

Navigating Criminal Liability and Trial Procedure in Dissociative Identity Disorder: Framework and Proposals for Bangladesh

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Abstract: Dissociative Identity Disorder (DID) poses unique challenges to the traditional criminal jurisprudence both from the substantive and procedural dimensions. The legal literature in Bangladesh has been quite silent, if not nonchalant, in addressing this issue of concern. The paper aims at bridging the gap between the existing penal laws of Bangladesh and DID patients as far as their criminal liability is concerned. It begins with shedding light on DID and the interplay between personalities living inside. Afterwards, it establishes the personhood of alter personalities through a right-duty-based analysis. Unlike other studies on this issue, it develops a new measurement framework of criminal liability for different DID conditions like mutual amnesic, unidirectional amnesic and co-conscious. Reflecting on the police interrogation phase and the evidentiary value of expert opinion, it suggests the trial procedure of DID patients in line with the Code of Criminal Procedure 1898 (CrPC 1898). Finally, it highlights an optimal outcome of such cases premised on reformatory theory and recommends a few amendments in the legal architecture. This paper concludes by pointing out some recommendations for amendments that, when viewed through the lens of DID, could be incorporated into our corpus juris to address the existing lacuna in this area.

Keywords: DID (Dissociative Identity Disorder), Alter-in-control Approach, NGRI-DID (Not Guilty by Reason of Insanity due to DID), Preventive Theory of Punishment, Reformatory Theory of Punishment.

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Parçalanmış Kimlik Bozukluğunda Cezai Sorumluluk ve Yargılama Usulünü Yönlendirmek: Bangladeş İçin Çerçeve ve Öneriler

Özet: Parçalanmış Kimlik Bozukluğu (PKB), ceza hukukunun hem maddi hem de usul boyutunda geleneksel yargı anlayışına özgün zorluklar getirmektedir. Bangladeş'teki hukuk literatürü, bu kaygı verici konuyu ele almakta büyük ölçüde sessiz kalmış, hatta kayıtsız görünmüştür. Bu makale, Bangladeş'in mevcut ceza yasaları ile PKB hastalarının ceza sorumluluğu arasındaki boşluğu kapatmayı amaçlamaktadır. Çalışma, öncelikle PKB'nin doğasına ve içsel kişilikler arasındaki etkileşime ışık tutarak başlamaktadır. Ardından, hak-ödev temelli bir analizle bu alternatif kişiliklerin "kişilik" statüsünü ortaya koymaktadır. Bu alandaki diğer çalışmalardan farklı olarak, karşılıklı amnezik, tek yönlü amnezik ve eş-bilinçli gibi farklı PKB durumları için yeni bir ceza sorumluluğu ölçüm çerçevesi geliştirmektedir. Polis sorgusu aşaması ve uzman görüşünün delil değeri üzerine düşünerek, PKB hastalarının yargılanma usulünü 1898 Ceza Muhakemeleri Usul Kanunu (CrPC 1898) ile uyumlu şekilde önermektedir. Son olarak, bu tür davalarda reformcu teoriye dayalı en uygun sonucu vurgulamakta ve hukuki yapıda bazı değişiklikler önermektedir. Makale, mevcut boşluğu gidermek amacıyla PKB perspektifiyle bakıldığında Bangladeş hukuk sistemine dahil edilebilecek bir dizi değişiklik önerisiyle sona ermektedir.

Anahtar Kelimeler: PKB (Parçalanmış Kimlik Bozukluğu), Kontroldeki-Alter Yaklaşımı, PKB Nedeniyle Cezai Ehliyetsizlik (NGRI-DID), Önleyici Ceza Teorisi, Reformcu Ceza Teorisi.

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Introduction

Liability, whether civil or criminal, is the legal bond or *vinculum juris* that exists between the wrongdoer and the evil consequences of his wrong.¹ The object of criminal or penal liability is the punishment of the wrongdoer.² The liability of a murderer to be punished, for example, is penal in nature. While with this end in view, measuring liability may sound to be a script-fueled mechanical task, life does not always go the way we want. Complexity may arise as to determining the criminal liability of a person affected by DID. A psychiatric examination of the offender may reveal that the crime was perpetrated not by him, but by his alter ego, who at the time of the offence might have been in a dormant state within the offender himself.

