

DIMINISHED RESPONSIBILITY AND ADDICTION: ANALYSING THE LEGAL AND SCIENTIFIC COMPLEXITIES

*Reshma Suresh**

ABSTRACT

Criminal law is the most intrusive action into the lives of individuals by the state. Criminal responsibility is imposed only when the offender has the complete intention to commit a particular crime. However, there are certain situations in which the cognitive abilities of individuals are compromised to such an extent that they are not able to understand the nature and consequences of their actions. Addiction is one such condition where the cognitive ability of the addict is compromised due to prolonged drug use. The paper traces the legal and scientific advancements in this regard and the complexities in criminal law responses. intoxication. The paper also investigates the aspect of requirement of a generic partial responsibility doctrine under the Indian Penal Code.

Keywords: Addiction, Diminished Responsibility, Disease, India, Neuroscience.

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I. Introduction

A CRIME is defined as an offence that invites condemnation from the community and punishment in the form of fine or imprisonment. It is considered as an offence which is committed against the community at large since it hampers the peace and harmony of the society. Criminal responsibility is placed on a person depending on his or her intention to commit a particular crime. Since criminal law is the most intrusive state action into the private lives of individuals, utmost caution must be placed while imposing criminal liability. The harm caused, the conduct which led to the harm caused and the causal relationship that exist between the harm and the conduct are crucial while determining criminal responsibility. The conduct is

* Ph.D. Scholar, the Indian Law Institute, New Delhi

explained as the voluntary outward bodily motion and hence a person shall not be held responsible for any sort of motion that is involuntary in nature.¹ If an actor is to be held criminally responsible, he or she shall commit the act in question intending or knowing its consequences.²

E. Barret Prettyman, the United States Circuit Judge of the United States Court of Appeals in his judgment *Carter v. United States*³ rightly points out that “the basic notion of criminal law is that if a person is not a free agent, or not making a free choice and is not acting freely, then that particular person is outside the ambit of criminal law and punishment.” This paper seeks to apply this basic principle of intentionality to the issue of addiction to ascertain criminal responsibility of addicts.⁴ The research seeks to explore whether the state of addiction can be considered as a ‘disease’ that would make the act ‘involuntary,’ in turn making the offender eligible to claim the defense of diminished responsibility under the tenets of criminal law jurisprudence.

1.1 Diminished Responsibility

The doctrine of diminished responsibility absolves partial liability of an offender if he or she suffers from an abnormality of mind which substantially impairs their responsibility in the commission of a crime. The offender could be completely absolved from their liability if their complete cognitive abilities are compromised. The doctrine of diminished responsibility states that criminal law cannot confine a person within its ambit if he or she did not have the cognitive capacity to understand the consequences of the act they committed. The doctrine rests on the idea that criminal law shall include a generic defense that is mitigating in nature that would be determined depending on the factual situations/circumstances of each case.

The doctrine of diminished responsibility deals with cases where the criminal responsibility is reduced considering the mental condition of the person committing the crime. The plea is very closely related to the defense of unsoundness of mind. However, unlike the defense of unsoundness of mind, which is a general one, the doctrine of diminished responsibility is not considered relevant to charges outside murder. When a person is dependent on alcohol and the dependence exceeds to an extent where it affects the cognitive and rational abilities of the

¹ Orvill C. Snyder, “Criminal Responsibility” 204 *Duke Law Journal* 205 (1962).

² *Durham v. United States* 214 F.2d 862.

³ 252 F.2d 608, 616 (D.C. Cir. 1957).

⁴ The author has used the term “addiction” as the prolonged use of drugs and alcohol affecting the cognitive abilities of an individual.

individual in question, the ‘self-control’ that could be exercised in certain situations would also differ. An addict may not be able to exercise self-control in the same manner as a non-addict. The defense was evolved in the courts of Scotland.⁵ It was first recognized in *HM Advocate v. Dingwall*⁶. The doctrine battles for lesser punishment when there is a degree of weakness of moral or intellectual infirmity of the offender while committing the act in question. Diminished responsibility, being a type of mental disorder defense operates as an excuse. The law very well considers the act of offender as wrong but is prepared to exercise compassion because of the compromise of cognitive faculties of the offender at the time of commission of the offence. The Singapore Penal Code expressly states the doctrine of diminished responsibility under its Exception 7 to murder. The diminished responsibility exception affords courts a sentencing discretion by punishing and convicting the offender for culpable homicide that does not amount to murder.

However, the doctrine is confined only to murder. There are various reasons for this. The main argument in favor of confining the defense only to murder is that the other offences do not carry the same stigma as that of murder. Unlawful homicide and murder are clearly divided into murder and culpable homicide depending on their levels of culpability. If the scope of the doctrine is to be extended to other sections, it would require the redefining of offences or creating new offences or taking the route of complete acquittal. Diminished responsibility defense is pertinent in the case of offence of murder because it waives off death sentence. In the case of other offences like hurt or grievous hurt, the court will be able to consider reduced culpability as a part of the sentencing discretion. Finally, if we consider extending the scope of doctrine to other offences as well, it would adversely affect the efficient court administration and management of time.

The doctrine of diminished responsibility is centered around the crucial link between intention and criminal responsibility. There are contemporary jurisprudential conflicts regarding the extent to which addiction can be considered as a defense among the legal fraternity. Counter arguments were always raised regarding how addiction is essentially a moral weakness and should not be considered as a defense. However, there are medical evidence which proves that addiction could be treated as a chronic as well as relapsing brain disease.⁷The partial

⁵ Edwards, ‘Diminished Responsibility: A withering away of the concept of Criminal Responsibility?’ *Essays in Criminal Science* 303 (1961).

⁶ (1867) 5 Irvine 446.

⁷ Stephen J Morse, “Addiction, Choice and Criminal Law” *Faculty Scholarship at Penn Law* 1608 (2017).

responsibility doctrine of diminished responsibility would be applied in cases where the behavior of the defendant has satisfied the required elements of the crime, but his rational as well as cognitive abilities are compromised in a such a manner that his decision-making capabilities are affected detrimentally.

1.2 Addiction

Giving a one stop comprehensive definition for addiction is a difficult task altogether. Addiction can be defined as a compulsive, chronic, psychological, or physiological requirement for a habit concreting substance that has impacts the physical, social, and psychological values of an individual causing well defined symptoms including anxiety, irritability, nausea or even tremors upon withdrawal or abstinence. The addicts know that the intake of the substance is not helping their body and mind, however, is not able to stop depending on the same. Originally, addiction was referred to “giving over” or “being highly devoted” to a particular person or activity or the involvement in a habitual behavior that had negative implications.⁸ Addiction is essentially a disjunctive concept because of the presence of several attributes that do not share many elements in common. The way addiction manifest in humans differs from person to person. Addiction can be categorized by the following characteristics as per its impact on the body and cognitive abilities of individuals.

