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+91 70421 48991
editor@ijlar.com
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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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“DEFENCE OF AUTOMATISM IN SUBSTANTIVE CRIMINAL LAW: A LESSON FROM COMMON LAW”

AUTHORED BY - ZAINAB SANA TARANNUM

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DEFENCE OF AUTOMATISM IN SUBSTANTIVE CRIMINAL LAW: A LESSON FROM COMMON LAW

ABSTRACT

Automatism can be defined as a state of person who is capable of action but he is not conscious of what he is doing. It is the basic principle of criminal law that a person act cannot be held liable unless his mind is guilty. When claiming automatism, a person is believed to be lost control over his action because of some external factor. There are many subs' categories under defence of automatism. Common law courts have developed complex yet technique method by which they decide whether accused can claim defence of automatism or not. In common law cases where there is mental malfunction it becomes necessary to take expert opinion of medical practitioner so as to prove that during the said chain of circumstance the accused was under the state of automatism. This paper is an attempt to understand and critically analyse the concept of automatism. This paper also aims to understand different debates surrounding general automatism. The researcher will also annalyse how the concept of automatism has been incorporated in Indian Penal Code.

Keywords- Automatism, guilty mind, consciousness, external factor & Act

CHAPTER I- INTRODUCTION

English criminal law and criminal liability has undergone a lot of significant changes. Among the contemporary change an important one is defence of automatism. An act is done in a condition of automatism in case its is would by the body without control by the care, (ex: it is a fit or a reflex), or on the other hand in case it is finished by a not cognizant individual of what they are doing. The act might be portrayed as involuntary, but won't be viewed as such basically on the grounds that the litigant doesn't recall it or couldn't avoid the drive to do it. An individual might stay away from responsibility for a criminal act acted in a condition of automatism, like making hurt somebody during a psychological power outage, as the lead being referred to is compulsory. This is on the grounds that compulsory developments or actions can't normally establish the actus reus of an offense, or even a severe responsibility offense¹.

¹ 'Automatism | Legal Guidance | LexisNexis' (Lexisnexis.co.uk, accessed 4 October 2021) <<https://www.lexisnexis.co.uk/legal/guidance/automatism>> accessed 4 October 2021.

It is foundation stone of criminal law that Actus Non-Facet Reum Nisi Men's Sit Rea which means that for any act to be illegal in nature it must be done with a guilty mind. A claim of automatism is denial of authorship of an act. It claims that link between mind and behaviour of the defendant was absent. Defence of automatism requires a total destruction of voluntary control on the defendant part impaired reduce a partial control is not enough, it usually means that the defendant should have zero control on what he is doing². The defence of automatism can be claimed when the accused committed an offense under involuntary circumstances. Lord Denning has defined automatism as an act, "which is done by the muscles without any control by the mind, or an act done by a person, who is not conscious of what he (accused) is doing"³. Automatism is often regarded as defence to a crime rather than absence of the criminal components⁴. In *Bratty Case*⁵ it was noted that there are two kinds of automatism. It is to be noted that the point of difference between two is the factor responsible for causing involuntary action. In Sane automatism requires an external factor which has resulted in involuntary action. The insane automatism requires to the internal factor or illness because which defendant has committed an offense. So, for example if the defendant is suffering from seizures and then committed crime it is insane automatism because here illness is internal factor which has resulted the defendant losing control because of a health condition in this case the defendant can claim the defence of insane automatism. It is submitted that the automatism undermines the sense in which someone is engaging the conduct thus it amounts to denial of the conduct as whole⁶. It is further submitted that the automatism includes mental disconnection from offense it amounts to the denial of conduct of crime. Claim of automatism prevents liability of all crimes. In common law *will violation & control over state of affaires* plays a very important role in conviction, defendant raising plea of automatism can be acquitted from all the charges if it is proved that defendant because of some external factor was not under the control of his act. The defendant has to bring credible evidence and has to prove beyond reasonable doubt that during the said circumstance the defendant was under the state of automatism. In common law cases where there is mental malfunction it becomes necessary to take

² *A-G Ref (No 2 of 1992)* (1993) WLR 3, p.982.