This paper is structured into five parts. The first part explores the nature of Dissociative Identity Disorder (DID) and the reciprocal functionalities of the alter personalities that resides within. It lays the groundwork for the analyses that follow by establishing the personhood of alter personalities in the legal jurisprudence. The second part dissects the applicability of the defence of insanity across the three different states of DID. The fourth part delineates the procedural framework for the trial of individuals with DID. Finally, this paper concludes by pointing out some recommendations for amendments that, when viewed through the lens of DID, could be incorporated into our corpus juris to address the existing lacuna in this area.

1. Dissociative Identity Disorder (DID)

Dissociative Identity Disorder (DID) is characterized by the presence of two or more distinct identities or personality states, each with its own patterns of perceiving, thinking, and relating to the environment and the self where at least two of these identities or personality states recurrently take control of the person's behavior.³ It has also been shown that the identities may also differ in age, gender, preferences, and even handwriting.⁴ Hence, persons coming down with DID have one physique, but not one

¹ Jayakumar, N. K. *Lectures in Jurisprudence*. 3rd ed. Gurgaon: LexisNexis, 2015.

² Jayakumar, *Lectures in Jurisprudence*.

³ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. (Arlington, VA: American Psychiatric Publishing, 2013), 292.

⁴ Corbett H. Thigpen and Hervey Cleckley, "A Case of Multiple Personality," *Journal of Abnormal and Social Psychology* 49, no. 1 (1954): 135.

psyche. Dissociation operates as a defense mechanism when an individual confronted with severe trauma shuts himself off and ends up creating any one or more personalities inside his mind to help him avoid the traumatic experiences.⁵ Resultantly, personalization of an individual does not get fully developed because the traumatic information is stored in different parts of the identity, so called alters.⁶

1.1. The Interplay of the Minds Inside

DID is marked by the coexistence of the host and alter identities that are fragmented from each other with limited or no communication.⁷ Host personality is the one that remains present from birth and for the maximum time afterwards, whereas alter personalities are those that develop in course of time as a shield to combat trauma.⁸ Putnam conceptualizes alter personalities as highly discrete states of consciousness organized around a prevailing affect, sense of self (including body image) with a limited repertoire of behaviors and a set of state dependent memories.⁹ Ozturk and Sar have identified three forms of awareness of the personalities:¹⁰

- A) **Mutual Amnesic:** Where host and alter personalities are not aware of the existence of one another.
- B) **Unidirectional Amnesic:** Where host personality is unaware of others but other personalities are aware of him.
- C) **Co-conscious:** Where all personalities are reciprocally aware of one another.

These states of DID, it is submitted, might function as catalyst in determining criminal liability of those who perpetrate crime under the influence of their alter.

⁵ Mudit Saxena, Sachin Tote, and Bhagyesh Sapkale, "Multiple Personality Disorder or Dissociative Identity Disorder: Etiology, Diagnosis, and Management," *Cureus* 15, no. 11 (2023).

⁶ Stefane M. Kabene, Nazli Balkir Neftci, and Efthymios Papatzi, "Dissociative Identity Disorder: Guilty or Not Guilty," *Frontiers in Psychology* 13 (2022).

⁷ Kabene, Neftci, and Papatzi, "Dissociative Identity Disorder".

⁸ Kabene, Neftci, and Papatzi, "Dissociative Identity Disorder".

⁹ Erdinç Öztürk and Vedat Sar, "Formation and Functions of Alter Personalities in Dissociative Identity Disorder: A Theoretical and Clinical Elaboration," *Journal of Psychopathology and Clinical Psychology* 6, no. 6 (2016): 385.

¹⁰ Öztürk and Sar, "Formation and Functions," 385.

