

Psychiatric Expert Opinion: Admissibility and Relevancy

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Abstract

In criminal law, the institution of legal capacity is central to determining the liability of the accused. Law and psychiatry amongst many other medical disciplines, interact at the justice system's surface to determine criminal liability in furtherance of the legal proceedings' enhancement.

This paper aims to define the legal framework, relevancy and admissibility of psychiatric expert opinion when commissioned by the court. The predominant focus is on criminal, rather than civil proceedings in which the psychiatrist gives an expert opinion. The author aims to elaborate on the relevancy of psychiatric expert opinion in determining criminal liability in Indian law and the recent developments that have taken place in western countries in this regard.

The paper emphasises the need to curb the gap between legal and medical insanity while interpreting and analysing the accused's guilt. Analysis of international law, criminal procedure legislation, and relevant case laws support the author's theory that an interdisciplinary approach is essential. Following this method, conclusions are drawn, and further recommendations are provided.

Key Words: *criminal law, expert opinion, insanity, medical, legal, psychiatry*

Introduction

The impetus for exposure to legalities that arise in psychiatry and law is minimal but operates at the justice system interface. Forensic psychiatry is that branch of psychiatry that requires special knowledge and training in the law related to the mental state of the alleged offenders. As a result of working in this area, psychiatrists are often called into court to give evidence as expert witnesses. A consequence of today's mental health professionals' growing role in the justice system is the increasing burden of responsibility and the potential power to harm. The legitimacy of an expert opinion stems from the knowledge they mediate. This qualification makes the expert opinion admissible as evidence in a case, though they are not related to the case's circumstances.

Law and psychiatry come into interface more often than the other specialities in the medical discipline. Psychiatrists appear in court in breach of contract, negligent acts (medical negligence or criminal negligence), and violation of the patients' rights. They are also called upon to act as experts in the court of law or quasi-judicial bodies to comment upon the following areas: (a) fitness to stand trial, (b) insanity defence, (c) testamentary capacity related to the execution of a will, (d) ability to make a contract, (e) marriage and divorce, (f) custody of the child, (g) interviewing the child in case of sexual abuse, and so forth. Recently, psychiatry has grown in importance, and consequently, psychiatrists are called upon more and more, to opine on cases involving crimes and wills, by both parties. A range of issues and discussions have arisen regarding accepting such opinion and the weight given to it.

With this mind, relevancy and admissibility of psychiatric expert opinion, existing and arising issues, and possible solutions will now be discussed.

Assessment of Criminal Responsibility

Psychiatry is a branch of medical science that deals with the diagnosis and treatment of mental disorders. Webster defines a psychiatrist as "a specialist in psychiatry, an alienist." The general notion is that any doctor because of his skill and education is presumed competent to advise the trier of fact. They need not be specialists in that particular branch or profession or have any experience of their own on the specific question involved in the case.

Psychiatry has a profound influence on criminal behaviour, which isolates one criminal from another. To establish a transparent approach, it is important to recognise various principles that play a vital role in the assessment of criminality.

Criminal liability is a means of assessing criminal conduct and proving that someone is guilty or not. It is an "intentional act or omission committed without any defence or justification in violation of criminal

law and penalised as a felony or misdemeanour by law." (Paul W Tappan. 1960) '*Actus non facit reum nisi mens sit rea*' is the fundamental precept of criminal law. It comprises of both a cognitive and a physical aspect of the elements of the crime. *Mens rea*, an individual's consciousness that his or her action is criminal, is the mental aspect, and *actus reus*, the act itself, is the physical aspect.

The assessment of capacity aims to test a criminal defendant on his degree of rational comprehension to consult his counsel with fair capacity and on his reasonable and truthful knowledge of the proceedings against him.

Indian law recognises this need of analysing the institute of legal and medical capacity for subjecting guilt on the accused.

Medical and Legal Capacity During Criminal Trials

The question of the ability of a natural person or a legal entity and the understanding of the motives of their actions or omissions and conscious conduct is central to deciding on a person's legal liability or the validity of their civil transaction. The set of such elements, in totality, is referred to as the institute of legal capacity. There exists a crucial distinction between medical and legal capacity. The former is intricately related to a person's cognitive abilities, while the latter legal aspect is related to a person's subjective attitude and understanding of their actions or omissions. Thus, medical and legal aspects do not always coincide. A person may not be mentally ill. Yet, for a specific offence or transaction, this person may be considered legally incapable or vice versa – a mentally ill person, may be recognised as legally capable. In such circumstances, medical and legal sciences fuse in one process. Thus, the issue of declaring a person's incapacity cannot be the sole discretion of a judicial officer presiding over the trial. Such an impartial individual does not possess any special or medical knowledge, the need for which is mentioned above.

