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Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)Platform & Workflow by: [Open Journal Systems](#)<https://doi.org/10.5281/zenodo.17316369>**Legal Insanity in Criminal Law in Sweden****Ali Ajmal**

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Abstract

The aim of this research is to study legal insanity in Sweden. The criminal law in Sweden does not recognize the defense of insanity, and offenders with mental disorders cannot be declared not guilty of the offences committed by them. The doctrine legal analysis research method was employed to study the legal insanity in Swedish criminal law. In Sweden the criminal law does not distinguish between mentally normal and abnormal offenders in the determination of guilt; rather, it considers severe mental disorder and consequent lack of mental capacity of an offender during the award of sentence. A criminal with a serious mental disorder shall be admitted to the forensic psychiatric confinement rather than prison, subject to the fulfillment of certain criteria in Sweden. It is recommended that the law dealing with mentally unstable offenders be amended to reintroduce the concept of accountability and that the defense of insanity be recognized in the criminal law in Sweden.

Keywords: Criminal, Insanity, Law, Mental, Sweden

Introduction

A person who meets the criteria of legal insanity cannot be punished for the offences committed by him. Such a person cannot be held legally responsible for his crimes (Mackay, 2022). It is unjust to punish a mentally unstable person since he lacks understanding of what wrong he committed (Höglund, 2015). There are special provisions in law to deal with criminals with mental disorders across the jurisdictions in the world. However, each jurisdiction has its own jurisprudence and procedure to deal with criminals with mental disorders (Morse & Bonnie, 2013). The doctrine of insanity defense can also be seen in international law (Ajmal & Rasool, 2024b).

The criminal law in Sweden does not recognize the insanity defense. Sweden abolished the insanity defense in 1965. Before 1965, the concept of accountability in case an offender is suffering from a mental disorder was there in the Swedish Criminal Law. Currently, instead of not considering an offender guilty of his offences by reason of insanity, the law in Sweden considers the abnormal mental health of an offender in the context of sentencing, as such an offender shall be confined to the forensic psychiatric facility instead of prison. The abnormal mental state of an offender is not relevant in the determination of his guilt but is considered at the sentencing stage in Sweden (Herlofson et al., 2009).

Literature Review

The law dealing with offenders with abnormal mental health has gone through many changes in Sweden. Before 1965, offenders with serious mental disorders could be declared not guilty for their offences (Herlofson et al., 2016). The criminal law in Sweden was later amended by abolishing the concept of legal responsibility to make all the criminals equal before the law (Juth & Lorentzon, 2010). In 1992, there was a further change in law in Sweden on compulsory psychiatric care. The legal landscape of dealing with mentally ill criminals was changed by the new legislation in Sweden (Johanson, 1993). The paradigm was shifted drastically regarding offenders with mental illness in Sweden by the introduction of this legislation (Bergenheim, 2014).

There is an ongoing debate in Sweden for the reintroduction of the concept of responsibility when dealing with the offenders with mental disorders. The proponents of the reintroduction of the insanity defense in the Swedish law believe that a person suffering from a severe mental disorder cannot be held accountable for his criminal acts. A person who cannot take care of himself cannot be considered responsible for his criminal acts. Further, the proponents of the reintroduction of the insanity defense believed that to address the matter of criminals with mental health issues, there needs to be established a connection between a crime committed and the mental health issue of an offender (Radovic et al., 2015). While the critics of the reintroduction of the insanity defense in the Swedish Criminal Law apprehend its misuse in case of its reintroduction in law and too much reliance on medical examination to fix the responsibility on the criminals with mental disorders (Bennet, 2024).

Method

The doctrinal legal analysis research method was employed to study the legal insanity in criminal law in Sweden.

Analysis

The criminal law in Sweden does not recognize the defense of insanity. However, there is an ongoing debate about the reintroduction of the insanity defense in Swedish criminal law. In this regard, a few proposals are presented by the government for the amendment in law on legal insanity. Currently, in Sweden, offenders cannot be judged not guilty on the ground of insanity. Those found liable for crimes while suffering from a mental disorder can instead be sent to psychiatric treatment; that is a legal sanction, among others. Whether a criminal is sent to involuntary psychiatric treatment depends on the nature of his abnormal mental health condition, its relation to the crime, and the need for psychiatric treatment (Gooding & Bennet, 2018). The offender will be discharged from psychiatric care once his mental condition becomes normal and he does not pose a risk of relapsing into criminal conduct (Bennet, 2024).

