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Insanity Defense in Criminal Cases in Courts in Pakistan

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Abstract: *The insanity defense is an affirmative defense against the criminal liability of a person suffering from mental disorder. Pakistan incorporated McNaughton Rules in section 84 of Pakistan Penal Code, 1898 according to which a person cannot be held guilty of committing a crime if such a person, at the time of the commission of a crime, was suffering from such a mental disorder which rendered him/her incapable of knowing the nature of the act. This article discusses the substantial, procedural, and evidential law on the defense of insanity in Pakistan in criminal cases in light of the judgments of the superior courts. Furthermore, this article discusses the recent developments in criminal law regarding the defense of insanity in Pakistan. The findings of this research hold implications for legislatures, jurists, judges, lawyers, psychiatrists, psychologists, forensic experts, and policy makers.*

Key Words: Crime, Insanity, Insanity Defense, Proof of Insanity

Introduction

Pakistan incorporated McNaughton Rules in its penal code as standard for criminal law related to insanity. Section 84 of the Pakistan Criminal Code 1898 deals with the insanity related law in Pakistan. This is the only exhaustive section in substantial law which deals with insanity in criminal law. Under section 84 of Pakistan Penal Code 1898 a person cannot be guilty if he/she is suffering from some mental disorder to such an extent as he/she cannot differentiate right from wrong (Mehmood, S. & Mehmood, N., 1998). Legislature used the word unsoundness of mind deliberately in section 84 of Pakistan Penal Code instead of word insanity to broaden and to specify the scope of the term which includes permanent as well as temporary incapability (Mehrban Alias Munna v. The State, 2002).

What is Insanity Defense?

Insanity defense is a defense against the criminal liability of a person suffering from a mental disorder. The fixing of criminal responsibility is a contentious issue across criminal jurisdictions. In case the accused is insane, the application of retributive and deterrent aspects of punishment is different than in case of a normal accused. It is assumed that punishment to a

person who is suffering from a mental disorder serves no purpose neither retributive nor as a deterrent. However, unlike other defenses, a successful insanity defense may or may not result in an acquittal but the accused's commitment to a forensic mental facility for treatment (Upadhyay, 2017).

Modern day defense of insanity is based on McNaughton Rules. The criteria for the tests of insanity are primarily based on the distorted cognitive faculty, pathological malfunctioning and deprivation of reasoning (Siddique & Sarkar, 1983). Specific kinds of mental disorders in different forms of severity can test the fire of the criteria of insanity for an accused to get benefit from this defense against the crime. The criterion is largely focus on cognitive factors as there was found no significant association between insanity, criminality, and personality factors (Schuessler & Cressey, 1950). Although no definition of insanity or insanity defense is given in Pakistan Penal Code, 1860; however, one can safely draw an inference from section 84 of PPC that if a person is not capable of knowing what he is doing or what is right and wrong because of his insanity, there would be no offence in case of such a person (Mehmood, S. & Mehmood, N., 1998).

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Statutory Law on Insanity Defense; the Section 84 of Pakistan Penal Code, 1898

Section 84 of the Pakistan Penal Code, 1898 is the statutory provision that deals with the defense of insanity in substantial criminal law in Pakistan. As the scope of this section is concerned the law is interpreted and settled by the courts in Pakistan, that not every person who is having a mental disorder can be exempted from punishment just because he/she is suffering from a mental disorder. An accused who wants to plead under section 84 PPC must prove that at the time of committing the offence, he was suffering from such a mental disorder as he/she cannot know the nature of the act (Khizar Hayat v. the State, [2006](#)).

Pre-requisites for Section 84

There are some mandatory pre-requisites to attract section 84 i.e., (1) the accused at the time of committing an offence must be having a mental disorder (2) which renders him/her unable of knowing what he/she is doing and/or (3) what he/she is doing is contrary to the law (Hassan, [1860](#)). Section 84 deals with a situation where a person is completely devoid of rational understanding so much so that he/she incapable of knowing his/her acts. Furthermore, such a person is incapable of distinguishing right from wrong and legal from illegal (Mehmood, S. & Mehmood, N., [1998](#)).