- Feeling Different
- Preoccupation with the behavior
- Temporary Satiation
- Loss of Control

Loss of Control is the state of addiction where the addict is not able to control their actions. There is sufficient cognitive impairment in this case. Criminal responsibility of addicts comes under discussion with respect to this stage of addiction. When an addict in this stage commits a crime, it would be difficult to determine whether his intentions were clear enough to have resulted in that consequence or it is a result of the cognitive impairment caused due to prolonged dependence to substances.

⁸ Steve Sussman and Alan N Sussman, “Considering the Definition of Addiction” 8 *International journal of Environmental Research and Public Health* 10 (2011).

A system of law shall be concerned with linking criminal responsibility and addiction into three specific heads. Firstly, addiction becoming the motive for the commission of a particular crime, secondly addiction being considered as a crime and finally, addiction compromising cognitive and mental faculties which leads to the creation or negation of criminal responsibility. Lord Atkin had opined that law should always abstain from imposing criminal responsibility in situations where the accused has committed an act out of an impulse which arose due to a mental condition which he essentially could not resist.⁹

The McNaughton rules of insanity¹⁰ also recognizes the fact that alcohol or drugs may result in causing a disease affecting the mind even temporarily, that will affect the cognitive abilities of a person. The degree of drunkenness that produces *delirium tremens* is considered as a disease affecting one's mind. In many jurisdictions, intoxication is not brought within the ambit of diminished responsibility. Intoxication is not considered for the defense because the damage or destruction it causes the brain is only temporary in nature and has no long-term impact. The defense would however be granted in situations where an accused persons past substance abuse history has resulted in longstanding and substantial damage to the brain. In such situations, the accused will have to prove that the abnormality of mind is due to the history of addiction and not a temporary state of intoxication.

II. History and Development of Models of Addiction

It is important to understand the history surrounding addiction to trace the development of scientific as well as criminal law jurisprudence treating addiction as a disease. The stage of addiction was first associated with Alcohol use. E.M Jellinek was a pioneer in the study of alcoholism. His contributions to the field of alcohol studies began in 1939. Jellinek played a key role in the establishment of the Yale Center of Alcohol Studies.¹¹ The center was among the first institutions to depoliticize issues surrounding alcohol, Jellinek advocated approaching addiction from a scientific perspective. The history of addiction as per the research conducted in the arena can be divided into three main stages:

- The pre scientific era of clinical speculation (1850-1940)

⁹ Joint Meeting of Medico Legal Society, "Addiction and Criminal Responsibility" 30 *Medico Legal Journal* 85 (1962).

¹⁰ The Mc Naghten Rule is a standard test used in criminal law in cases where the accused is considered insane while committing a particular act (such as killing) and he or she was not able to distinguish between right and wrong and was not in a position to understand the moral nature of the act due to a mental disease or a defect.

¹¹ Center for the Translational Neuroscience of Alcoholism (CTNA), Yale School of Medicine, *available at*: <https://medicine.yale.edu/psychiatry/ctna/> (last visited on: October 14, 2022).

During 19th century, in many countries, alcoholism started becoming a major public health concern when medicine and psychiatry were developing as professional areas. The research surrounding alcoholism during this time stems from William Carpenter's research on the area which classified different types of wine mania as 'oinomania'.¹²In his work Carpenter proposed three main types of Oinomania: acute, periodic and chronic. In the acute category, the desire to consume alcohol occurs suddenly and it rarely proceeds beyond irregular intoxication. In the periodic category, there is a pattern of binge drinking which becomes severe and damaging in the longer run. In the chronic category, alcoholism becomes an overwhelming preoccupation that results in constant alcoholic consumption.

- Jellinek era of review and synthesis (1941-1960)

The Jellinek era signifies the contributions of E.M. Jellinek in the field of alcoholism and related studies. He started working around the subject in late 1930's and brought a scientific perspective into the study. During this period, he developed original data, new methodology, and relevant question and hypotheses about alcohol and its use which were not to be found in any of the classic fields of study.

- Post Jellinek era of sophisticated scientific research (1960 – present)

EM Jellinek has significantly contributed to the development of treating addiction as a disease. His work was greatly influenced by the empirical research details. Depending upon the various methodological approaches that were used, the various perceptions regarding addiction were divided into different ranges depending on their seriousness concerning the impact on cognitive and physical abilities of individuals.¹³

2.1 Disease Model of Addiction

¹² William Carpenter, *On the use and Abuse of Alcoholic Liquors* (Prize Essays, London, 1851), available at: https://books.google.co.in/books?hl=en&lr=&id=UhQDAAAQAAJ&oi=fnd&pg=PR1&ots=DcCA6pk9_r&sig=jfozwHZcNjyZha2j3b-QRud7bbk&redir_esc=y#v=onepage&q&f=false (last visited on October 14, 2022).

¹³ Judit H Ward, William Bejarano, Thomas F Babor and Nicholas Allred, "Re-Introducing Bunky at 125: E. M. Jellinek's Life and Contributions to Alcohol Studies" 2 *Journal of studies on Alcohol and Drugs* 376 (2016).

When the research surrounding addiction started, the medical professionals were divided as to the treatment of alcohol as a moral or medical issue.¹⁴ The disease concept of addiction was developed substantially by Benjamin Rush and Thomas Trotter. They noted that alcoholism could be treated as a disease in which the alcoholic suffers from a gradual as well as progressive addiction that leads to loss of control over the consumption of alcohol. By the end of the 19th century, there was sufficient evidence to support the disease model of addiction based on the findings that came in pathology and microbiology.

Around the same time, the temperance movement started gaining momentum. The movement focused on chronic drunkenness and its moral implications. It was strongly vocal against considering addiction as a disease and pointed out that habitual drunkenness in any individual would lead to addiction. Alcoholism as a disease was considered more of a scientific hypothesis than a political and social construct.

Alcohol as well as drugs affect the brain in three different ways. Firstly, the pleasure center of the brain called basal ganglia is over activated.¹⁵ Due to the temporary positive feeling felt by people on consumption of the substance or drugs, they continue using the same. With repeated usage of the substance, a tolerance is developed and the addicts are forced to consume more substance to get the same positive feeling due to which they started consuming the drug in the first place. The brain becomes accustomed to the increased tolerance levels and the person is becoming addicted to the substance.¹⁶

In the second stage, the body processes the drugs and alcohol consumed by the person, the brain area becomes increasingly sensitive and the individual starts experiencing symptoms like withdrawal, depression, irritability and anxiety. At this stage, when the person makes conscious efforts to stop drinking, the withdrawal symptoms might also be severe ranging from hallucinations, incontinence, loss of bodily balance and emotional breakdowns.¹⁷ In the third stage, the alcohol and drugs specifically impact the prefrontal cortex which is the decision-making part of the brain. There will be serious impairments regarding decision making in this stage. At this point the person will not be able to understand the result of his actions. Now, the

¹⁴ Michael M. O'Hear, *Federalism and Drug Control*, 57 *VAND. L. REV.* 784 (2004)

¹⁵ *Drugs, Brains, and Behavior: The Science of Addiction*, *National Institute on Drug Abuse*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drugs-brain> [<https://perma.cc/FZ2D-7LU5>].