1.2. Are ‘Alter Personalities’ Persons in Jurisprudence?

Salmond defines person as ‘any being whom the law regards as capable of rights and duties’.¹¹ To put it simply, persons are the substances of which rights and duties are the attributes.¹²

When alters are present, they are adequately capable of rights and duties. As an illustration, Article 31 of the Constitution sanctions equal protection of law and admits of no restrictions to be imposed by the legislators. If a host personality in the face of extreme physical and sexual abuse develops an alter personality, makes the alter suffer the abuse and subsequently that alter personality carrying the body moves to the court to punish the wrongdoer, can the court deny his constitutional right? Let us think it from the other way around. If the alter perpetrates any other offence, can the court say that he was under no duty to respect the right of others just because he is an alter? Both of these questions, it is submitted, seem to have a negative answer.

Daniel Dennett (1976), a philosopher, has identified six theme that are prominent in philosophical discussions of personhood –

- i) rationality;
- ii) subject of intentional predicates;
- iii) recipient of a certain stance or attitude — a person is a moral object;
- iv) capable to reciprocate when such a stance if taken a person is a moral subject or agent;
- v) usage of language;
- vi) having a special kind of consciousness, perhaps self-consciousness.¹³

The case of Billy Milligan, charged with rapes and robberies at Ohio State University in 1977, starkly illustrates how alters come within the purview of Dennett’s theme. It was found that the crimes were committed not by Billy, the host personality long absent from

¹¹ Salmond, John William. *Jurisprudence*. 7th ed. London: Sweet & Maxwell, 1924, p. 329.

¹² Khan, Hamiduddin. *An Introduction to Jurisprudence*. 2nd ed. Dhaka: Ideal Library, 1973, 167.

¹³ Dennett, Daniel C. *Brainstorms: Philosophical Essays on Mind and Psychology*. Cambridge, MA: MIT Press, 1978, pp. 267–285.

consciousness due to suicidality, but by his alters Adalana and Ragan.¹⁴ Each alters had different handwriting, accents, and physical mannerisms.¹⁵ After blackouts when one of the alters acted, the others had no recollection of those events.¹⁶ It therefore follows that alters have different memories, different emotions, different likings and when they intend to do any act, they do so with their own intent only, and not with that of the host or of any other. *Mens Rea* (Guilty Mind), a constituent element of crime, can also be formed by the alter alone. The sole deprivation of alters lies in their lack an external vessel, a separate body capable of being perceived by senses. However, Salmond rightly excludes human body to be determinative of personhood as slaves, for example, are destitute of personhood in any legal system which regards them incapable of rights and duties.¹⁷ Therefore, the fact that alters do not have separate bodies does not by itself operate to be deprive them of legal personhood.

The Supreme Court of Bangladesh (SCB) has already manifested its liberal stance towards granting personhood to entities. In the landmark Turag River case, the SCB declared all rivers flowing through Bangladesh as legal or juristic persons.¹⁸ The SCB went on to designate the National River Commission as their *loco parentis* or legal guardians with the responsibility to protect, conserve, and develop rivers, safeguarding them from encroachment and pollution.¹⁹

It is, in fine, submitted that alters may well withstand the threshold of personhood, both from the right-duty based jurisprudential perspective and under the philosophical framework of Dennett.

2. A Measurement Framework of Criminal Liability: Bringing DID in Harmony with the Penal Code 1860

Reflecting the legal acumen of Lord Macaulay, the Penal Code of 1860 stands as a beacon of certainty. Nevertheless, time is not like stagnant water, neither should the

¹⁴ Elyn R. Saks & Stephen H. Behnke, *Jekyll on Trial: Multiple Personality Disorder and Criminal Law* (New York University Press 1997), p. 6.

¹⁵ Keyes, Daniel. *The Minds of Billy Milligan*. New York: Bantam Books, 1995. p. 8.

¹⁶ Keyes, p. 27.

¹⁷ Salmond, John William. *Jurisprudence*. 329.

¹⁸ *Human Rights and Peace for Bangladesh v Bangladesh* [2019] Writ Petition No. 13989/2016 (SCB).

