

RECOGNISING PTSD AS A LEGITIMATE CRIMINAL DEFENCE IN INDIA

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Abstract

Posttraumatic stress disorder (PTSD) is a psychiatric disorder that is a resultant if experiences of traumatic events such as a natural disaster, a serious accident, a terrorist act, war/combat, or rape, sexual violence or serious injury.² It causes a significant disturbance in normal cognitive functions, such as memory, consciousness, time estimation, sense of reality, and identity, and the patient may also reexperience symptoms, in which the traumatic event is relived in a vivid manner as if it were happening again in the present.³ Even prior to its formal introduction in the third edition of Diagnostic and Statistical Manual (DSM-III), war neurosis has been a judicially recognised criminal defence. Since, its inclusion in DSM-III, it has been invoked in several American cases as a criminal defence on grounds of insanity. This paper contends that given, the ingenious exceptions in the Indian Penal Code, 1860, PTSD can be accommodated as a legitimate criminal defence under Section 84 and Exception One to Section 300 in light of the evolving definition of mental illnesses rather than embracing a strictly orthodox and anachronistic interpretation of the statutes.

Introduction

Posttraumatic stress disorder, better known as PTSD was first attributed its psychiatric nomenclature following its inclusion in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III), in 1980.⁴ Since then, it has often been invoked as a defence in criminal cases on grounds of insanity, unconsciousness, self-defence, and diminished capacity.⁵

Traditionally and typically, the employment of PTSD as a criminal defence across the globe is in cases involving war veterans. Nonetheless other special forms of PTSD have, over the course

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² Posttraumatic Stress Disorder (PTSD) *available at:*

<https://www.oxfordbibliographies.com/view/document/obo-9780199828340/obo-9780199828340-0094.xml>
(last visited on October 11, 2021).

³ IBID.

⁴ American Psychiatric Association, *American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association, Washington, 3ed edn., 1980)

⁵ Omri Berger, Dale E. McNiel, *et. al.*, "PTSD as a Criminal Defense: A Review of Case Law" 40 *The Journal of the American Academy of Psychiatry and the Law* 509-521 (2012).

of global judicial history, found themselves being invoked such as the battered-wife syndrome (as in the case of *R v Ahluwalia*) and the rape trauma syndrome. However, it is worth noting that even prior to the addition of the diagnosis of PTSD in Diagnostic and Statistical Manual (DSM) and International Classification of Diseases (ICD) traumatic stress syndromes, demonstrated by drawing the illustration of traumatic neurosis of war, were offered due recognition as a base for criminal defence on grounds of insanity. The moderate acceptance of the disorder may primarily be attributed to its relatively easily comprehensible nature, i.e., it is one of the limited mental disorders for which the DSM describes a known cause.

PTSD phenomena

PTSD phenomena that are commonly presented as grounds for criminal defence usually pertain to dissociative flashbacks, hyperarousal symptoms, survivor guilt, and sensation-seeking behaviours.⁶

A section of scholars have, based on their observations, put forth the proposition that the sole legitimate ground to warrant exculpation by pleading the defence of insanity should be dissociative flashbacks.⁷ While preliminary literature supports the employment of PTSD as a valid criminal defence, the body of empirical psychological and psychiatric research focused on studying the relationship between PTSD and criminology has been limited and thereby inconclusive in its scope.⁸

PTSD in American Jurisdiction

Prior to the introduction of PTSD in the DSM, traumatic stress disorders were offered as the basis for insanity defences. This assertion finds exposition in the case of *Houston v. State*, wherein 1979 Alaska Supreme Court case, the defendant, an army sergeant, killed a man he believed to be reaching for a weapon. The defence expert testified that the defendant had traumatic neurosis of war and he was in a dissociative state at the time of the death. The appeals court found merit in the defendant's plea for a defence based on insanity.⁹

⁶ Omri Berger, Dale E. McNiel, *et. al.*, "PTSD as a Criminal Defense: A Review of Case Law" 40 *The Journal of the American Academy of Psychiatry and the Law* 509-521 (2012).

