
BOOK REVIEW
MENTAL DISORDERS AND THE LAW

by
Kok Lee Peng, Molly Cheang and Chee Kuan Tsee
(Singapore University Press, 1994; 337 pages)

The book is divided into five parts. Part I describes mental disorders and gives an account of the existing mental health laws in Singapore and Malaysia, in one chapter. The first half of Chapter One explains what is meant by mental disorder; taking the reader through a detailed yet concise route of the nature of psychiatric problems, problems in terminology and the classifications of mental disorder - all these are rather technical and clinical in expression. The processes that a medical expert has to go through in relation to a mentally disordered accused or defendant before giving evidence are also explained here.

The second half focuses on the existing mental health legislation in Singapore. Management of the mentally disordered under the Mental Disorders and Treatment Act 1985 as well as the role of family members as provided under the Act are succinctly laid out. Differences between the English and the Singapore mental health laws are noted. Comparisons between Singapore and Malaysian mental health laws relating to admission and detention of patients are also made. Three significant differences are that the Malaysian Mental Disorders Ordinance 1952 still prohibits the setting-up of

private hospitals in relation to the mentally disordered; in Malaysia, anyone above 21 years of age who has seen the patient within the last seven days may sign a form requesting his admission; and temporary treatment without certification for a person who is unable to state whether he is willing to have treatment or not is permitted in Malaysia.

The rights of patients, (which are not statutorily provided), such as the right to communicate, right to leave and discharge himself, and right to treatment, among others, are outlined. A brief discussion as to the nature of these rights is also included.

One would have liked to see more explanation on the existing rules and procedure in Malaysia. For instance, with regard to the differences in the rules on admission and detention of patients. The laws in Singapore were reviewed and changed in 1973. Then again, perhaps the lack of attention on Malaysian cases is due to the painful fact that the law on mental disorders in Malaysia is wanting. The comparisons made between English, Singapore and Malaysian mental health legislation show how far behind the Malaysian laws are. The Malaysian legislation is dated 1952!

Part II deals with the criminal liability of a mentally disordered accused. This part comprises Chapters Two to Six, inclusive. Chapter Two deals with the accused person's fitness to stand trial and fitness for punishment. It starts off by examining what is meant by "fitness" or "unfitness" to plead or stand trial, and the abilities or disabilities that constitute "fitness" or "unfitness". The procedure adopted in ascertaining the state of mind of the mentally disordered accused is explained. An enquiry is made as to whether, and the extent to which the objective of the rules and procedure (which is "to protect and for the benefit of" the accused) is met. Comparison is made between English (and by extension, Singapore and Malaysian) and United States laws with regard to the test of "fitness for trial".

In England, the accused would be deemed to be fit to stand trial if the court feels that he understands the charge against him, realises the effect of any evidence that may be given against him and is able to make his defence or answer to the charge.

The test in the United States is more stringent. It covers the same principle above, but includes an understanding of the range and nature of the possible penalties as well as an understanding of the adversary nature of the legal process by the accused. It requires the accused to be more perceptive to the finer details of the legal process.

The law regarding remand of an accused of unsound mind is reviewed and evaluated. In Malaysia, by virtue of sections 342(iii) and 342(v) of the Criminal Procedure Code, the accused may be remanded for a maximum period of three months to undergo "observation". This period may be shortened when the Medical Superintendent is of the opinion that the accused is fit to stand trial. If the Medical Superintendent certifies the accused to be unfit for trial, how the accused will be "disposed" of depends on whether the offence is bailable or otherwise. In short, the currently available procedures are tedious and somewhat confusing.

The authors recommend reforms in the law with respect to current remand procedures. The position in England is briefly outlined and one gets the impression that the authors are recommending the adoption of similar procedures here. For instance, in England, if the accused is found unfit to plead, the trial proceeds no further. He is then placed in a mental institution where his case and condition will be reviewed after six months. The Home Secretary (on the advice of the medical officer) may remit the accused for trial when he is found fit to do so.

Under the heading of fitness for punishment, the issue of whether a subnormal person should be subjected to corporal punishment is raised.

Chapter Three examines the four defences in criminal law, that is, insanity, diminished responsibility, automatism and intoxication. The meaning of insanity and how the defence operates, is explained. Definitional and other problems inherent in the defence are identified and suggestions are made for its improvement.

The defence of diminished responsibility, as applicable in Singapore and which is in *pari materia* with its English counterpart, is analysed. This defence is not available in Malaysia. The reader will find a rather exhaustive list of

situations in which this defence has been raised - schizophrenia, personality disorders (psychopathy and sociopathy), affective disorders, alcohol - related disorders, mental retardation, and organic brain disorders.