¹⁹ *ibid*.

statutes be. In course of time, statutes need to be reinterpreted so as to cater the needs of the present time. Multiple Personality Disorder (MPD) was first introduced to *Diagnostic and Statistical Manual of Mental Disorders* (DSM) in 1980²⁰ and re-named Dissociative Identity Disorder (DID) in subsequent editions of the diagnostic manual.²¹ Thus, the term itself was not coined in 1860. However, DID is being used as a defence in criminal cases all over the world,²² and so it is pertinent to analyze relevant provisions of the Penal Code 1860 to decipher to what extent it admits DID as a defence from criminal liability.

2.1. The Defence of Insanity

Incorporating the crux of McNaughten case,²³ section 84 of the Penal Code 1860 runs-

Nothing is an offence which is done by a person who, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Alters may, as shown earlier, be viewed as persons in the legal parlance. The challenge now lies in exploring the nuances of criminal liability across different states of DID.

2.2. Criminal Liability in case of Mutual Amnesic

Some DID patients' host and alter personality are totally ignorant as to the existence of one another.²⁴ It may appear prima facie that in such circumstance, the personality of the alter who was in control at the time of the offence should be put into examination to determine whether he could understand the nature of his act. But what will wait ahead if that personality is found sane? The prominent English jurist William Blackstone

²⁰ American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders*. 3rd ed. American Psychiatric Publishing, 1980, 257.

²¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed., 292.

²² *State v Miligan* (1978) No 77-CR-11-2908 (Ohio Court of Common Pleas); *State v Rodrigues* (1984) 67 Hawaii 70; *State v Badger* [1988] 551 A2d 207 (Vermont Supreme Court); *Orndorff v Commonwealth* [2010] 691 SE 2d 177 (Virginia Supreme Court).

²³ *R v McNaughten* [1843] RR 59, 8ER 718 (HL).

²⁴ Öztürk and Sar, "Formation and Functions," 385.

observed, ‘[B]etter that ten guilty persons escape, than that one innocent suffer.’²⁵ Like many other common law countries, our criminal jurisprudence also stands on this well-formed Blackstonian foundation. This ‘alter in-control approach,’²⁶ quite glaringly, runs counter to quintessence of criminal jurisprudence. It is impossible to punish only the criminal alter, because nobody can, with reasonable certainty, claim that the criminal personality will be present all throughout and others will remain dormant. Thus, an approach to punish the alter will result in punishing the criminal at the cost of an innocent.

In *State v Milligan*,²⁷ Billy, accused of three rapes, was argued to be NGRI-DID (Not Guilty by Reason of Insanity due to DID) because it was his alter, and not he, who perpetrated the offence. It was revealed that during his childhood, Billy’s stepfather raped him, hanged him and even buried him alive. Billy was led by these traumatic events to develop alter personality as a shield. Examining expert opinion and other collaborative evidence, the court absolved Billy from criminal liability since both criminal and non-criminal personality co-existed within himself.

The view of the Indian Supreme Court in a comparable psychiatric condition is also apt to mention in this regard. In *Re Pappathi Ammal v. Unknown*,²⁸ the court held that if a person commits an offence under the effect of somnambulism (sleep-walking), he shall be considered not guilty under Section 84 of the Penal Code 1860. A person who is the victim of a somnambulist habit has generally no recollection of the events occurring during the fit after he awakes.²⁹ Similar to somnambulism, mutual amnesic in DID also causes as a disruption in the memory and bodily control. Although these views are not binding upon our courts, they hold significant persuasive value in adjudicating criminal cases involving mutual amnesic.

²⁵ Blackstone, William. *Commentaries on the Laws of England*. 1st ed. Clarendon Press, 1769.

²⁶ Kabene, Neftci, and Papatziki, “Dissociative Identity Disorder”.

²⁷ (1978) No 77-CR-11-2908 (Ohio Court of Common Pleas).

²⁸ [1959] AIR Mad 239.

²⁹ Modi, Jaising P. *A Textbook of Medical Jurisprudence and Toxicology*. 12th ed. LexisNexis, 1955.

2.3. Criminal Liability in case of Unidirectional Amnesic

In some DID cases, one personality knows about the existence of the other, while the other remains unaware of it.³⁰ In examining criminal liability involving unidirectional amnesic, two situations may arise-

- A) The criminal alter is aware of the innocent one, and not vice versa.
- B) The innocent personality is aware of the criminal alter, and not vice versa.