³ *Bratty v Attorney-General for Northern Ireland* [1963] AC p.386.

⁴ *Principles Of Criminal Law* (7th end, Oxford University Press 2013)

⁵ Ibid.

⁶ *R. D. Mackay, Mental Condition Defences in the Criminal Law* (1995), Ch 1;
R. F. Schopp, Automatism, Insanity, and the Psychology of Criminal Responsibility (1991).

expert opinion of medical practitioner so as to prove that during the said chain of circumstance the accused was under the state of automatism.

CHAPTER – II RESERCH METHODOLOGY - STATEMENT OF PROBLEM

Criminal law stands on the basic principle that prosecution should prove guilt beyond reasonable doubt. The defence of automatism leads to complete and unqualified acquittal however in the cases of insane automatism since it is a case of illness of mind it may result into awarding compulsory admission in mental health care institution. There is no express provisions related automatism. In country like India where there is no specific provision of automatism. It becomes very tough to prove and it is also at the discretion of the judge.

With growing mental illness and people with mental illness who are committing crime. These accused are not qualified claim defence under legal insanity as a result. The distinction between the insane and non-insane automatism is not vey clear and not satisfactory as was highlighted by *Sullivan case*. Automatism constantly swings between public protection and legal insanity.

SIGNIFICANCE OF STUDY

For committing a criminal act, it necessarily has to be conscious decision or a willed movement. An act which beyond the control of accused can be termed as automatism⁷. Examples of forms of involuntariness which might amount to automatism include muscle spasms, convulsions, acts following concussion, physically coerced movements. The aim of this paper is to analyse the different kinds of automatism and what are the major difficulty and loopholes when it comes to taking defence of automatism. This paper will also highlight what is the jurisprudence of defence of automatism and whether defence of automatism should be included in Indian penal code.

REVIEW OF LITERATURE

The review of literature has been divided into two sections Indian and western. Further the author has opted for thematic division of literature.

⁷ Vibhute k, Psa Pillai's *Criminal Law* (12th edn, Lexis Nexis 2014)

- A. *Penal Code Defences: Lessons from Sri Lanka* by Stanly Yeo, 29 NLSI Rev 86 (2017)⁸- In this article author is of the opinion that even though in code word automatism has not been used however concept of voluntariness is deeply enshrined in the code so the defence of automatism has been covered in some form or other. Author in his article suggested that automatism can be caused by concussion, acute stress, somnambulism some forms of epilepsy, other neurological or physical ailments, or by pure accident. In the case of *Gamini v. Attorney General*⁹ in which the court held that automatism is plea which propose that the act was involuntary if plea is accepted by court the accused is acquitted from all the charges including strict liability. It was further observed by the court that act should be construed in general sense and that act should have will component in it to make accused liable for offense. Actus reus of the crime charged comprised of human conduct. It is the duty of the prosecution to prove and establish that act done was voluntary, conscious and will. The word conscious means that accused knows the consequences of his act. In the case it was held that the defence of automatism can be claimed when act was done because of automatism. Secondly, the act was done when the accused was not conscious of the act.
- B. *Insanity As a Defence* by Shivanshu Bhardwaj, CNLU LJ (9) [2020] 146- In this article the author discussed historical background of automatism, he argued that in historical era there was no difference between insanity and automatism. People used to plead automatism when what exactly they are arguing is insanity. There was a clear-cut distinction between insanity and automatism when the British parliament brought Criminal Lunatics Act of 1800, whereby now if a person is claiming insanity has to undergo compulsory sentence in medical institution so that his mental health can be improved. With the help of this act courts got power to keep the accused in its custody. The sole idea of this act is to stop the mentally instable people to repeat violent incidents also not letting the accused scoot free¹⁰.
- C. *Defence Of Insanity in Indian Criminal Law* by K.M. Sharma 7 JILI (1965) 325¹¹- In this article author argues that retributive and deterrent theories in case of automatism are unrealistic and pointless. The author in this case argues at the commission of offense the accused was not aware of the consequences of his act in such cases accused cannot be held