Statutory Provisions on Legal Insanity in Swedish Criminal Law

Although the defense of insanity does not exist in Swedish criminal law, offenders with mental health issues are legally dealt with in Sweden like they are dealt with in many other jurisdictions in the world. Section 6 of Chapter 30 of the Swedish Criminal Code (1962) asserts that an offender with serious mental disturbance will be admitted to psychiatric care instead of prison if such a criminal committed an offense under the influence of his abnormal mental condition and subject to the fulfillment of the criterion specified in law. Moreover, convicted

patients in Sweden can be given outpatient or inpatient forensic psychiatric care depending upon their mental conditions (Svennerlind et al., 2010).

The courts in Sweden may send an offender with abnormal mental health to prison in exceptional circumstances, considering if an offender committed a high-penalty-value offense, if an offender does not need psychiatric care, or if the abnormal mental condition was induced because of self-induced intoxication or in the case of the presence of other relevant circumstances (Section 6 of Chapter 30 of the Swedish Criminal Code, 1962). Otherwise, section 6 of chapter 30 of the Swedish Criminal Code (1962) restricts the court from sending an offender to prison who lacks the mental capacity to understand the implications of his conduct or to adapt his conduct in accordance with law.

The criminal law in Sweden sanctions an offender with serious mental disturbance to psychiatric confinement instead of sending such an offender to prison if such an offender lacks the mental capacity to understand his conduct or to control his conduct in accordance with law. Such lack of capacity of an offender must be due to severe mental disturbance. The criteria of dealing with mentally abnormal offenders, which is recognized in Sweden, is like the criterion of legal insanity in most of the jurisdictions in the world (Ajmal & Rasool, 2024b).

The criminal law in Sweden distinguishes between lack of mental capacity and reduced mental capacity of an offender. Sanctioning an offender with mental health issues into psychiatric confinement is only considered in case such an offender lacks the mental capacity to understand or to control his acts. However, reduced mental capacity of an offender with mental health issues is considered as a mitigating factor (Ajmal & Rasool, 2024a). Section 3(2) of Chapter 29 of the Swedish Criminal Code (1962) considers reduced mental capacity due to serious mental illness as a mitigating factor. If an offender has a reduced capacity to understand his act or to adapt his conduct accordingly due to serious mental disturbance or has a reduced capacity to control his behavior due to abnormal mental conditions, such instances are considered mitigating circumstances when assessing penalty value for an offence committed. In terms of reduced capacity, the role of emotion other than mental disturbance is also considered relevant (Section 3(2) of Chapter 29 of the Swedish Criminal Code, 1962).

Mental Health of Offender Criteria in Sweden

The criteria for considering the abnormal mental state of an offender at the stage of sentencing is the inability to understand and to control his behavior. There must be a lack of mental capacity to understand the implication of action and/or the inability to act accordingly to be declared as legally insane. The mental health criterion recognized in Sweden is like the criterion of the insanity defense in most of the civilized jurisdictions where the insanity defense is recognized. However, there is no standard criterion for the determination of legal insanity of an offender in the criminal law in Sweden (Radovic et al., 2015). Each case of an insanity plea is decided on its own merits. As a general principle, the criminal law in Sweden considers *allvarlig psykisk störning*, which can be translated as “serious mental disturbance,” and subsequent lack of mental capacity as a criterion to put an offender in psychiatric care instead of prison (Herlofson et al., 2016).

Merely having a mental disorder is not sufficient to put an offender into forensic psychiatric care. Decisions merely based on the existence of mental illness in an offender can be misleading to the purpose (Dahlin et al., 2009). An offender must be suffering from severe mental disturbance and subsequent lack of mental capacity to meet the criterion of involuntary

psychiatric confinement. However, not every severe mental disturbance necessarily meets this criterion (Dahlin et al., 2009). Furthermore, the law in Sweden considers severe personality disorders as relevant mental conditions when sentencing an offender with mental health issues (Sparr, 2009).