⁷ IBID.

⁸ IBID.

⁹ 602 P.2d 784 (Alaska 1979).

Soon after its inclusion into DSM-III in 1980, PTSD permeated the legal framework and found its way as a popular insanity defence. In the case of *State of New Jersey v. Cocuzza*, the defendant was Vietnam veteran who assaulted a police officer. It was held that he was not guilty based on the defence of insanity as he claimed he perceived the police officer to be an enemy soldier, and this found corroboration in the testimony of a police officer who claimed that Mr Cocuzza's grip over the stick was like it was a rifle.¹⁰

Similarly, in the 1989 Massachusetts case of *Commonwealth v. Tracy*, a Vietnam veteran was charged with armed robbery but was declared not guilty by the reason of insanity stemming from PTSD, given the dissociative state of the defendant, which was triggered by the sight of a funeral parlour, which served as a reminder of his Vietnamese war experience. PTSD phenomenon of dissociation has been successfully presented as a basis for insanity.¹¹

However, the admissibility of PTSD as a qualifying mental disorder for the insanity defence has been met with scepticism in several jurisdictions, especially following amendments in the insanity defence statutes.

This can be exhibited in the 1984 federal case *United States v. Duggan*, wherein the District Court denied the defendants' pre-trial motion for an insanity plea, based on the grounds that they failed to serve evidence or clinical findings in support of insanity. The court also raised the question whether PTSD as a diagnosis can ever lead to insanity.¹²

In the 1984 Tennessee Court of Criminal Appeals case *Gentry v. State*, the defendant was charged with the first-degree murder of his girlfriend. He claimed insanity on the grounds of PTSD, contending that after the accidental shooting of his girlfriend, he disassociated with reality and shot her again. While the defendant was diagnosed with PTSD by both, the experts from the sides of defence and prosecution, the experts from the prosecution opined that the disorder was not adequate to render him incapable of understanding the gravity of his acts.

¹⁰ No. 1484-79 (N.J. Super. Ct. 1981).

¹¹ 539 N.E.2d 1043 (Mass. App. Ct. 1989).

¹² 743 F.2d 59, 81 (2d Cir. 1984)

Finally, the jury found him guilty of first-degree murder, thereby, denying his defence of insanity. The Court of Appeals, in agreement with the Tennessee Court of Criminal Appeals, upheld the conviction.¹³

Notwithstanding the above, some courts have unequivocally found PTSD to be a qualifying mental disorder that could lead to a defence of insanity. This finds exposition in a District of Columbia District Court case known as *United States v. Rezaq*, wherein the defendant was charged with aircraft piracy, for which he intended to plead a case of insanity defence based on PTSD. In support of this defence, he offered the opinions of three psychiatrists who diagnosed PTSD. While the government sought to exclude this testimony on grounds of the defendant's PTSD not being a sufficient basis for insanity, the District Court denied this motion based on the fact that the experts' report "clearly indicate(d) that defendant's diagnosis of PTSD meets the test of insanity as set out" in federal statutes.¹⁴

Accommodation of the PTSD under Indian Penal Code, 1860

Insanity is an excusable exception to criminal liability in accordance with the Indian Penal Code (IPC), 1860.

Section 84 of the Indian Penal Code, 1860, states: "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."¹⁵

PTSD compels individuals to psychologically relive the traumatic situations. So, while individuals may be aware of their actions in terms of the cognitive aspect, they are rendered unable control their behaviour and urges. This notion was proposed on the basis of interviews with and clinical observations of people suffering from PTSD, who have said that they perceive that they are in a combat-oriented situation that triggers their behaviour.¹⁶

¹³ 1984 Tenn. Crim. App. LEXIS 2738 (Tenn. Crim. App. 1984).

¹⁴ *United States v. Rezaq*, 918 F. Supp. 463 (D.D.C. 1996).