¹⁶ Shreeya Sinha, *Heroin Addiction Explained: How Opioids Hijack the Brain*, *New York Times* (Dec. 18, 2018).

¹⁷ Steven M. Melemis, "Relapse Prevention and the Five Rules of Recovery" 88 *Yale Journal on Biology and Medicine* 328 (2015).

question is whether an offender possesses an intention strong enough to invoke criminal responsibility when they are in such a situation.

The discussions surrounding addiction as a disease opened doors to the possibility that it would exclude criminal liability. In *Robinson v. California*,¹⁸ the majority opinion given by Justice Stewart acknowledged the fact that people who are addicted to drugs shall either be considered as diseased or ill.¹⁹ The central point of his argument rests on the fact that it is considered a disease considering the impact it has on brain functions of individuals. The person is not healthy physically and mentally if the state of addiction persists.

Addiction can be categorized as “a compulsion symptomatic of a disease” or as an “invariable” symptom that coexists with a disease. The term disease has a complicated definition even in the medical context. The term basically suggests that a person manifests some conditions that are essentially a result of biological conditions. The key problem is that addiction is not uniformly categorized as a disease by the medical professionals. Even when the definitions and theories tend to have clarity and uniformity, it would not be in a position to explain which aspects of the disease shall be considered to be of an exculpatory nature in criminal law. The person raising the defense has to prove dual factors – the existence of a mental disease as well as the defect in the volitional capacity.²⁰

2.1.1. *Critically Analyzing the Disease Model of Addiction*

The disease model of addiction puts forward the idea that addiction is influenced by multiple factors and it can be treated. There might be genetic, social, and other causes for addiction and the disease model argues that it can be cured through proper treatment measures. Addiction treatment responds to the circumstances and needs of the individual seeking treatment.²¹ The treatment and cure from addiction as per the disease model is only an option-individuals with stable living conditions could resort to. As per Benjamin Rush who had developed the disease model of addiction, he says that the addicted individual should completely abstain from these

¹⁸ 370 US 660 (1962).

¹⁹ 370 U.S. 660, 667 and *Linder v. United States*, 268 U.S. 5, 18 (1925).

²⁰ Herbert Fingarette, “Addiction and Criminal Responsibility” 84 *Yale Law Journal* 413 (1975).

²¹ Edward P. Havranek, Mahasin S. Mujahid, Donald A. Barr, Irene V. Blair, Meryl S. Cohen, Salvador Cruz-Flores, George Davey-Smith, Cheryl R. Dennison-Himmelfarb, Michael S. Lauer, Debra W. Lockwood, Milagros Rosal & Clyde W. Yancy “Social Determinants of Risks and Outcomes for Cardiovascular Disease: A Scientific Statement from the American Heart Association” 132 *Circulation* 873, 888 (2015).

substances.²² This view roots from a privileged point of view which presumes that all addicts come from a background that makes it easy for them to quit addiction as and when they want to.

III. Addiction and Diminished Responsibility

The courts had always been divided on the scope of responsibility of the people addicted to substances. This conflict is because a person decides to use a substance initially out of choice and at a later point only it becomes an addiction. Initially the person themselves makes a decision to try a particular substance and it turns into addiction upon prolonged use. So, the question is with respect to the choice made by the individual upon trying a particular substance which becomes an addiction at a later point.

3.1 Concept of addiction

The concept of addiction is primarily concerned with four core concepts of criminal law - voluntary intoxication, involuntary intoxication, temporary insanity and fixed insanity.

3.1.1 Intoxication

Addiction can be manifested as a kind of intoxication due to heavy dependence and consumption of a substance that leads to impaired judgment, physical functioning, and loss of inhibitions.²³ The intersection of criminal law happens when the criminal defendant raises the defense that criminal liability cannot be imposed since they were intoxicated and their cognitive abilities were compromised. While dealing with this argument, the court seeks to understand whether the intoxication was voluntary or involuntary in nature.

Voluntary intoxication happens when a person takes a substance possessing intoxicating properties. In this case, exculpation is not considered as a viable option since the choice to consume the substance was taken by the individual themselves. As per William Blackstone, voluntary intoxication was to be considered as an aggravation of the offence and not as an excuse for any kind of criminal misbehavior.²⁴ Justice Story also considered that intoxication is not an excuse for murder but essentially aggravation for its malignity.²⁵ It is not possible to

²² Benjamin Rush, *An Inquiry into the effects of ardent spirits upon the Human Body and mind* 36 (Cornelius Davis, New York, 1823).

²³ The medical and scientific reasons for this assumption is explained in the later sections of the paper.

²⁴ Egelhof, 518 U.S. at 44 (quoting 4 William Blackstone, Commentaries 25-26).

²⁵ *United States v. Cornell*, 25 F. Cas. 650, 657-58 (C.C. RI. 1820) (No. 14,868).

negate criminal responsibility based on voluntary intoxication because there is free will in the consumption of the substance.

The next category is involuntary intoxication. Involuntary intoxication happens when a person consumes a substance with intoxicating properties not upon his free will and the cognitive abilities are compromised as a result of that. Involuntary intoxication can happen under two main circumstances. Firstly, when a third party forces the offender to consume the substance with intoxicating properties. Secondly when a medical professional prescribes the substance with intoxicating properties.²⁶ Involuntary intoxication in many cases has negated the criminal liability because a free will was absent during the consumption of the intoxicating substance and the criminal act was not according to his intention.²⁷

3.1.2 Insanity

Insanity is another domain through which intoxication and addiction are addressed under criminal law. Insanity is concerned with the aspect as to whether an individual can understand the consequences and wrongfulness in their act.²⁸ Addiction can result in temporary as well as permanent insanity depending on the stage of addiction of the individuals. Temporary insanity results in the compromise in cognitive faculties for a short span of time whereas continuing insanity results in the compromise in cognitive faculties for a longer period.²⁹

The discussions surrounding this progressed with the US Supreme Court decision in *Robinson v. California*.³⁰ In this case, narcotic addiction was accepted as a disease which affects the normal functioning of the brain. The judgment also noted that the criminal punishment of such a person thus falls under the category of cruel and unusual punishment. The general trend that was followed by courts was to interpret the judgment in a minimalist way and the courts have argued exculpation to be extended to crimes that relate to addiction.³¹

In *Powell v. Texas*,³² which was decided 6 years after the case of *Robinson*, court took leap and decided that an alcoholic person shall be immune from criminal punishment for public

²⁶ When Intoxication Deemed Involuntary to Constitute a Defense to Criminal Charge.

²⁷ *Sallahdin v. Gibson*, 275 F.3d 1211, 1236 (10th Cir. 2002) ("Involuntary intoxication results from fraud, trickery or duress of another, accident or mistake on defendant's part, pathological condition, or ignorance as to the effect of prescribed medication.").

²⁸ *Id.*

²⁹ *United States v. F.D.L.*, 836 F.2d 1113, 1116 (8th Cir. 1988).

³⁰ 370 U.S. at 679.

³¹ Goldstein & Katz, *Abolish The "Insanity Defense"- Why Not?* 72 *Yale Law Journal* 853 (1963).