⁸ Yeo S, 'Penal Code Defences: Lessons From Sri Lanka ' (2017) 29 NLSI Rev

⁹ *Gamini v. Attorney General* (1999) 1 Sri LR 321 325

¹⁰ Bhardwaj S, 'Insanity As A Defence' (2020) 9 CNLU LJ

¹¹ Sherma K, 'Defence Of Insanity In Indian Criminal Law' (1965) 7 JILI

guilty for a particular act. The author relay on American law institution model which is an article written by Allen¹² which argues that the test of responsibility becomes important for people who are not fit for criminal justice system and needs compassion and therapy for their condition. The author also points out that historical and religious books like Manu smriti also provides for insane automatism because the act done was involuntary.

WESTERN LITERATURE

- A. *Automatism: The Unconsciousness Défense To a Criminal Action* by Patrice E, Diego L. Rev. 839 (1978)- In this article the author argues that in United States the rules for automatism is complex. In initial phase M'Naghten rule was taken into consideration however it should be read along with Durham rule excuses an accused if his unlawful act was a product of a mental disease or defect. The court relied on American Law Institute's diminished-capacity test this rule is generally called right or wrong rule; it simply means that the accused at the time of committing the offense knows the consequences of act¹³.
- B. *Automatism: A Complete Yet Imperfect Défense* Captain Brendan J. McKenna *Military Law Review* (2019)- In spite of the fact that automatism gives a total defence, utilizing the defence might open a charged to extra crook and managerial results. For instance, disorders that structure the reason for an automatism defence are a finished bar to military service.¹⁰ A charged who depends upon a sleepwalking defence might struggle with Article 104a, Fake Enlistment, Appointment, or Separation," in the event that they were aware of their condition before joining the military and neglected to uncover it. Additionally, a similar charged may in any case be indicted if the subsequent damage was predictable or the felony murder rule applies. Even if acquitted, a charged may confront managerial division for qualifying disorders under a premise of condition not a disability¹⁴.
- C. *Power Of Self-Control in Provocation and Automatism* by Stanley M H Yeo 14 *Sydney L. Rev.* 3 (1992)¹⁵- The author in this case have written about grave and sudden provocation

¹² 'American Law Institution Model' (1962) 45 Marq.L. Rev.

¹³ Patricia E Gould, 'Automatism: The Unconsciousness Defense to a Criminal Action' (1978) 15 San Diego L Rev 839.

¹⁴ Brendan J McKenna, 'Automatism: A Complete Yet Imperfect Defense' (2019) 227 Mil L Rev 46.

¹⁵ Stanley M H Yeo, 'Power of Self-Control in Provocation and Automatism' (1992) 14 Sydney L Rev 3.

and non-insane automatism. Article discusses about the jurisprudence about common automatism. The author has taken reference of a case where a father was sexually exploiting daughter and mother killed her husband. In this case court while defining automatism said that it cannot only restricted to unconscious acts but it should be extended to extraordinary stress. There should be psychological blow. There should be semi-consciously and involuntarily, with involuntariness depending on the extent to which the actor has been overtaken by unconscious forces.

- D. *Automatism Is Never a Defence by J J Child NILQ 65(2): 167-86 (2014)*¹⁶- Offense components are intended to target criminal wrongs; characterizing outside (actus reus) and interior (mens rea) prerequisites to indicate and disconnect restricted occasions. Conversely, criminal defences, stringently considered, work the other way; characterizing certain conditions where, regardless of perpetrating the criminal offense, D's direct ought to all things considered be pardoned from responsibility.
- E. *It's A Man's World: Claims of Provocation and Automatism In 'Intimate' Homicides by Bernadette MCSHERRY, 29 MELB U L Rev 90, (2005)*¹⁷- In this article author tried to discuss the defence of automatism in cases where crime has been committed due to provocation. Author discussed case of Dharmendra case¹⁸, the facts of case is as follows, Dharmender Singh got separated from his wife. After the divorce decree a daughter was born from the wedlock. The cause of separation was domestic violence on the wife. After separation Dharmendra Singh has got two days in week where she can meet her daughter. his estranged wife after some time dint allows him to meet daughter in provocation, he killed her. A defence of automatism was claimed however trial court rejected it. An appeal was made claiming that Demander was suffering from dissociative amnesia caused by external stress. This was later on accepted by the jury and court. The acquittal of Dharmander Singh is of great concern given the circumstances leading up to the killing. The case raises issues about the use of expert evidence by mental health professionals in explaining an accused's reaction to a relationship breakdown. In automatism cases, much