Relevancy and Admissibility of Psychiatric Expert Opinion under Indian Law

Indian law provides procedural rules relating to expert opinions in courts; under the Evidence Act, 1872¹ and the Criminal Procedure Code, 1973,² respectively. An expert is a person with impeccable knowledge and skill in a particular field of study. Evidence is information or opinion given by any person that proves an allegation to be true or false. In summary, expert evidence is information or opinion offered by an expert in a field that the person is specialised in, which comes out to be evidence

¹ Section 45 of the Evidence Act, 1872

² Section 293 of the Cr. P.C., 1973

in any matter. In law, an expert witness is a person whose opinion is accepted by the Judge relating to any fact or evidence. Expert evidence can be applied to both civil cases and criminal cases. Section 45 of The Indian Evidence Act, 1872 states, "*When the Court has to form an opinion upon a point of foreign law or science or art, or as to the identity of handwriting (or finger impressions), the opinions upon that point of persons specially skilled in such foreign law, science or art, (or in questions as to the identification of handwriting), (or fingerprint analysis) are relevant facts. Such persons are called experts*".³

Thus, an expert's opinion is relevant in all cases where a question of science is concerned. This has been recognised significantly by Indian law. In cases of insanity, the issues raised are as follows: (a) whether the accused was of unsound mind at the time of the commission of the act, and (b) whether by reason thereof they were incapable of knowing the nature, wrongfulness and illegality of the act.

Sections 328 of the Code of Criminal Procedure, 1973 (CrPC) defines the procedure against the lunatic; it states that "When the Magistrate believes that such a person is of unsound mind and consequently incapable of making his defence, then he shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or another officer as a witness, and shall reduce the examination to writing".

According to M'Naghten Rules⁴, which build the basics of the Indian Criminal Law on insanity under Section 84 of the Indian Penal Code, 1860, a medical witness who has been present in court and heard the evidence, could also be asked as a matter of science, whether the facts stated by the witness, supposing them to be true, show a state of mind incapable of distinguishing between right and wrong.

A qualified expert may testify to the accused's mental condition either upon their examination or on the testimony if they have heard it in the court. Such a witness can also give their opinion upon hypothetical factual situations even though they compose no personal knowledge of the accused. A psychiatric expert who has made a personal examination of the accused after the commission of the crime may opine about the accused's mental condition at the time of the examination and whether it existed during the offence. The expert may also opine whether the accused is feigning or simulating insanity. An expert who has not known the accused, but has only heard the trial may state their opinion based on undisputed and straightforward facts.

Consequently, it becomes a question of science. The reason for this restriction is that in case of disputed and conflicting evidence, such a practice would require the expert to work out its truth and value, then

³ The Indian Evidence Act, 1872, No. 1 of 1872, §.45.

⁴ M'Naghten's Case 8 ER 178 Volume 8

make the scientific inference from there. In this respect, the fifth question and answer in the M'Naghten case are relevant.

The relevant parts of the rules are as follows:

"(1) Everyone is presumed to be sane until the contrary is proved.

(2) It is a defence to criminal prosecution for the accused to show that when he committed the act, he was labouring under such defect of reason, due to disease of the mind, as either, (a) not to know the nature and quality of the act he was committing, or (b) if he did know this, not to know that what he was doing wrong.

(5) Evidence of the medical man who has seen the accused only at the time of trial cannot be let in to prove the disputed fact of the state of mind of the accused; but where the facts are admitted or not disputed, and the question becomes one of science only, it can be done as a matter of convenience though not as a matter of right."

Judicial Responses to Psychiatric Expert Opinion

The fundamental principle guiding the expert's opinion is that it is not only for the expert to have evidence to support his opinion but also for the result to be quantifiable. The court is not to surrender its judgment to that of the expert or delegate its authority to a third party. Still, it should assess the expert's opinion like any other evidence.⁵ The court must consider the practical value of a psychiatric expert opinion. With this view, in sonic terms, experts were asked to give their opinion on the Indian cases, whether the defendant differentiated between right and wrong. The difficulty arises when the admission states that the accused is abnormal, and the question is whether, at the relevant time, he was so mentally disordered as to be incapable of distinguishing between right and wrong. It is here that the court needs the help of the psychiatric experts to arrive at the right conclusion.

Deo Rao v. Emperor⁶ and Baswant Rao v. Emperor⁷, are essential in this respect. The same medical expert seems to have given evidence in both the cases, but in the former, his evidence was accepted in acquitting the accused. In contrast, in the latter, the evidence was rejected, and the accused was convicted.

In Deo Rao v. Emperor, it was held that '*...under section 45 of the Evidence Act, an expert's opinion is relevant where the question of science is involved. The questions, whether the accused was of unsound*

⁵ Chunni Lal v State of Haryana, 1977 Cr LJ (Notes) HC

⁶ A.I.R. 1946 Nag. 321.

⁷ A.I.R. 1949 Nag. 66.

mind at the time of the commission of the act, or that he was doing what either wrong or contrary to the law was, are questions of fact which in England are decided by a jury and in India where the trial is with the aid of assessors by a sessions judge. But in arriving at a finding, the opinion of an expert in mental diseases is relevant. In cases involving a question of insanity, an expert in mental diseases is the gene, rally examined as a witness.'