³² 392 U.S. 514 (1968).

drunkenness owing to his addiction. Discussions surrounding addiction and criminal responsibility progressed after this. Two arguments were important in this context:

- Addiction and prolonged drug use could very well be linked to a disease
- The usage of drugs by addicts is an involuntary result of a condition that is either physiological or psychological in nature.

In cases including *MacDonald v. United States*³³ and *United States v. Brawner*³⁴, US court had shown a sympathetic approach towards treating addiction as a disease. However, it was reluctant to accept addiction as a part of mental disease. The disease argument of addiction finds basis in two crucial factors. Firstly, it says that the physiological as well as psychological condition of a person shall be considered while deciding on the criminal responsibility of a person for his conduct. Secondly, it should be implied that the addictive behavior of a person is involuntary in nature. Another line of argument raised with respect to addiction is that it is involuntary. In *Powell v. Texas*³⁵, the argument was centered around the aspect that “alcoholism is a disease that is invariably and non-culpably caused and maintained”.

3.2 Addiction and responses of Criminal Law

The response of the criminal justice system towards the use of alcohol and illicit drugs has always been contradictory in nature. This contradiction can very well be attributed to the potential of alcohol and such illicit drugs to affect the status of mind of the individual and result in creating chaos in the society.³⁶ Criminal law in general imposes responsibility on individuals for their actions which is guided by clear intention. Addiction takes individuals into a state of life where they can neither understand their actions nor comprehend their consequences.³⁷

The main question that has been dealt with here is how an excusing condition of a person is dealt under criminal law. This cannot merely be considered as a doctrinal or legal question because dependence on drugs is considered morally not right by the society and is considered as a deviant behavior per se. Individual autonomy is one among the key concepts in justifying criminal law: every person is considered responsible for their behavior. The science of addiction basically comes in conflict with the addict’s responsibility for their act. When you

³³ 312 F.2d 847.

³⁴ 471 F.2d 969 (D.C. Cir. 1972).

³⁵ 392 U.S. 514, 569 (1968) D.

³⁶ Hans Jorg Albrecht, “Addiction, Intoxication, Criminal Law, and Criminal Justice 4 *European Addiction Research* 85 (1998).

³⁷ Paul H Robinson, “Causing the conditions of one’s own defense: A study in the Limits of Theory in Criminal Law Doctrine” 71 *Virginia Law Review* 2 (1985).

are intoxicated, it seriously affects your rational thinking capacity. When an offender is addicted to alcohol, the impact of the same lasts beyond the time of intoxication. When the individual's agency is impaired and he cannot exercise control over his actions, the intention to commit a particular act is difficult to determine.³⁸

Some continental criminal justice systems have already dealt with the question of treatment of the offenders who are addicted. Countries like Germany, Switzerland and Austria provide for a two-track system of criminal sanctions which enable providing special treatment to offenders who are intoxicated or addicted in case there is a risk of falling into serious problems and the diminished responsibility element with respect to criminal responsibility is established.³⁹

There are different theories that try to understand the causal link between addiction and criminal behavior. The 'disinhibition' theory establishes a direct link between the crime and the addiction of the offender. The 'common cause' theory establishes that a set of independent variables which forms a common set explains the behavior between alcohol addiction and crimes. The 'theory of interaction' approach says that alcohol influences perceptions which distort the realities of people and explains the crimes they commit. The 'common cause theory' is the most reliable theory considering the research advances with respect to drug use, addiction and crimes.⁴⁰

IV. Scientifically Analyzing Addiction

4.1 Neuroscience and Addiction

Addiction is explained as a chronic and relapsing disease of the brain that is triggered by prolonged drug addiction and is in a vulnerable position due to genetic as well as social positions.⁴¹ The emotional capacity, stress levels and the will to self-regulate is decreased among the addicts. The addict is compelled to take the drug even after continuous problems

³⁸ *Id.*

³⁹ Andrew Ashworth, *Principles of Criminal Law* (Oxford University Press, Oxford, 1995).

⁴⁰ *Id.*

⁴¹ Nora D Volkow, Michael Michaelidas and Ruben Baler, "The neuroscience of Drug Reward and Addiction" 99 *Physiological Review* 2115 (2019).

and emotional breakdowns. The neurocircuitry of addiction is also something that requires attention.

People who become addicts after prolonged drug use shows drug induced behavior that varies from drug to drug. For instance, drug induced behavior will be on the higher end for drugs like heroin or methamphetamine and lower for drugs like cannabis or alcohol. The studies in epidemiology had suggested that the environments also influence the behavior of addicts and the level of addiction. Poor social support when coupled with easy accessibility of drugs leads to increased exposure of drugs eventually leading to drug addiction. The effects of drugs and how it affects the brain is still a matter of research and the developments in this regard have been quite fascinating.

4.2 Addiction and Choice

Individuals with drug or alcohol use are certain points incapable of exercising a choice as to whether to drink or not. However, this is not a blanket rule. An individual who is suffering from drug or alcohol problems is not able to exercise that choice at times and would not be proper subjects of criminal sanction.⁴² The disease model of addiction says that the individual cannot be blamed for alcohol or substance use that leads to the compromise of cognitive abilities. This does not negate the responsibility for exercising choice when the disease is acquired. If a person is categorically compelled to drink due to his social and economic situations, then he could be given an exception since the choice element was lacking. But if an addict had the opportunity, awareness, viable options, or individual circumstances to distance themselves from the substances, it could be presumed that a choice was available to the addict with respect to their dependence on the substance.

The disease model of addiction says that the addict cannot be held responsible for developing an alcohol or substance disorder. This does not categorically incapacitate the addicts from exercising their choice regarding addressing the disease and the adverse manifestations of it. Dr. David Linden notes that, “the development of addiction is not the addict’s fault. Believing that addiction is a disease does not absolve addicts from responsibility for their own recovery”.⁴³

⁴² Hanna Pickard, “Responsibility Without Blame for Addiction” 10 *Neuroethics* 169 (2017).

⁴³ Mary Carole McCauley, Johns Hopkins Neuroscientist David Linden Explains the Biology of Pleasure, BALT. SUN (Apr. 14, 2011).

It is possible that an individual with alcohol or drug disease is able to form a conscious awareness that their drinking use is problematic and warrants corrective measures. Even individuals with addiction can make a conscious effort to detach them from the crime they are committing. Addiction is traditionally linked with involuntariness. Involuntariness is said to exist when the actus reus is considered as a reflexive or conditioned response towards a stimulus that is external in nature.⁴⁴

4.3 Behavioral Genetics and Addiction

Behavioral genetics intends to study the role of genetics and the environment to understand the variations observed in human behavior. Behavioral genetics focuses on the genetic variation and behavioral variations that occur in people belonging to a population. It is pertinent to note that behavioral genetics evidence is already used in criminal trials for varying purposes, including as exculpatory evidence to support defenses and as a mitigating defense during the sentencing process. Genetic contribution plays a key role in contributing to behavioral differences in cases of violence, hyperactivity, aggression, antisocial behavior, drug addiction, alcohol abuse, impulsivity, and other behavioral traits.

