicide Act 1957 (Before amendment)

³ Campbell [1996] Crim Lr 495

⁴ R v Byrne (1960) 2 Q.B. 396

development of the mind. It was held, that pre-menstrual tensions⁵, morbid jealousy⁶, battered women's syndrome⁷ or chronic depression⁸ can constitute abnormality of mind. Thirdly, such abnormality must cause the defendant to be impaired in his judgment of his actions.

The defence of diminished responsibility is more popular than that of insanity owing to its broad application. However, due to the nature of the plea, the burden of proof lies with the defendant and only the defendant can raise it.⁹ The need for such a defence was evident as the M'Naghten Rule¹⁰ which laid down the test of criminal liability in the case of mentally disordered defendants had only recognised insanity. Thus, with the introduction of The Homicide Act, 1957, the defence of diminished responsibility gave way to establishing abnormality of the mind. This resulted in the jury's decision to substantially decide the outcome of cases. For example, in the most celebrated of the Yorkshire Ripper,¹¹ it was held to be murder as the plea was not accepted by the jury. Though there was a unanimous decision of four psychiatrists that the defendant was mentally abnormal, the brutal nature of the killings was focused on by the jury that led to such a decision. However, in other cases such as R v Byrne¹², the sentence was reduced from murder to manslaughter. Though the defendant had mutilated the body of the victim, it displayed the nature of the abnormality of the mind.

Need for a change:

The law commission proposed that the diminished responsibility provision needed some changes in 2008. The need for change is not something that is new in the field of law. One of the main reasons for the need for an amendment was that there has been immense development in the fields of science and medicine since the Act in 1957 was enacted. Further, the law commission had been keen on partial defences to murder and review or revisit the criminal law system. The law commission has gone through the question of whether the retention of the partial defence of diminished responsibility is needed. One of the most surprising recommendations was from organisations for women's welfare, who supported that the defence is important as it aids in cases where women kill their partners because of domestic abuse.¹³

⁵ R v Smith 1982, R v Reynolds 1988

⁶ R v Miller [1983] 2 AC 161

⁷ R v Hobson 1998 (43) BMLR 181

⁸ R v Gittens 1984

⁹ Straw (1995) 1 All ER (187)

¹⁰ M'Naghten's Case 1843 10 C & F 200

¹¹ Regina v Sutcliffe 1982 CACD 24

¹² Ibid 4

¹³ Law Commission, Report on Partial Defences of Murder (No 290) 2004

Further, the report tends to mitigate the reasons against retention. The report establishes that the defence of diminished responsibility is one that is grossly abused.¹⁴ Though retention is supported, the law commission also establishes that the role of psychiatrist plays is significant in establishing abnormality of mind. Also, there have been some subtle criticisms by the judges on the section. For instance, in *Galbraith*,¹⁵ it was held that the provision of diminished responsibility has a long history but a vague application. This case has been one of the main reasons to rethink the provision. Further, The Scotland law commission produced several reports to rethink a statutory formulation that mirrors the essence of *Galbraith*.¹⁶ Thus, the discussion of a need for change has been recognized from time to time. Finally, the home office consultation paper of 2008¹⁷ was the one that contributed to the passing of the Coroners and Justice Act 2009.

Amendment in the Act:

The Coroners and Justice Act 2009 in sec 52 made an amendment in sec.2 of the Homicide Act. The amendment has retained some bits of the provision but has essentially increased the medical importance of the provision. The amended provision states that: “a person... not to be convicted for murder... if he was suffering from an abnormality of mental functioning which-

- a) aroused from a recognised medical condition.
- b) substantially impaired his ability to understand the nature of his conduct or form a rational judgement or exercise self-control.
- c) provides an explanation to the act or omission in doing or being a party to the killing.”¹⁸

While the earlier provision was grounded in mental abnormality, the amendment makes it narrower that the defence is only available to clinically recognised conditions which explain the act of the defendant. Hence, with the introduction of the new amendment, the requirement for the defence has also been changed. For instance, jealousy and battered women syndrome are not considered a ground for defence now. Hence, the requirement of mental abnormality is fulfilled only when there is a recognised medical condition that explains the act or omission of the defendant which resulted in killing.

¹⁴ *ibid*

¹⁵ *Galbraith V HM Advocate* 2002 JC1

¹⁶ Scots Law Com No 195, Appendix A: Criminal Responsibility and Unfitness for Trial (Scotland) Bill [Draft] clause 3(1)

¹⁷ Home Office, Consultation paper (19/08) on murder, manslaughter and infanticide (2008)

¹⁸ Sec 2. of Homicide Act 1957.

The case of Golds¹⁹ is the first case of the supreme court which dealt with diminished responsibility after the amendment. Hence, in this case, Lord Hughes was able to lay down guidelines and give clarifications. It was held that, in order to have a successful plea the court has to answer four questions.

- i. Firstly, did the defendant suffer an abnormality of mental functioning? The definition of abnormality is discussed above in Bryne.²⁰
- ii. If yes, secondly, did it arise from a recognised medical condition? It is held that medical evidence is a practical necessity.²¹ However, not all recognised medical conditions can qualify for the defence. For instance, acute alcoholism does not qualify as it would affect the balance of criminal law in relation to defences by way of intoxication.²²
- iii. Thirdly, if yes to both, did it substantially impair the defendant's abilities listed in sec 1A? the jury was asked to consider the word substantial impairment under the section should have its meaning in a broad common-sense way, and the impairment must be quite sizable²³. The ability to understand the nature of his conduct or form a rational judgement²⁴ or exercise self-control. Loss of self-control does not mean that the defendant has lost full control of his mind.
- iv. And finally, if yes to all the above, did it significantly contribute to the killing? Only by considering these questions, the defence of diminished responsibility can be successful.

Conclusion:

The defence of diminished responsibility when seen broadly may appear to be similar to that of other defences such as the defence of insanity or the defence of loss of control. However, when discussed deeply will be distinctive. The plea of diminished responsibility is a necessary relief when seen from a reformatory and rehabilitative perspective of punishments. However, it is also necessary that such a provision should not be abused. The amendment of The Coroners and Justice Act has rightly emphasized the role of medicine and psychology in the provision.

¹⁹ Golds [2016] UKSC 61

²⁰ Ibid 4.

²¹ Bunch [2013] EWCA Crim 2498

²² Dowds [2012] EWCA Crim 281

²³ Ibid 19.

²⁴ Conroy [2017] EWCA Crim 81, it was held that the ability to form a rational judgement not only about the outcome but during all stages of process of reasoning

In this way, though the statute may remain the same, the law will grow alongside medical and scientific advances. Further, any change required in the law will be reflected in the opinion of experts in the form of judicial precedents.

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