¹⁶ J J Child and Alan Reed, 'Automatism Is Never a Defence' (2014) 65 N Ir Legal Q 167

¹⁷ Bernadette McSherry, 'It's a Man's World: Claims of Provocation and Automatism in Intimate Homicides' (2005) 29 Melb U L Rev 905.

¹⁸ *R v Singh* (2003) 86 SASR 473.

more than in provocation cases, the defence will rely on expert evidence about the accused's mental state at the time of the killing.

SCOPE AND LIMITATION

The aim of the paper is to discuss the automatism and its related jurisprudence. Since the defence of general automatism is not available in India there is not much literature that can be found. Time and resources are the major limitation of the paper.

RESEARCH OBJECTIVES

Following are the research objective of the paper-

- A. To understand the defence of automatism in common law countries
- B. To understand the different types of Automatism
- C. To understand the difference between insanity and automatism
- D. To understand the relationship between alcoholism and automatism
- E. To understand the defence of automatism in Indian context

HYPOTHESIS

Following is the hypothesis which researcher aims to prove-

“The defence of automatism even though not expressly mentioned in the Indian Penal Code has implied for defence of automatism.”

RESEARCH QUESTIONS

Following are the research questions which author would answer in paper-

- A. What is general automatism?
- B. What are the two types of automatism?
- C. What are the specific elements for claiming defence of automatism?
- D. What is the difference between insanity and automatism?
- E. Can defence of automatism claimed in India?

DATA SOURCE AND METHODOLOGY

This paper is an attempt to do legal research. The researcher will do primary research. It is through primary research, by which the researcher will critically analyse the important questions. The researcher will adopt explanatory research design. The sources of data are divided into two parts primary and secondary. For data collection researcher will use non doctrinal method and will be using secondary source such as article and commentaries. However primary sources like acts and judgments will also be used by the researcher.

CHAPTER III- TYPES OF AUTOMATISM

As mentioned above automatism can further be divided into two parts sane and insane automatism. It is to be noted that both defences are claimed when offense is committed by the accused under involuntary circumstances. In non-insane automatism the accused commit an offense because of external factor or stimuli's which takes the control of person action. For example, in the case *Hill vs Baxter*¹⁹ in which a person was charged with rash driving. The defendant in this case argued that he was suffering from an undiagnosed condition and he has no recollection what so ever happened from when he started the journey till the accident period. The issue involved in this case was whether the plea of automatism can be entertained or not. Court in this case noted that Road Traffic Act 1930 under which defendant was charged provides no requirement of men's rea. It was further held that such blank out is not part of insanity. The burden of proof of automatism should be the accused since he has an exclusive knowledge. It was further held by the court that during the accident defendant failed understand the consequences of his action and hence the action was involuntary.

On the other hand, it should be noted that insane automatism happens because of disease of mind and happens because of internal factors. In case of insane automatism, the accused is not fully acquitted he must spend some time in mental health care institution so that the state can ensure that such act of violence can be stopped in future by giving accuse proper care. Secondly for claiming insanity as dense the burden of proof is on the dense in case of sane automatism it is on prosecution. Thirdly in case of insane automatism it should be proved beyond reasonable doubt that there is loss of consciousness, however in the cases of sane automatism sometimes court may

¹⁹ *Thomas Richard Hill v Kenneth Baxter* (1958) 1 Q.B 277.

allow that act includes consciousness however the violation must be absent. For example, in the case of *R v. Woolley*²⁰ defendant was hit by car which in turn created a domino effect and hit seven other cars. Here the defendant was conscious yet the court decided that the incident happened because of involuntary circumstances.