Procedure of Mental Health Evaluation of an Offender in Sweden

If an offender appears to have a mental disorder, the courts in Sweden may order a forensic mental health evaluation to find out if the accused needs to be assessed in detail. In case of affirmation, the accused is assessed in detail by a team of mental health professionals. In Sweden, a court-ordered mental health evaluation is necessary to determine whether an offender has a serious mental disturbance and consequent lack of mental capacity. Forensic mental health evaluation is conducted by a governmental authority, the National Board of Forensic Medicine (Radovic et al., 2015). The procedure for the mental health evaluation of offenders is strict and standardized. All reports on mental health assessments are managed by a governmental agency with their own staff. Moreover, the court orders the report directly from the agency (Pouls et al., 2022). The mental health evaluation reports generally contain detailed information about the assessment of the mental health conditions of the offenders (Ajmal et al., 2022).

Recommendations

Fixing criminal responsibility on a person to declare him guilty for his criminal acts is one of the fundamental principles of criminal law. A person who cannot be held responsible for his act cannot be considered to commit an offense. A mentally abnormal person who does not understand right and wrong and/or cannot control his conduct cannot be held responsible for his actions. Moreover, holding any person responsible for his criminal actions is not limited to his sentencing; rather, it also brings some other legal consequences. Since the insanity defense is not allowed in criminal law in Sweden, the matter of legally dealing with the offenders with mental illness in Sweden becomes complicated (Lernestedt, 2009). Without the concept of criminal responsibility, a person with abnormal mental health may avoid prison because of his abnormal mental health condition, but such a person should also be able to avoid other legal consequences that follow when a person becomes convicted in the eyes of the law. Thus, the reintroduction of the doctrine of criminal responsibility in Sweden is recommended.

The intent to commit a crime as an element of crime is one of the fundamental principles of criminal law, and the criminal law in Sweden also recognizes an intent to commit a crime as an element of crime. In the case of a person with a mental disorder, the ascertainment of intent is a complex task (Radovic et al., 2015). A person with abnormal mental health cannot be said to possess the intent to commit crime and thus cannot be considered liable for his actions (Ajmal et al., 2023). The reintroduction of accountability in the criminal law in Sweden will not only protect the rights of mentally abnormal offenders but will also have implications on the law on compulsory psychiatric care (Karlsson, 2023). It is another justification for the reintroduction of the concept of criminal liability, and the defense of insanity must be a part of the criminal justice system in Sweden.

The relevant statutory provisions in the Swedish Criminal Code 1962 must be amended. Mental health criteria for dealing with mentally abnormal offenders given in section 6 of chapter 30 of the Swedish Criminal Code 1962 are ambiguous and outdated. It must be replaced by introducing standard and up-to-date criteria. Moreover, the term “allvarlig psykisk störning,”

which can be translated as “serious mental disturbance,” is a generic term and can be misleading. It is recommended that this term must also be amended and replaced with more appropriate terms considering the latest development in the fields of mental health and behavioral science to better meet the objective of this law.

The objective of forensic mental health evaluation is the ascertainment of the mental health condition of an offender for the assistance of the courts. Standard procedures and mechanisms of forensic mental health assessment must be specified and enforced to better assist the courts and to bridge the communication gaps between the mental health and legal professionals. Only forensically trained mental health professionals must be allowed to conduct forensic mental health evaluations of the offenders with mental health issues. Moreover, the role of psychologists must be enhanced in forensic mental health assessments of offenders in Sweden.

The capacity building of relevant stakeholders in Sweden is also recommended. The professionals dealing with forensic mental health evaluations and offenders with mental health issues must be extensively trained to handle these matters. The courses on forensic psychiatry and forensic psychology must be a mandatory part of the training of the mental health professionals, and the judges, lawyers, police personnel, and social workers must be taught courses on mental health as a part of their professional training. Moreover, interdisciplinary research on mental health and law must be promoted.

Conclusion

A person with serious mental disturbance who lacks his capacity to understand the implications of his actions and to adapt his conduct in accordance with law cannot be penalized for the crimes committed by him in Sweden. Such an offender shall be admitted to the psychiatric facility subject to the fulfillment of certain criteria. As the concept of accountability has been abolished in Sweden, an offender with abnormal mental health cannot be declared not guilty by reason of his abnormal mental health; rather, his abnormal mental health condition shall be considered at the sentencing phase, and such an offender shall be admitted to the psychiatric facility. Court-ordered mental health evaluation of such an offender is mandatory. The defense of insanity is not recognized in the criminal law in Sweden. However, there is an ongoing debate on the reintroduction of the concept of accountability in the criminal law in Sweden. It is recommended that the relevant statutory provisions be amended, and the defense of insanity must be a part of the criminal law in Sweden.

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