Behavioural genetics does not say that all human actions are affected by their genes or to put it in perspective, it in no way supports the idea of genetic determinism. A complex interaction between biology and environment gives rise to behavioural differences between individuals. The correlation between behavioral variation and genetic variation is estimated on the basis of “heritability”.⁴⁵ Heritability gives a statistical estimate of the contribution of genetic differences and environmental differences to understand the differences in behaviour of individuals. Heritability can very well change in accordance with the age, culture, and the environment of the population under study.

In order to evade criminal liability, criminal defendants often claim that the particular criminal act was committed due to the genetic predisposition to addiction and the offender acted through reflex or convulsion and not through free will. The involuntariness defence in accordance with the genetic predisposition to compulsion was mostly prevalent in the perspective of drug or alcohol addiction. When it comes to drug addiction, the self-control of an individual is guided by two essential aspects with respect to drug addiction - the physical craving for the drug and

⁴⁴ Neil Levy, *Addiction and Self Control: Perspectives from Philosophy, Psychology and Neuroscience* (Oxford University Press, Oxford, 2013).

⁴⁵ Laura A. Baker, Serena Bezdjian & Adrian Raine, “Behavioral Genetics: The Science of Antisocial Behavior” 69 *Law and Contemporary Problems* 7 (2006).

the moral standards possessed by the defendant.⁴⁶ In the United States case of *People v. Decina*,⁴⁷ the rationale that was cited by the court was that if the person is aware of his genetic predisposition, then the choice to take drugs or alcohol constitutes a voluntary act and hence, he could be punished for the offence committed.⁴⁸

V. Addiction in the Indian Perspective

5.1 Intoxication

Criminal Responsibility and Intoxication is intertwined in many ways. Alcohol is closely associated with violent crimes. Alcohol acts as a depressant on the brain. Prolonged influence of alcohol weakens or removes inhibitions that keep us within the boundaries of civilized behaviour. It severely impairs reasoning abilities, perceptions and inhibitions of persons to foresee consequences.⁴⁹ The acts committed by a person under the influence of alcohol might not be in his real senses. Convicting a person for an act that is strictly beyond their control is not within the general scheme of criminal law. However, intoxication is not treated as a general defence in the common interests of the society. A person becomes addicted by getting intoxicated voluntarily and impairs good judgment.⁵⁰

In the case of intoxication, some offenders will get a complete acquittal, whereas in other cases a partial acquittal is made possible. When alcohol is consumed it reduces the cognitive capabilities of a person causing the conduct of the person to be involuntary and affects the physical component of a crime also. The defence of intoxication is dealt under sections 85 and 86 of the Indian Penal Code.⁵¹ Intoxication is considered as an extenuating factor. Section 85 deals with involuntary intoxication. The language used in section 85 is very similar to that of section 84. It accords immunity from criminal liability to a person who is subject to involuntary intoxication. Intoxication is considered as a defence to criminal charge if at the time of committing an act or omission, the person did not know the consequences of the act and the

⁴⁶ *United States v. Moore*, 486 F.2d 1139 (D.C. Cir. 1973). Behavioural genetics in the context of addiction was not the primary subject matter of the case. However, an expert on drug addiction stated that the offender in the case “was an addict of long standing, that appellant’s addiction had the characteristics of a disease, and that as a consequence appellant was helpless to control his compulsion to obtain and use heroin.

⁴⁷ 138 N.E.2d 799 (N.Y. 1956).

⁴⁸ Nita A. Farahany & James E. Coleman Jr, “Genetics and Responsibility: To Know the Criminal from the Crime” 69 *Law and Contemporary Problems* 115 (2006).

⁴⁹ Glanville Williams, *Textbook of Criminal Law* (Stevens & Sons, London, 1983).

⁵⁰ *Sohon Manihi v. State of Bihar*, AIR 1970 Pat.

⁵¹ Section 85 - Act of a person incapable of judgment by reason of intoxication caused against his will.

state of intoxication was caused without the consent of the person so intoxicated or the person against whom the criminal charge was instituted was temporarily or otherwise insane as a result of the intoxication. For this purpose, intoxication is deemed to be a state that is produced by narcotics and drugs. Section 86 gives a limited exception from criminal liability when a voluntarily intoxicated person commits a crime.⁵²

The Indian Penal Code envisages three types of intoxication. The first case is where the third party has maliciously or negligently led the offender into intoxication as a result of which they were not able to understand the consequences of the act or omission they are committing. This comes under the category of non-self-induced or involuntary intoxication. The second form is where the accused was in a severe state of intoxication and is supposed to be insane at the time of commission of the offence. The third situation is where the accused is exculpated from an offence because they were not able to have that intention for the commission of the offence as a result of the state of intoxication they were in. The basic idea behind this is that the state of intoxication restrains the person from having an intention for the commission of that particular crime.

5.1.1 Involuntary Intoxication

If we historically trace the evolution of the sections with respect to intoxication, we can see that the final version of the sections are narrower than that of Macaulay's provisions. To put it in perspective, as per the structure of section 85 of the Indian Penal Code, involuntary intoxication is accepted as a defence only under circumstances where the cognitive abilities of the accused are compromised to a level similar to that of unsoundness of mind. The scenarios of lessened inhibitions are not accepted even though Macaulay had envisaged this in the draft code.⁵³

Section 85 of the Indian Penal Code, 1860 has two limbs. S. 85 (2) (a) is specifically with respect to whether the intoxication was self-induced or involuntary. As per the context of the section 85 (2) (b), in order to successfully raise the defence of intoxication, the accused person shall prove that:⁵⁴

⁵² *Supra* note 59.

⁵³ Ferguson, 'Intoxication' in Chan, Wright and Yeo (eds), *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform* 257 (Ashgate, London, 2011).

⁵⁴ *Bablu @ Mubarik Hussain v. State of Rajasthan* (2006) 13 SCC 116.

- At the time of committing the offence, the accused did not know the nature or consequences of their conduct.
- The reason for the commission of the offence shall necessarily be intoxication which leads to a temporary insane condition of a person.

The phrase ‘temporary or otherwise’ basically means that the symptoms of insanity may be transient in nature. In section 85, the defence is surrounded by the malice or negligence of a third party, when the essential question in consideration of criminal law is concerning the blameworthy stage of the accused. The exculpatory effect of involuntary intoxication depends on whether the intoxication was done against the will of the offender or not. The standards required are very similar to that of the levels expected in the case of unsoundness of mind. The degree of cognitive impairment caused as a result of intoxication is placed on a pedestal comparable with that of unsoundness of mind. A mere fact that a particular intoxicant was administered to the offender by another person does not qualify him for the defence.⁵⁵ Just because of the fact that the mind of an intoxicated person was detrimentally affected and it gave rise to some violent passion does not make the offender eligible for any general exemption.⁵⁶ It needs to be established that as a result of the intoxicant that was administered to the person, they were not able to understand the consequences of the act they committed.⁵⁷

In the case of *Bablu Mabarik Hussain v. State of Rajasthan*⁵⁸, the appellant under the influence of alcohol killed his wife and five children, the court pertinently pointed out that mere proof of intoxication is not enough to invoke section 85. The crucial element which the offender has to prove is the element of involuntary intoxication.