For calming the defence, it should be proved that at the time of accident accused was incapable to understand the nature of act because there are some changes in his brain and he has some mental illness. Now these changes should not be absolute, for claiming plea of insanity it should be provided that accused have lost the control to decide what is right and what is wrong during the commission of offense.

There are three major reasons to entertain insanity as a defence –

- *Furiosis nulla voluntas est*- A mad man has no will.
- *Furios absentis* low est- A mad man is like one who is absent.
- *Furissus furore sui puniter* – A mad man is punished by his own madness

The test of insanity has undergone a lot of changes. From time to time there are various test which determine the weather a person is legally insane or not.

The wild beast tests

One of the initial tests for determining insanity was the wild beast test which derived from *Rex vs Arnold*²¹, which says that defines of insanity can be claimed when a person at the time of doing the act have lost the capacity to differentiate between right and wrong. He has become just like wild beast. The court in this case have given two major principles for testing insanity the first is equating a human to that of a wild beast. Secondly the human lost his capacity to distinguish between right and wrong. He has lost all his capacity to reason. Because of this reason the insane person should be refrain to enter in the society. It is to be noted that for qualifying plea for wild beast the mental illness should be permanent. The condition of accused should be such that it cannot be reversed.

²⁰ *R v Woolley* (1998) CLY 914.

²¹ *Rex v. Arnold* (1724) 16 How. St. Tr. 765.

Mc Naughton Rules

This rule was an extension of wild the second principle of wild beast test which arise from R vs Daniel Mac Naughton²². The court in this case looked at the particle aspects of insanity. Court differentiated between medical and legal insanity. It looked at what are specific terms which should be used while deciding the case on insanity. Court will always be assumed that accused is of sane mind and burden of proof is on accused to prove the insanity beyond reasonable doubt. Further it was also held that for claiming successful plea accused need to prove that he has lost capacity to differentiate between right and wrong at time of commission of offense. Following are the main postulates of Mc Naughtons rules-

1. The accused lost his ability to reason when he was doing the act
2. The act done should be unlawful
3. It arises from disease mind
4. He was not able to differentiate between right and wrong with reference to the commission of offence
5. He did not know nature and quality and consequences of the act

The Irresistible Impulse

This test was first evolved in United States in the case of Common wealth vs Rogers²³. This test provides that the accused should be given lesser punishment or complete acquittal because he has certain mental conditions which resulted into losing control over impulses.

The Durham Rule

This test is combination of Mac Naughton Rule and Irresistible impulse test. It was first discussed in the case of Durham v. United States²⁴ where the plea insanity was claimed and the court noted that both the test failed to take into account some mental illness that is why court held that while deciding case on mental insanity court will consider whether act was done by disease of mind and not whether he displayed particular symptoms which medical science has long recognized do not necessarily, or even typically, accompany even the most serious mental disorder.

²² *R. v. Mac Naughton* (1865) 10 Cl. & F. 200 (M'Naghten rule).

²³ *Com. v. Rogers* (1844) 7 Metc. 500.

²⁴ *Durham v. United States* (1954) 94 U.S. App. D.C. 228.

The Model Penal Code

This test specifies that because the accused is suffering from debases of mind, he is unable to understand the law and he has lost his capacity to differentiate between right and wrong. Accused do not understand law that is why he has committed particular offense and he should not be prosecuted for the same.

Voluntary Alcoholism

Alcoholism and automatism defence was discussed extensively in the case of *R. v. Hartridge*²⁵ in this case the accused was involved in voluntary intoxication. Accused blood alcohol level was 23 he shot his wife. When he was apprehended, he has shown sever systems of alcoholism. Three experts were called which suggest that the accused was suffering from amnesia at the time of offense. One of the doctors said that he cannot differentiate between organic amnesia and automatism. The amnesia can also be stimulated. It should be noted that the medical practitioners have given their opinion according to the facts and circumstances which is narrated by the accused. The court in this this case found the accused guilty of murder. The accused profred appeal court held that that the manslaughter needs intent or men's rea for commotion. The Court of Appeal decided that there had been misleading concerning organic amnesia. The outcome of organic amnesia, whenever brought about by alcohol, and automatism, are not as old as the law is concerned. If the amnesia is induced by alcohol, it is simply one component demonstrating the level of drunkenness. The protection is one of absence of the imperative plan because of intoxication and the legitimate decision, if the guard is set up, is homicide rather than a total acquittal.