Automatism as a defence is considered next. What this term means from the medical and legal perspective, and an account of the types of legal automatism that have been recognised or raised in courts are given.

Under the defence of intoxication, the reader is given an outline of the law governing this defence, and reference to decided cases enhances understanding.

Homicide is dealt with in Chapter Four. Besides setting out the law on homicide, it highlights examples of cases in which mentally ill offenders were charged with homicide. There is a brief but clear comment on the decision of the court at the end of each case. The law on infanticide is also touched upon, albeit rather briefly. This offence is in fact covered under the defence of diminished responsibility. In England, the Butler Committee, on Mentally Abnormal Offenders (1975) para 19.12 - 19.27 has recommended the repeal of the offence of infanticide. The Criminal Law Revision Committee, on the other hand, has argued for its retention. It would be most interesting to know the authors' view in the light of the current differences in opinion. The authors do, however, call for the need for legislation to provide for this aspect of the law in relation to mentally ill offenders.

Chapter Five deals with Minor Offences. The categories of minor offences are laid down. Examples of offenders suffering from a variety of mental disorders and how the courts dealt with them in passing sentence are explained. The judgments show that mental illness does not have the same meaning as legal insanity. Most of the cases discussed are unreported, obtained mainly from newspapers and hospital records, useful to the practitioner in both disciplines as well as a definite eye-opener! (some of the facts are rather bizarre, such as committing battery on some Japanese people in the belief that the Japanese are enemies of the people, assaulting a policeman in the belief that the government is against him, the accused. In another case, the accused struck his supervisor

due to his frustration and humiliation on not being confirmed in his job.)

Sexual Offences are dealt with in Chapter Six. The relevant provisions of the law both in Singapore and Malaysia relating to sexual offences are laid out. The types of sexual offences commonly committed by the mentally disordered, the ability of a mentally disordered victim to be a competent witness, and the fitness of a mentally accused to attend court are all discussed. The cases included serve as a useful illustration of the law and the difficulties encountered by the courts in making decisions.

The second half of this chapter raises the issue of homosexuality. Relevant provisions of the law are laid down. A sociological perspective is employed in discussing homosexuality in relation to the role of parenting and child custody. A brief coverage on the issue of transsexualism is included, with specific focus on definition, characteristics of transsexuals and problems relating to custody.

Part III delves into the civil liability of the mentally disordered. It comprises two chapters. Chapter Seven lays down the duty of the psychiatrist to his mentally disordered (and potentially dangerous) patient, as well as to the foreseeable victim. The conflict between the issue of confidentiality versus the duty to warn the third party is examined with reference to existing laws, namely the Penal Code and the Evidence Act. The controversial decision of the California Supreme Court in *Tarasoff v The Regents of the University of California*, 118 Calif Rptr 129; 529 P 2d 553 (Calif 1974) is discussed. In that case, a doctor was held negligent for failing to warn the deceased third party, of his patient's (the accused) intention to harm her. The controversy generated by this case centred around the conflict between the duty to warn and the breach of confidentiality resulting from a doctor/patient relationship. An examination is made as to whether local courts would subscribe to *Tarasoff's* decision should a similar situation arise in this part of the world.

The latter half of the chapter deals with the testamentary capacity and contractual capacity of a mentally disordered person. A will is defined, and the conditions to be met in order for a will to be valid are outlined. Relevant cases

are used to illustrate the legal position. Similarly, the contractual capacity of the mentally disordered is examined with reference to local cases.

Chapter Eight looks at the grounds for divorce in both Singapore and Malaysia, then considers whether mental illness can be classified as "exceptional hardship", thus allowing it to be a ground for divorce. Cases in which petitions have been made as against a mentally ill spouse are cited. Nullity of marriage is dealt with in the later half of this chapter. The differences between a void or voidable marriage and the grounds for which a marriage may be deemed void or voidable, are set out.

Part IV examines the relationship between mental capacity and consent. Chapter Nine deals with consent to treatment and consent to sterilisation. In the section on consent to treatment, relevant provisions of the Singapore Penal Code in relation to consent are noted. A patient in Singapore must fulfil certain requirements in relation to age, voluntariness and competence before he or she may give valid consent prior to a particular treatment. These three requirements are elaborated upon. Methods adopted in assessing the competence of the patient are also set out.

Other issues which are raised include: what happens when the patient is unable to give consent; and who may give consent on his behalf? In this respect, the role of the guardian whose views are sought in giving consent is examined.