In the first instance, the mere fact that the criminal alter is aware of its innocent counterpart does not make any difference. As the criminal alter knows of every detail about the other, it is quite possible for him abet the innocent alter by pressing any emotional or behavioral trigger such as creating a situation of extreme anger, or by manipulating the environment to entrap the other into committing any crime. It is submitted that only when the criminal alter abets its counterpart by instigating in any manner and the counterpart does the act abetted, the guilt becomes reciprocated and comes within the purview of the Penal Code 1860. If the very act abetted is done, the individual is punishable as per section 109³¹ and 110;³² whereas, if a different but naturally following act is done, the individual is punishable as per section 111,³³ 112³⁴ and 113³⁵ of

³⁰ Öztürk and Sar, "Formation and Functions," 385.

³¹ "Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment Explanation.-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

³² "Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other."

³³ "When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it: Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment."

³⁴ "If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences."

³⁵ "When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had

the Penal Code 1860. As both personalities are guilty at this juncture, the punishment of abetment according to the relevant sections of the Penal Code may be inflicted while violating no principle of criminal jurisprudence. However, cases where one alter personality intentionally manipulates the other may appear to be less common as this situation is likely to arise only when the criminal alter has very limited and unstable control over the body.

In the second instance, the innocent personality can only be held criminally liable when he, not only knows that the act being done by his alter is wrong or contrary to law, but he has effective control over his alter as well. Only when he has effective control over his alter can he attempt to prevent the crime commission by regaining control of the body, alerting others, placing himself in a safe environment or voluntarily incarcerating himself. But if he fails to do so, he intentionally aids by omission the commission of the offence. Therefore, the weapon of section 107³⁶ of the Penal Code 1860 holds him as an abettor by omission and makes him punishable accordingly.

2.4. Criminal Liability in case the Personalities are Co-conscious

In this state of DID, every personality prevalent within oneself remains vigorously cognizant of one another's presence.³⁷ In cases, they may even talk to one another.³⁸ Even then, prudence must grace the halls of justice. Just because the host is aware of the alter and vice versa, the court cannot punish the innocent counterpart. As a general rule, criminal law does not recognize the principle of vicarious liability.³⁹ To punish the

abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect."

³⁶ "A person abets the doing of a thing, who

Firstly.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.-A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

³⁷ Öztürk and Sar, "Formation and Functions," 385.

³⁸ Öztürk and Sar, "Formation and Functions," 385.

³⁹ Jayakumar, *Lectures in Jurisprudence*, 317.

individual, it must be shown that each personality formed the requisite *mens rea* (guilty mind), or else there cannot be any criminal liability.

It is therefore submitted that the Court has to enquire into whether both shades of the personalities shared the common intention and conjointly perpetrated the crime. If the answer appears in the affirmative, the principle of joint liability as elucidated in section 34⁴⁰ of the Penal Code may be called into action and the individual, whether carrying the host or alter personality, may be punished as principal offender. In *Abul Bashar v State*,⁴¹ a prior concert was deemed a precondition of a common intention before anyone can vicariously be convicted for a criminal offence committed by another. Hence, the personalities must concert prior to the commission of the offence. It falls upon psychiatrists to cumulatively decipher from his conduct and behavior whether any prior concert took place. After the offence is perpetrated, it becomes immaterial who perpetrates the crime since both thereafter stands on the same footing as regards criminal liability.

3. Paving Procedural Pathway for DID Cases

3.1. Police Interrogation

Interrogating a person with DID requires specialized expertise. In the renowned case of Billy Milligan,⁴² police officials were at a fix during interrogation and could not understand whom they are talking to at different times.⁴³ Unfortunately, the police officials of Bangladesh often disregard Article 35(5) of the constitution and resort to third-degree treatment to extract confession.⁴⁴ In *Saifuzzaman v State*,⁴⁵ the SCB also vehemently criticized torture in police custody and termed it as ‘state terrorism’.⁴⁶ Inflicting such treatment on an accused with DID would only exacerbate his trauma and

⁴⁰ “When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

⁴¹ (1980) 32 DLR 182.