CHAPTER IV ESSENTIAL OF AUTOMATISM

The automatism can be claimed where the any other defence such as insanity is not allowed. For claiming successful defence of automatism, the accused need prove that the action was result from external stimuli. Since the conduct is involuntary the accused is not criminally liable. It should be noted that that accused cannot discharged from criminal liability for the voluntary stimulating the

²⁵ *R. v. Hartridge* (1966) 57 D.L.R. (2d) 332.

factor. For example, if the accused drink alcohol in such a manner which caused amnesia it should not be case of automatism because the external factor is self-induced.

There is very thin line between insane and non-insane automatism. It should be noted that in insane automatism the incident happen because of changes in the mind or cells of the body of the person since the changes is happening inside that body of person it is internal factor which will qualify the accused to claim a successful claim in the insanity. However, in non-insane automatism it happens because of some external factor.

In today's world where the mental health is a big factor influencing the life of individual the criminal law needs to incorporate the dense of automatism in broad manner. There is large amount of medical insanity cases which will not qualify for legal insanity. In cases like these the accused should not be punished for acts which lacks in the intent and means *rea*. For example, in the case of *R v T*²⁶ in this case the accused was suffering from post-traumatic disorder (PTSD) because she was victim of rape. She took part in the robbery. The court in these cases decided that she committed robbery because of external factor and she was not having men's *rea* for the same. The PTSD in this case was taken as an external factor which trigger the accused to take part in the robbery.

Elements of automatism

Automatism is state where the accused have lost all the control and consciousness of the act which he was doing. This loss of consciousness is happening because of some external factor. these external factors can also be a reflex such as in the case of *R v. Woolley* where the reflex of sneezing was widely discussed by the jury. The following are some important points to be proved for claiming successful claim of automatism.

1. the act must be a reflex caused by the external factor. For example, in the case of *R v Burgess*²⁷ where the accused smashed a bottle and tape on head of women. The accused in this case claimed the defence of automatism of sleep walking however the court in this case held that the such violent action cannot be included in the automatism because their must

²⁶ *R v T* (1990) Crim LR 256.

²⁷ *R v Burgess* (1991) 2 All ER 769 324.

be some other reasons involved on why accused have acted so violently. This case was fit case of insanity and not automatism.

2. The action resulting from the external factor should be in voluntary in nature
3. Thirdly the automatism must not be self-induced.

Categories of Offenses

As to defects of consciousness, the conduct bringing about present requests of Insanity and compulsory conduct might be legitimately grouped into three categories:

- (1) Conduct that falls only inside the domain of Insanity, to be specific conduct brought about by a disease of the mind which might bring about deformities of consciousness yet doesn't prompt unconsciousness, for instance, a condition that causes the litigant not to comprehend the criminality or nature of his conduct, despite the fact that he might be completely cognizant.
- (2) Conduct that falls solely inside the domain of compulsory conduct, to be specific conduct brought about by an imperfection of consciousness autonomous of mental insufficiency, as, for instance, activities performed quickly following an assault that has handicapped the entertainer from controlling his conduct. This classification is known as normal automatism or non-crazy automatism.
- (3) Conduct that falls inside the normal space of both Insanity and compulsory conduct, which is known as crazy automatism. At one limit of this classification are cases in which the activity was obviously dedicated unknowingly, yet it is unsure whether the glitch is the consequence of dysfunctional behaviour. Particularly progressed instances of arteriosclerosis would fall into this class. At the other limit are cases in which the conduct begins clearly from a disease of the mind, yet it is dicey whether, simultaneously, the entertainer was oblivious. Particularly serious types of separation states may fall into this classification²⁸.