5.1.2 Voluntary Intoxication

Voluntary intoxication is not considered as a defence under Indian law because of the social implications it would have.⁵⁹ Section 86 of the Indian Penal Code deals with the immunity of a self-intoxicated person when he commits an offence that requires a ‘particular intention or knowledge’ on the part of the accused. The degree of intoxication demanded by section 85 and

⁵⁵ *Chet Ram v. State of Himachal Pradesh* (1971) CrLJ 1246 (HP).

⁵⁶ *Amer Singh v. State* AIR 1955 Punj 13.

⁵⁷ *Venkappa Kannappa Chowdari v. State* (1996) Cr LJ 15 (Kant).

⁵⁸ (2006) 13 SCC 116.

⁵⁹ *State of Orissa v. Kielbasa Suba* (1978) CrLJ (NOC) 259 Ori.

section 86 is similar in nature. The degree of intoxication should make the offender incapable of forming the specific intent required to commit the offence.⁶⁰

Section 86 could be considered as a defence in true sense and the burden is placed on the accused to prove intoxication on the basis of the balance of probabilities. This is because the section is found in the Chapter VI of the Indian Penal Code specifically dealing with general exceptions.⁶¹ Section 85 (1) also expressly refers to section 86 as concerned with the defence of intoxication. Additionally, it needs to be pointed out that voluntary intoxication allowed under section 86 (2) shall not be placed in such a manner that the accused is put in a more favourable position than an accused who pleads another defence under the code. The main rationale for reducing the blameworthiness of the accused is because he or she lacked the fault element required for the commission of the offence.

The second limb of section 86 is synonymous to the rule laid down in the case of *DPP v. Beard*.⁶² However there are significant differences between the interpretations. The rule looks into the aspect as to whether intoxication rendered the accused incapable of having an intention whereas the provision looks into whether intoxication prevented the accused from having the intention which is required to commit the crime that is charged against him. It is pertinent to note that the accused person will be punished if he or she possesses the fault element. In the English case of *R v. Kingston*⁶³, the accused was a homosexual with paedophilic tendencies and he was charged with the offence of assault of a 15-year-old child. The case was that the co-accused in the case had administered a drug to the accused as well the victim so as to get compromising pictures. It was concluded that the drugs could have brought a temporary change in the cognitive abilities of the accused as well as the victim. The trial court opined that “a drugged intent is still an intent”. The court of appeal quashed the conviction and stated that:⁶⁴

The law recognize that, exceptionally, an accused person may be entitled to be acquitted if there is a possibility that although his act was intentional, the intent itself arose out of circumstances for which he bears no blame.

The House of Lords later rejected this proposal stating that no such principle existed.

⁶⁰ *Dasa Kandha v. State of Orissa* (1976) Cr LJ 2010 (Ori).

⁶¹ *Chan Kwee Fong v. PP* [2010] I MU 441; *Francis Antonysamay v. PP* (2005) 3 MLJ 389; *Juma'at bin Samad v. PP* (1993) 2 SLR (R); *Surudet Senarit v. PP* (1993) 2 SLR (R) 754; *Indra Wfaya Ibrahim v. PP* [1995] 2 SLR (R) 86.

⁶² (1920) A.C. 470.

⁶³ [1994] Crim L R 846.

⁶⁴ [1994] QB 81 at 7.

5.2 Intoxication and Insanity

In the case of *Basudev v. Pepsu*,⁶⁵ the apex court held that insanity, whether it is produced by drunkenness or otherwise becomes a defence to the crime that is charged. Voluntary intoxication thus serves as an extenuating factor if it leads to the ‘unsoundness of mind’. This was reiterated by the court in the case of *Bablu Maubarik Hussain v. State of Rajasthan*.⁶⁶ The Penal Code does not create any differentiation between the insanity that is caused as a result of excessive drinking and insanity due to other factors. Voluntary drunkenness becomes a key element in determining whether the accused person had the mental ability to form the specific intent required for the commission of the offence.⁶⁷

It is pertinent to note that intoxication and insanity cannot be treated in the same manner. The poisoning of the brain is essentially a self-induced condition. The threat of punishment may influence a person to reduce their alcohol intake and restrain themselves from prolonged dependence on alcohol. Drunkenness in itself cannot be considered as insanity. The prolonged use may lead to addiction and result in a condition similar to that of addiction. The burden of proof in both voluntary and involuntary intoxication rests on the offender.⁶⁸

5.3 Problems in the approach towards addiction

Addiction is a problem that affects individuals in a long-term manner. It has serious physical as well as mental implications on the individuals. Addiction cannot be treated merely as a condition that is created by individuals exercising their free will to depend on a substance that they know would create serious complications. But the social circumstances surrounding the individual that led him to such an addiction shall also be a matter of concern. The effective and emotional dimensions of addiction are often overlooked by law and neuroscience.

Addiction cannot be merely seen as a problem that is neurological in nature. In the works of S.E Hyman on addiction, he tries to understand the concepts of neuroscience and neuroethics on the basis of cognitive abilities.⁶⁹ The impairment in decision making while a person is addicted is linked to the loss of “cognitive control of behaviour” due to the failure of brain

⁶⁵AIR 1956 SC 488.

⁶⁶ (2006) 13 SCC 116.

⁶⁷*Supra* note 74.

⁶⁸*Enrique F Rio v. State* (1975) CrLJ 1337 (Goa).

⁶⁹ Hyman S.E., “The neurobiology of addiction: Implications for voluntary control of behavior” 7 (1) *American Journal of Bioethics* 8-11 (2007).

processes that invariably affects important cognitive functions. There is indeed loss of certain cognitive functions because of addiction, but the domains of emotions, feelings and the aligned capacities of brains should also be given equal attention. It is because of the interference of emotions and feelings that addiction is treated fundamentally as an affective matter that concerns the competing feelings and emotions in a brain set up that is essentially governed by conflicting matters.⁷⁰

Affective neuroscience brings us to the understanding that feelings and emotions of a person are equally important in their decision-making process.⁷¹ The choice to decide on the selection of options is ultimately what determines the consequences of a particular act of an individual.⁷² Addiction basically affects the capacities of the brain that generate values that ultimately determine the choice of an individual. Even though the disruptions have consequences that are cognitive in nature, addiction cannot merely be considered as a cognitive disorder. Emotions and the corresponding effects determine the thinking and behaviour capability of an individual. The criminal law jurisprudence often fails to see addicts as individuals who deserve attention and treatment. It is important to understand that like hunger, substance dependence is a craving in people who are addicted to a particular substance. The addicts struggle hard to not give up to this feeling in many situations, but the same is difficult to be kept under control unless without sufficient medical, emotional and societal support. Addiction is not a matter that is purely semantic in nature.⁷³ The standards for proving cognitive ability compromise in addicted individuals as per the standards specified in the Indian Penal Code is invariably high. This creates various complexities and results in conviction of addicted individuals who were not able to understand the nature and consequences of their actions.