⁴² *State v Miligan* (1978) No 77-CR-11-2908 (Ohio Court of Common Pleas).

⁴³ Keyes, Daniel. *The Minds of Billy Milligan*. 1st ed. Bantam Books, 1981.

⁴⁴ Badsha Mia, “Custodial Torture: Laws and Practice in Bangladesh,” *ER/SSH* 2, no. 2 (2020): 232, 241.

⁴⁵ (2004) 56 DLR 324.

⁴⁶ *ibid* [9] (Surendra Kumar Sinha J).

worsen his mental disorder. Hence, some legislative changes are required in this regard which will be proposed in the latter section of the paper.

3.2. Expert Opinion of Psychiatrists

Law and psychiatry come into interface more often than many other fields in the medical discipline.⁴⁷ Under section 45 of the Evidence Act 1872, expert opinion is sought when the court has to form an opinion upon a point alien to the court's expertise. In most of the cases, psychiatrists are called in aid to testify the defence of insanity.⁴⁸ In DID cases, psychiatrists may accordingly be called in aid to elicit, from the diagnostic feature elucidated in DSM,⁴⁹ whether the accused suffers from DID and explain to the court the reasons supporting his decision. Section 510 of CrPC 1898 also solidifies report of an expert as an evidence usable in enquiry or trial which carries heavy weightage. However, expert opinion is one piece of evidence and should be considered with other evidence on record.⁵⁰

3.3. The Trial

The trial procedure designed for lunatics in CrPC 1898, it is submitted, squarely fits for DID patients as well.

Under section 464 of CrPC 1898, when a person is of unsound mind at the time of trial, the trial gets postponed by Magistrate. The rationale underlying this section is not difficult to locate, that is, the accused cannot simply defend himself. Coming to DID, the personality other than the perpetrator cannot also defend himself. As alters are competent to be considered persons and they, if dormant, cannot defend themselves, it will be a severe violation of the Article 33(1) of the Constitution to keep the trial in motion. Hence, DID patients do also come under the umbrella of section 464. Section 465 is couched in similar terms as the previous one, but applies to the Court of Sessions. As per section 466, lunatics, when the trial is postponed, are released on sufficient security being given that he shall be properly taken care of and shall be prevented from

⁴⁷ Narayani Sepaha, "Psychiatric Expert Opinion: Admissibility and Relevancy," *LCJLS* 1, no. 1 (2021): <https://lawcolloquy.com/journals/psychiatric-expert-opinion-admissibility-and-relevancy-narayani.pdf> accessed September 28, 2024.

⁴⁸ *ibid.*

⁴⁹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed., 292-94.

⁵⁰ *Masud Haider (md) v. Md Golam Ambia (Harun)* (2015) 67 DLR 395.

doing injury to himself or to any other person or are kept in jail or mental asylum. Accordingly, DID patients may be released in the similar conditions if the criminal alter is asleep and it will sufficiently prevent them from committing further crimes. Whenever it appears to the person-in-charge that the criminal alter has taken over, the trial may be resumed as section 473 suggests in case of lunatics. If the alter again goes asleep, the trial may again be postponed on the touchstone of section 468(2).

3.4. An Optimal Outcome

On one hand, if the individual is found guilty following the previously articulated framework of the Penal Code 1860 (either there was active complicity between the personalities or one personality intentionally aided by omission the commission of the offence), the defence of NGRI-DID is not available and as such it is expedient to bring him to book accordingly.