²⁸ TS Sneha, 'The Defence of Non-insane Automatism' (*impleaders*, 23 October 2021)<https://blog.impleaders.in/defence-non-insane-automatism/#Difference_Between_Insane_and_Non-insane_Automatism> accessed on 23 October 2021.

CHAPTER V – CASE ANALYSIS- PATRESWAR BASUMATRY V. STATE OF ASSAM

FACTS OF THE CASE- This appeal arises from a judgment of the Sessions Judge, Goalpara passed on 25-6-86 in Sessions Case No. 25(3-G) of 1985 convicting the accused appellant under Section 302, IPC and sentencing him to imprisonment for life. Karmeswar Basumatary and the accused Patreswar Basumatary are brothers and are resident of Bamunigaon. The accused in this case was suffering from parasomnia. At the time of commission of the offence the accused was of 20 years old and his brother who is victim was 30 years of age. On the day 4-3-83 accused saw a dream where he was attacked. He took the dao which was kept on the head of the bed and attacked his brother who was sleeping next to him. It is submitted that the brothers were living alone in the house.

ISSUE RAISED - *WHETHER THE ACCUSED HAS COMMITTED ANY OFFENCE?*

Argument Raised - it was argued on behalf of the respondent that the act was not involving mens rea however the sleepwalking was not amounting to insanity, the accused argued that the sleepwalking was involuntary conduct. The accused claimed the defence of non-insane automatism.

JUDGMENT- The court relied on mostly the jurisprudence of foreign court case laws. The court in this case relied on two major decisions on automatism *R. v. Clarke*²⁹ and *Bratty v. Attorney General*. In *Clarke* case a woman is charged with the theft, in her defence she claimed that she was absent minded when she took the goods. This absent mindedness is common symptom resulting from depression. Court in this case accepted this as an external factor. In *Bratty* case Lord Denning defined "Automatism" - means an act which is done by the muscles without any control by the mind such as a spasm a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing; such as an act done whilst suffering from concussion or whilst sleepwalking".³⁰

The court in this case looked at the involuntary nature of the act. The court noted the conduct of accused during and after commission of offense. It was noted by court that during the offense the

²⁹ *R. v. Clarke* (1972) 1 All ER 219.

³⁰ *Bratty v. Attorney General* (1961) 3 All ER 523.

accused was not conscious about the nature and consequences of his act. After seeing what accused has done it was submitted by the prime witness that accused try to commit suicide.

For proving whether the accused has committed the crime the prosecution has to prove the guilt beyond reasonable doubt. However, the court dependent on case of *State of Kerala v. Bahuleyan*³¹ dependent on the case where the conclusive proof of the guilt (1) death as a result of the voluntary act of the accused and (2) malice or motive of the accused. However, it also cannot be ignored that if the accused set up a special plea, the onus of proof (not the burden of proof) is shifted to the accused, although the standard of proof is not like that of the prosecution³².

The court in this case accepted the plea of automatism and acquitted the accused.

Judgment in Rem- the above-mentioned judgment contributes to the jurisprudence of automatism in case of sleepwalking cases. The involuntary conduct of the accused is highlighted by the court which would be guiding force for coming cases.

Judgment in personam- The accused in the case was acquitted.

CONCLUSION AND SCOPE FOR FURTHER RESEARCH

Automatism is not expressly provided by the Indian penal code. However, court has been incorporated this defines in some cases. Automatism can be used by the court to bridge the gap between legal insanity and other mental health disease. For example, the cases of PTSD it is not qualified as insanity or mind of disease its part of mental illness. If someone is suffering from PTSD and committed offense he can claim defense using automatism. It is submitted that with growing mental illness and commission of crime by people who are suffering from mental illness the law should be incorporating the changes in society.

Scope of further research - further research should be done under crime of passion and how far Indian courts have entertained the plea of automatism.

³¹ *State Of Kerala vs Bahuleyan* (1986) AIR 1987 SC 482

³² *Patreswar Basumatary vs State of Assam* (Assam HC 1988) <<https://indiankanoon.org/doc/1705001/>> accessed on 23 October 2021.

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