VI. Addiction and Diminished Responsibility: Comparative Perspective

6.1 Malaysia and Singapore

⁷⁰ Charland L.C., "Cynthia's dilemma: Consenting to heroin prescription" 2 (2) *American Journal of Bioethics* 37 (2007).

⁷¹ Panksepp J., *Affective neuroscience* (Oxford University Press, Oxford, 1998).

⁷² Damasio A., *Descartes' error: Emotion, reason, and the human brain* (New York Press, New York, 1998).

⁷³ Louis C. Charland, "Affective Neuroscience and Addiction" 7 *American Journal of Bioethics* 20 (2007).

Diminished responsibility doctrine is expressly accepted as Exception 7 to murder under the Singapore Penal Code. In the case of diminished responsibility, there are 3 elements which the accused must prove on the balance of probabilities for the plea to succeed under exception 7. Firstly, at the time of killing, the accused person was suffering from an abnormality of mind. Secondly, the abnormality must have arisen from a condition of arrested or retarded development of mind, or from any inherent cause, or was induced by disease or injury. The third element requires the abnormality of mind to have substantially impaired the accused's mental responsibility for killing. The scope of the defense of diminished responsibility is wider than that of unsoundness of mind under section 84 of the Singaporean Penal Code as well as the insanity of mind under M'Naghten Rules in the very fact that it is not restricted to defects of reason i.e. understanding or cognition, but extends to volitional defects as well. The scope of the exception goes beyond the general instances of abnormalities of mind. This is stated well in the case of *G. Krishnaswamy Naidu v. PP* where it was noted that the 'Exception 7' is not concerned with all manner of abnormalities but only those that had substantially impaired the mental responsibility of the accused person.

In Malaysia, it can be noted that the defence of intoxication operates mainly as a complete defence and not merely as a mitigating circumstance. But in the case of *Tan Hung Song v. R*⁷⁴ and *Suba Singh v. PP*⁷⁵, the court considered intoxication as a mitigating circumstance reducing the verdict of murder under section 300 to that of culpable homicide not amounting to murder under section 299. The observation of the court in *Tan Hung Song* suggests that intoxication would have negated the *mens rea* of intention in section 300. In the case of *Subha Singh*, the court opined that, at the time of commission of the crime, the person is not able to understand the consequences of his actions and is unable to form an intent to perform the crime, then it is reasonable to reduce the offence of murder to manslaughter. The section 86 (2) of the Singapore and Malaysian Code does not speak about "knowledge or intent" as stated in the Indian Penal Code, it only refers to intention.

In Singapore, from the cases that came before the court, it is quite evident that the courts are reluctant to accept the defence of intoxication. The aspect of pathological drunkenness was raised in *Kalidass*.⁷⁶ In this case, the accused person was charged with the murder of his seven

⁷⁴ (1951) *MLJ* 181.

⁷⁵ (1962) *MLJ* 122.

⁷⁶ Unreported decision, Criminal Appeal No. 5 of 1980

year old niece by strangulation. The accused raised the defence that he was suffering from pathological drunkenness and the defence psychiatrist also confirmed this. However, the court in this case rejected the defence of diminished responsibility. In the case of *PP v. Tan Ho Teck*⁷⁷ also, the court was reluctant to review the position of alcoholism with respect to diminished responsibility. The offender had family problems, was depressed and was an alcohol addict. The main defences that were raised in the case were insanity, incapacity to form specific intention for the offence charged as a result of intoxication and diminished responsibility. The question as to whether drinks and drugs can produce an abnormality of the mind as a result of inherent causes of disease under the defence of diminished responsibility is treated as “gray area”.

Prolonged dependence on alcohol leads to a condition called “chronic sozzling” that gives rise to explosive rage and aggression that is beyond the control of the accused. Even this condition was hardly an exception in relation to the defence of diminished responsibility. As per the qualifications set out in the code, both voluntary as well as involuntary intoxication would absolve a person from liability. Voluntary intoxication in this regard operates in the perspective of insanity induced by intoxication as highlighted under section 85(2)(b) and under section 86(2) where the offence charged requires the proof of intention. Involuntary intoxication is covered under section 85(2)(a). As enshrined under section 107 of the Evidence Act, the legal burden to prove the existence of circumstances that exempt criminal liability falls on the accused who raises the defence of intoxication. The standard of proof required here is the balance of probabilities. This was stated in the case of *PP v. Alang Mat Nasir*⁷⁸ and *N. Govindasamy v. PP*.⁷⁹

The availability of medical and scientific evidence to prove the extent to which cognitive abilities were compromised was considered important however not essential. This point was clearly stated by the Malaysian Federal Court in the case of *Francis Antonyswamy v. PP*. The main concern in the defence of intoxication is how the state of mind of a person is affected at the time of intoxication and whether the person would have been able to form necessary intention at that stage.⁸⁰ This was reiterated in cases of *PP v. Ramasamy a/l Sebastian* and *Abdul Aziz bin Mohammed Shariff v. PP*⁸¹. The facts and circumstances surrounding the state

⁷⁷ [1988] 3 M/J 264.

⁷⁸ [1938] 1 MLJ 153

⁷⁹(1976) 2 MLJ 49.

⁸⁰ {2005] 3 MU 389 at [471].

⁸¹ PP [2010] 6 MU 759.

of mind of the accused under the influence of intoxication, before and after the consumption of the intoxicant is crucial.⁸² As stated by the court in *PP v. Daniel Lo Kiang Heong*⁸³, a higher degree of intoxication is required to completely negate the intention component of the crime committed, however, it does not mean that it should be to an extent where the person passed out because of the same.

Judicial developments peculiar to Singapore gives importance to whether the intoxication was voluntary or involuntary.⁸⁴ The main argument is that self-induced intoxication, not being illegally caused' does not meet the definition of 'injury' as provided under section 44 of the Code. Since, involuntary intoxication had been illegally caused, it very well meets the definition of injury and therefore can support the plea.

The key principles regarding intoxication and the law of diminished responsibility as accepted in Singapore and Malaysia could be zeroed down as follows:

- In the case of voluntary intoxication, the offender could be exonerated from criminal liability for murder which requires particular intent by showing that at the time of commission of the offence, the offender lacked that intent.
- In the light of the decisions in *Tan Hung Son* and *Subha Singh*, a successful plea of intoxication could reduce the offence of murder to culpable homicide not amounting to murder.
- In charges of murder under section 300 (1) (2) or (3), if it is proved that the accused by reason of intoxication did not form the required intent but instead had the knowledge that their act of causing bodily injury was likely to cause death, they will be liable for culpable homicide not amounting to murder that is punishable under section 304 (b) of the code.
- Intoxication offers reduced liability from murder to culpable homicide not amounting to special exceptions to section 300 of provocation and diminished responsibility. It is pertinent to note that provocation and diminished responsibility when successfully pleaded becomes partial excuses than partial justifications.

⁸² *Chan Kwee Fong v. PP* [2010] 1 MU 441.

⁸³ [2007] SGDC 47.