On the other hand, if it is proved beyond reasonable doubt that the body perpetrated the offence but the individual is found not guilty following the previously articulated framework of the Penal Code 1860 (either the personalities were unaware of one another or the innocent personality knew about, but had no effective control over, the criminal alter), the defence of NGRI-DID absolves him from criminal liability. Then again, leaving him to the society at large does not seem to be a wise action. To arrive at an optimal outcome in this regard, a conglomerate of preventive and reformatory theory has to be made within the legal framework. Preventive theory of punishment aims to prevent a repetition of the offence by rendering the offender incapable of its commission.⁵¹ In contrast, the reformatory theory of punishment is an alternative approach to criminal justice that emphasizes rehabilitation and social reintegration rather than retribution and incapacitation.⁵² The two theories get amalgamated at law in the treatment of criminal lunatics under CrPC 1898 and the Mental Healthcare Act 2018 (MHA 2018). Firstly, like lunatics, he might be kept in an asylum by the reception order of the magistrate or court under section 471(1) of CrPC 1898 read with section 15(1) of MHA 2018. Secondly, under section 474(1) of CrPC 1898, he might form a ground for release from asylum if the person-in-charge (Inspector General or Visitors) finds him

⁵¹ Jayakumar, *Lectures in Jurisprudence*, 187.

⁵² Weihofen, Henry. "Punishment and Treatment: Rehabilitation." In *Theories of Punishment*, edited by Stanley E. Grupp. London: Indiana University Press, 1971, 255.

rehabilitated and no longer a threat to the society. Furthermore, in light of section 475(1), he might also be handed over to his friends or relatives on their giving security to the satisfaction of the Government with some conditions superadded i.e. he shall be prevented from harming anyone further and shall be produced at any time the government directs.

Moreover, he must be accorded proper treatments like psychotherapy, medication etc. by the psychiatrist. Psychotherapy, considered the primary treatment for DID, involves sessions talking to various alters and trying to reconciling them.⁵³ A case study from Bangladesh further necessitates this requirement of psychotherapy. A second-year medical student admitted in the psychiatry department of the Bangabandhu Sheikh Mujib Medical University (BSMMU) was diagnosed as a case of DID. However, frequent psychotherapy and relaxation techniques at the psychiatry department made him come round the identity disturbance.⁵⁴ Therefore, DID patients have considerable possibility of coming round the disorder if proper treatment and facilities are provided.

Concluding Remarks

Although the plea of this disorder in our domestic legal spectrum still remains to be seen, the urgency for reform is far from remote. Since criminal liability of a person has always to be measured with an arithmetic exactitude, the proposed measurement framework of criminal liability suggests that determining liability in such cases requires a careful scrutinization into the states of awareness between the personalities. If the subject suffered from mutual amnesic, the defence of NGRI-DID (Not Guilty by Reason of Insanity due to DID) may be invoked to exonerate him from liability. It is in cases of unidirectional amnesic and co-conscious that an enquiry into the interaction, if any, between the alters becomes necessary. With regard to the procedural law, the trial procedure and outcome applicable to the lunatics can squarely be attributed to DID patients except for the fact DID patients need additional psychotherapy for reformation.

Finally, the following recommendations are proposed to be introduced to facilitate adjudication of DID-related cases:

⁵³ Saxena, Tote, and Sapkale, "Multiple Personality Disorder," 2023.

⁵⁴ MS Ahsan, MSI Mullick, MA Sobhan, M Khanam, JS Nahar, M Islam, and M Ali, "Multiple Personality Disorder: A Case Report," *Bangladesh Journal of Psychiatry* 20, no. 2 (2006): 96.

1. **Psychiatric Examination during Investigation:** It is difficult, if not impossible, for the police officials to identify a person with subtle personality disorders like DID. To ensure an empathetic interrogation phase to an accused alleged to be suffering from DID, a provision may be inserted to CrPC 1898 requiring psychiatric examination of the accused if he shows signs of DID. If the examination reveals that the accused suffers from DID, the interrogation may thereafter be handed over to the psychiatrist.
2. **Redefining 'Mental Disorder':** The definition of mental disorder appearing in section 2(16) of MHA 2018 recognizes the ability to lead normal life as an identifying criterion to mental disorder. The definition lacks clarity and inadvertently excludes all personality disorders, for individuals with these disorders may often lead normal lives. Therefore, the definition needs reconsideration.
3. **Separate Custody:** Since DID patients are not like conventional lunatics, confining them together may add to their trauma and worsen their psychiatric condition. Like the provisos to section 7(1) of MHA 2018 which demand separating children, criminal lunatics and drug-addicts from others, a provision may further be inserted to separate DID patients from other criminal lunatics as well.

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