¹⁵ Indian Penal Code, 1860 (Act 45 of 1860), s.84.

¹⁶ Vito Zepinic, "Posttraumatic Stress Disorder in Courtroom: Insanity Defense" 6 *Asian Journal of Applied Psychology* 22-30 (2017).

In the light of the aforementioned proposition, PTSD should be offered for consideration under Exception One of Section 300 of the IPC, i.e., sudden and grave provocation. The exception stipulates: “Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.”¹⁷

In view of this, it is thus, erroneous that in the case of *B.D. Khunte v. Union of India*, the Court gave no consideration to the accused’s state of mind in relation to the probability of potential PTSD. In the said case, the appellant, while on guard duty, shot Subedar (AIG) Randhir Singh dead with a 5.56 mm Insas Rifle issued to him. He was still seething with anger over the deceased’s attempt to sexually violate him and sodomise him earlier in the day. He opened fire from his service weapon following which Sub Randhir Singh was hit and dropped dead on the spot.¹⁸

The appellant was not subjected to any medical or psychological evaluation or examination, which blatantly displayed how the Court failed to acknowledge, let alone consider, PTSD as a legitimate cause or defence for the appellant’s *actus reus*.

The Court convicted the appellant of murder and failed to give him the benefit of Exception One, i.e., sudden and grave provocation under Section 300.

PTSD and “mental illness”

In tune with the United Nations Convention on Rights of Persons with Disabilities, India, a signatory, drafted the Mental Healthcare Act, 2017. The Act defines, under Section 2(s), mental illness as “a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but

¹⁷ Indian Penal Code, 1860 (Act 45 of 1860), s.300.

¹⁸ (2015) 1 SCC 286.

does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub normality of intelligence.”¹⁹

The neoteric and widely accepted definition of PTSD based on DSM-5, which is referred to by India, positions PTSD under Trauma and Stressor related Disorders which is in its totality an independent chapter.

The catalogue of PTSD symptoms have now expanded to also include intrusive symptoms such as avoidance of stimuli associated with the traumatic event, and alteration in arousal and reactivity, which as a consequence results in negative thoughts and emotions linked to the traumatic event.

It is proffered that the recognition of PTSD as a criminal defence in India can help in defending arguments pertaining to the “battered women syndrome” and the “battered child syndrome”.

Indeevarakshan Nair M P & Others v. Officer I C Records A S C Records MT & Others

In a rare and pleasantly surprising occurrence, PTSD was recognised as a medical condition that must be taken into consideration while deciding cases pertaining to soldiers and army personnel in the case of *Indeevarakshan Nair M.P. & Others v. Officer IC Records A S C Records MT & Other*. This serves as a ray of hope amidst the bleakness that is reflected by the narrow approach to insanity as well as sudden and grave provocation adopted by the Indian judiciary.²⁰

It is now upon the courts to carve this out as a sufficient defence for insanity along with ensuring it is subsumed within Exception One of Section 300, and then extend this defence to civilians.

¹⁹ Mental Healthcare Act, 2017 (Act 10 of 2017), s. 2(s).

²⁰ LNIND 2010 AFTRBKOC 56.

Conclusion

It is evident that in the past, the Indian criminal justice system has lacked the maturity or even the expertise to consider the various aspect deliberated upon in this paper and has been ill-equipped to handle such cases. Dealing with PTSD as a criminal defence requires not only necessitates colossal legal dexterity but also a high degree of sensitivity.

In the light of the studies demonstrating a causal link between PTSD and “violent behaviour”, it is imperative that Indian courts adopt an approach to view PTSD as a criminal defence in the interests of social welfare and to enable and enlighten the legal framework that currently places PTSD patients at a disadvantage.

It must, however, be admitted that the definition of PTSD is very wide in its ambit and will thereby pose grave difficulties for the courts to reach conclusive precedents. Yet the new definition definitely finds resonance with the justice system’s notion of fairness and can help bridge the obtuseness of the often criticised Indian judicial system