The court further opined that *'We accept the opinion of Dr Roy and other evidence in the case and hold that the accused by reasons of unsoundness of mind did not know the nature of the act or that what he was doing was either wrong or contrary to the law established legal insanity within the meaning of section 84, Indian penal code.'*

In Baswant Rao's case, the court opined that *'the question whether in the given circumstances a man was sane or insane is for the court to decide. An expert can only furnish the court with data from which insanity can be inferred. It is beside the point whether, in the expert's opinion, the man was medically insane. Even that would be a dangerous conclusion on the slender data on which Dr Roy proceeded; however, that may be, what we have to decide is whether the man was legally insane and there, at the bottom, the question is a simple and common sense one which ordinary Jurors can easily comprehend.'*

Justice Hidayatullah further contended, *'I need not refer in this connection to Deo Rao v. King-Emperor in which Dr Roy's evidence was accepted. Dr Roy, in fact, modulates his evidence on that case. In the interpretation of the evidence of an expert, an earlier decision is hardly relevant. It cannot be suggested that because a Court accepted Dr Roy's evidence in one case, it must be accepted in every other case.'*

However, the trend of judicial holdings in India that psychiatric is neither conclusive nor essential for the court to decide a mental case. However, it is up to the Judge or the court, as a matter of practice, to send the accused to a psychiatric expert for review if a plea of insanity is made on behalf of the accused or if there is cause to suspect that the accused has a mental illness. When the report or the evidence of mental expert is available, the court should analyse such opinions so meticulously to accord proper importance to them. The failure of the Judge or the police to subject the accused to psychiatric assessment would be taken as a decisive factor in acquitting the accused if the other facts and circumstances would support a reasonable doubt as to the state of insanity of the accused at the time of the commission of the offence.

International Approach on Admissibility of Psychiatric Expert Opinion

While Indian law holds psychiatric expert opinion at dithering position, English law adopts a relatively correct approach to the issue of relevancy and admissibility of psychiatric expert evidence. It promotes the idea that a straight line does not separate normality and abnormality; there is a vast grey field that merges into each other. Although the ultimate decision is for the jury or the Judge, the specialist will express an opinion on the ultimate problem in the case quite accurately in these days of psychological innovations.⁸ Expert evidence is not only desirable but also of great importance because the subjective assessment of guilt is getting more and more recognition. The more significant is the emphasis on subjectivity, the more is the role of psychiatric expert evidence. Psychiatric expert witnesses can bring out what is within the defendant himself. Modern psychiatry and psychology have achieved tremendous progress in mental health problems, following this notion.

Per the United Nations Convention on the Rights of Persons with Disabilities (C.R.P.D.), international law advances have called for wider recognition of persons with mental disabilities and their legal competencies. The call for broader legal recognition, following this understanding, is shown to extend not only in the sense of personal decisions but also in the context of liability for criminal acts. This line of reasoning suggests two sides of the same coin to these two kinds of legal capacity: a need for recognition in the personal sphere automatically means a need for recognition in the criminal sphere.

In terms of legal capacity, strong interpretations of Article 12 (C.R.P.D) radically emphasise evaluative considerations over psychological considerations. The idea that justice limits the role that should be played by evaluative reviews in setting these standards, therefore presents a challenge to such views. A crucial question that needs further investigation concerns whether, as some supporters argue, this construction of the relationship between evaluative and psychological factors is relevant, as lawmakers attempt to respond to the C.P.R.D.

Analysis

In India, the jury trial system is not in existence, and thus the Judge is responsible not only for the final decision but also for the evaluation of the evidence. However, this does not diminish the role of the psychiatric expert opinion since the Judge is a layman regarding mental well-being and other issues surrounding it are concerned.

Logically, such evidence ought to be admissible wherever it is relevant to the court's final decision. To morph the accused's criminal responsibility, it is crucial to understand and implement the notions of criminal responsibility upholding the nature of psychiatry that focuses on the evaluation of guilt is a crucial aspect towards adopting a more interdisciplinary approach. For that, lawmakers and practitioners have to bridge the gap between legal and medical insanity

Conclusion

Crime is a myriad concept which cannot be explained exclusively of psychological theories. Although, the court's approach to admitting psychological medical proof was not consistent; sometimes, such evidence was admissible and sometimes not. Strict adherence to the right and wrong test of criminal responsibility has been mainly responsible for having an unsubstantial weightage of psychiatric expert opinion as evidence.

In order to merge law and psychiatry and to mark an interdisciplinary structure, which assumes free will and moral responsibility, a significant change needs to be made in the legal system. Introduction of forensic psychiatry needs to be implemented as a collaborative attempt by various agencies and regulatory bodies in the Indian criminal justice system. The implementation of training and teaching may be a step forward in the merging of law and psychiatry, offering a new beginning in the area of psychiatry and law.

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