In the section on consent to sterilisation, the arguments for and against sterilisation are laid down. The local courts have not had to deal with this issue, but case law from England, Canada, United States and Scotland are cited as examples of how other jurisdictions have dealt with this matter.

Part V of the book is an overview and comprises recommendations. The authors recommend the expansion of the defence of insanity to incorporate other mental conditions, such as irresistible impulse. The authors also note the confusing meaning of "abnormality of mind" under the defence of diminished responsibility. They urge a change in the law to include the types of illnesses that would be acceptable under the law for this defence, so as to clarify the present

ambiguity of what "abnormality of mind" really encompasses. The reviewer agrees with this particular recommendation, except that just like law, medicine is not a static field. However helpful a list of illnesses that falls under the category of "abnormality of mind" might be, this list will need to be reviewed, amended and changed from time to time with the discovery of new illnesses. The applicable law too, unfortunately, needs to keep up with these changes through new legal provisions.

The authors also recommend for the abolition of the defence of automatism and only retain the defence of insanity in its place.

The reviewer feels that the defence of insanity - in terms of absolving the accused from liability, should not be the only available defence for a mentally disordered accused. Being placed in a mental institution may well be a worse "defence" in the long run. When such a person is released, the stigma of being insane will be with him throughout his life which may prevent him from being fully accepted by society. The accused may not have a sense of belonging, and this feeling, if prolonged, is surely not conducive to normal living, to say the least. In order to reduce this stigma, it is submitted that perhaps the defence of diminished responsibility should be incorporated into the Malaysian criminal law. Even though this defence, if successfully pleaded, leads to a conviction, and carries its own version of stigma, it is argued that an ex-convict who is viewed as "having turned over a new leaf" will be more readily accepted into society than an "insane" person. The defence of diminished responsibility would be extremely helpful to those offenders who are "temporarily insane during the commission of the crime".

The authors have fulfilled their objective, as stated in the preface, that of providing literature dealing with both the medical and legal issues pertaining to the mentally disordered in a single volume. Though the language employed is relatively simple and straightforward, the issues discussed may not be obvious to a person who has neither medical nor legal background knowledge. As such, this book would be more useful and informative and indeed a "must-have" for both medical and legal practitioners. The reader is able

to see, in one single reading, the interaction between these two disciplines and this makes for easier understanding of both the medical and the legal position. This also means that it is easier to spot any flaws or confusion, especially those related to the defences of insanity and diminished responsibility. Other than medical and legal practitioners, policy-makers would find this book invaluable when considering any changes, amendments or introduction of new mental health policies.

The book is easy to read especially from Chapter Three onwards. The summary at the end of each chapter is excellent. Readers would be wise to read the summary if he needs an "instant" account of what the chapter contains. Something must be said for the style of presentation adopted in Chapter Four and various parts of later chapters. The lucid comments given after each cited case makes the relevant law "accessible" to readers who have no legal background. Cases and legal provisions from England, Canada and United States are indeed useful as a guide to the development of the legal treatment of mentally disordered offenders in our laws.

The book explains clearly, the fate of a mentally disordered accused, within the existing framework of the Criminal Law. However, due to the shortcomings within the Criminal Law itself, perhaps non-legal factors such as moral, social, economic and political considerations, in determining the culpability of the accused, ought to have been explored by the authors.

It is the reviewer's view that imposing the available variety of punishments does not really solve what ought to be the main problem - which is why people commit crimes, and how does one reduce the occurrence of crimes. Rapid policy changes encouraging industrialisation (and all that it encompasses), breeds materialistic attitudes and stress within the social setting. This fact must be acknowledged by the law-makers. It is argued that once this effect is accepted, then it would be easier to understand why people commit crimes. It is a medical fact that stress may induce violence and "insanity", temporary or permanent. The criminal law's treatment of offenders must take into account these socio-economic changes within the society. Only then will there be

hope for better synchronisation of the law, its enforcement and the variety of punishment cum treatment for offenders.

A study into the rehabilitative effect of the types of punishment would further complete the book. Incarceration is the form of punishment currently meted out, whether it be imprisonment, or detention at a hospital. Perhaps a socio-legal or even a medical study could have been made to find out whether incarceration, especially imprisonment, serves its purpose for mentally disordered offenders.

Another recommendation that is made is in the location or placement of the mentally disordered who has been convicted. At present, they are detained in a mental hospital, and the authors suggest the setting-up of non-gazetted hospitals such as those in Japan.

It is hoped that this book will spur other writings on medico-legal literature on the mentally disordered.

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