⁸⁴ *PP* (1999) 1 SLR(R) 800

6.2 England

In the case of addiction, the English Courts were of the opinion that involuntary craving for alcohol may fall within the ambit of the doctrine of diminished responsibility.⁸⁵ The English Court of Appeal in *R v. Dietschmann* rightly puts that the trier of fact shall answer the question: Has the defendant satisfied you that, despite the drink, his mental abnormality substantially impaired his mental responsibility for his acts?⁸⁶

Kenny opined that neither addiction nor drunkenness is to be considered a defence because unlike insanity, it had been produced voluntarily and out of one's own choice. It is hence, to be considered wrong both legally and morally. The main reason behind which drunkenness was not considered a defence is because the general perception was that the state of drunkenness could be easily feigned or counterfeited. It was pointed out that there could rarely be conviction for homicide if drunkenness avoided responsibility.⁸⁷

However, Hall and Williams discounted this fear by raising the argument that a person who wants to commit a crime would not want to incapacitate himself by becoming greatly intoxicated. The offender would rather focus on escaping detection than on relying on drunkenness as an excuse. The landmark case on the defence of drunkenness is *DPP v. Beard*.⁸⁸ In this case, the defendant tried to molest a girl. In order to stop her from screaming, he closed her mouth and she died of suffocation. The defendant when charged with murder, raised the defence of drunkenness. The house of lords restored the conviction for murder. Three main propositions were laid by the court on drunkenness:

- Insanity whether produced by drunkenness or otherwise is to be considered a defence to the crime charged
- The evidence of drunkenness which incapacitates the offender from forming the specific intent required for the commission of offence shall be considered with other surrounding circumstances to determine whether or not the offender had this intent.
- The evidence of drunkenness falling short of proved incapacity required to constitute the crime and establishing the fact that this gave way to the offender and he acted on

⁸⁵ *R v. Tandy* [1989] 1 All ER 267.

⁸⁶ (2003) 1 All ER 897 at 913.

⁸⁷ Wharton, *Criminal Law*, (Lawyers Cooperative Publishing Co, Rochester, 1932).

⁸⁸ [1920] A.C. 479 (H.L.).

some violent passion does not rebut the presumption that the offender intended the natural consequences of the act.

In *R v. Davis*, Stephen J. held that even temporary drunkenness arising out of alcohol dependence could be also allowed as a defence. He stated:

But drunkenness is one thing and the diseases to which drunkenness leads are different things; and if a man by drunkenness brings on a state of disease which causes such a degree of madness, even for a time, which would have relieved him from the responsibility if it had been caused in any other way, then he would not be criminally responsible. In my opinion, in such a case the man is a madman and is to be treated as such, although his madness is only temporary.

This view was reiterated by Lord Birkenhead in the *Beard* case. Considering the consequences of a successful plea of insanity, the English practice was that the judge would not direct the jury on the question of insanity unless the defense is actually set up by the counsel for the defendant.⁸⁹ In the case of *R v. Monkeyhouse*,⁹⁰ and *R v. Doherty*,⁹¹ it was held that drunkenness evidence could be used to negate specific intent. In *R v. Meakin*,⁹² the court stated that specific intent would not be negated by the evidence of drunkenness if the offender used a dangerous weapon to cause the particular harm. It was stated as follows:

A drunken man may form an intention to kill another, or to do grievous bodily harm to him, he may not; but if he did form that Intention, although a drunken intention, he is just as much guilty of murder as If he had been sober.

In the case of *R v. Meade*,⁹³ Darling J stated that the basic presumption that the offender had the specific intention to do something could be rebutted by showing that the mind of the accused was so affected by drinking and was unable to understand the consequences of the act. This rule was however criticised in *Beard's* case.

Regarding drunkenness and the defence of provocation, the English courts had a quite interesting take. In the case of *R v. Thomas*, Parke B had taken the view that drunkenness could be considered to determine whether the defence of provocation could be raised or not.⁹⁴ In

⁸⁹ *D.P.P. v. Beard*, [1920] A.C. 479 (H.L.).

⁹⁰ (1849), 4 Cox C.C. 55.

⁹¹ (1887), 16 Cox C.C. 306.

⁹² (1836), 7 Car. & P. 297; 173 E.R. 131.

⁹³ [1909] 1 K.B. 895.

⁹⁴ (1837), 7 Car. & P. 817; 173 E.R. 356.

drunkenness, the general trend in English cases was that drunkenness was taken into account to determine provocation.

VII. Conclusion

Addiction is condition with serious need emotional support to overcome. The consumption of alcohol is prevalent universally in almost all societies. The physiological as well as psychological effects of alcohol is known to people who depend on alcohol. The general public perception, thus, does not support laws that excuse offenders from the crimes they commit when intoxicated. This is strictly based on the social policy. The general principles of criminal law do not side the punishment of offenders who are at time of commission of the offence unable to understand the consequences of their action due to a serious compromise in their cognitive facilities.⁹⁵ The condition of addiction could be analyzed as a partial as well as complete defence.

However, this should be a cautious approach considering the impacts it could have on the society. If the level of addiction is such that there is a complete compromise of the cognitive abilities of the offender, in such a manner that it affects their normal bodily functioning also, then the same shall be considered as a complete defence. Considering addiction to be a part of diminished responsibility contemplates on the dichotomy between the fact that criminal law does not support conviction of an individual whose *mens rea* cannot be determined due to the compromise of their cognitive abilities and the other aspect that self-induced intoxication shall not help any person evade responsibility for their volitional acts.

The argument that addicts shall not be held criminally responsible for the acts they commit where there is a serious compromise of cognitive abilities is based on the idea that *actus reus* and *mens rea* shall be established beyond any reasonable doubt by the prosecution. There shall be contemporaneity between the *mens rea* as well as *actus reus* elements in the intoxicated act of the accused person. Majority of the individuals who becomes addicts to substances are not in a position to get out of the same due to lack of social support and financial restrictions. De-addiction centers and treatment are a far-fetched option for the people belonging to the lower

⁹⁵ S. Beck and G. Parker, "The Intoxicated Offender - A Problem of Responsibility" 54 *Canadian Bar Rev.* 563 (1966).

economic strata of the society. Hence, the same shall be considered when the discussions surrounding addicts and criminal responsibility occur.

Criminal law is the most intrusive state action into the private lives of individuals. Criminal responsibility shall be imposed on individuals only when they had the requisite intention to the offence. If criminal responsibility is imposed otherwise, then it will compromise the core principles in which criminal law is based on. The excuses provided to addicts does not mean that the deed they committed was not wrong, but it provides an excuse to the actor since the accompanying conditions suggest that the actor is not responsible for their deeds. A legal excuse basically means that a particular conduct is wrong and undesirable, but imposition of criminal responsibility would be inappropriate since the cognitive abilities of the actor were seriously compromised during the commission of the particular act. The excuses in criminal law rests on the main aspect that the state shall not punish individuals who do not fulfill the basic elements of culpability as per the tenets of criminal law. Hence, the development of addiction as a partial or complete excuse depending on the level of addiction of individuals is in consonance with both principle as well as policy.