However, not every mental disorder can make the accused exempted from punishment, rather it is the court to decide which mental disease and in what condition is sufficient to be considered as a defense against the crime committed. There must be a substantial lack of understanding up to a certain level which is not the case in every mental disorder (Noor Uddin v. State, [2014](#); Abdul Ghaffar v. State, [2017](#); Mehrban Alias Munna v. The State, [2002](#)). If the cognitive faculty is not disabled to such an extent and the accused is able to know right and the wrong, he is not unsound (Mehmood, S. & Mehmood, N., [1998](#)).

Legal Insanity vs. Medical Insanity

Legal insanity is different from medical insanity. Not every kind of insanity can be considered as legal insanity. The criteria of medical insanity are different and the behavior which considers abnormal in medical terms is based on medical purposes of diagnoses and treatment while in the case of legal insanity, the purpose is legal, thus the criteria is different. The purpose of medical insanity is diagnostic and clinical, whereas legal insanity is primarily focus on the purpose and criteria set by relevant law which is whether a person can make a judgement about his/her actions.

Not all psychiatric disorders can be considered as causing legal insanity. The accused shall be considered insane on the criteria of legal insanity (Jeewan Shah v. Muhammad Shah, [2006](#)).

Proof of Insanity in Criminal Law in Pakistan

A person who wants to invoke the section 84 PPC must prove that at the time of committing the crime, he/she was having a mental disorder to such severity as not to be able to know the nature of the act. However, each person is presumed to be sane unless the otherwise is proved (Khizar Hayat v. The State [2006](#); The State v. Balahari Das Sutradhar, 1962).

Onus of Proof in Plea of Insanity

In case of the insanity defense is taken, the burden of prove is on the accused. The burden of proof, as in the case of all other exceptions in Chapter IV of PPC, shall be on the accused. As per Article 121 of QSO 1984, the burden is on the accused to prove that at the occurrence of the illegal act he was suffering from a mental disorder which made him unable to know the nature of the act and/ to differentiate from right to wrong and legal to illegal (Lal Khan v. The Crown, 1952; Gholam Yousaf v. The Crown, [1953](#)). According to Article 121, QSO 1984, the onus of proof, like all other exceptions, is on the accused. The prosecution needs to prove the allegations levelled against the accused beyond reasonable doubt and even in case of unsuccessful plea of insanity the prosecution will not be absolved of this. However, in case of an insanity plea taken under section 84 of PPC the onus of proof is on the accused to prove it (Safia Bano v. Home Department and others, 2021; Mehrban Alias Munna v. The State, [2002](#); Muhammad Idrees v. State, [2011](#)).

Standard of Evidence in Insanity Plea

To establish the plea of insanity the standard of evidence is the preponderance of probabilities rather the standard of beyond reasonable doubt (Muhammad Iqbal v. The State, [1985](#); State of Rajasthan v. Shera Ram, [2012](#)). The accused must prove at the standard of the balance of probabilities that at the time of committing the offense he was suffering from a mental disorder that he was unable to comprehend what he/she is doing and/or unable to appreciate what is right and wrong (Ashiruddin Ahmed v. The King, [1949](#)).

Underlying Presumption of Sanity

The law all over the world considers every person as a normal person. Every man is assumed to be rational

and sane unless otherwise proven. The burden of prove is on the accused in case of an insanity plea (State of Rajasthan v. Shera Ram, [2011](#)). Minor deviation from normal behavior is not insanity, thus no defense of insanity can be taken in such a case (Ahmad, [1898](#)).

Criteria for Test of Insanity

In Pakistan the criteria for the test of insanity are the one laid in McNaughton rules. Pakistan like many other countries with a common legal system adopted the McNaughton rules which declare a person insane if at the time of the offense, he/she does not know what he/she is doing and/or what he/she is doing is either right or wrong (Anayat Ullah v. The State, [2011](#)). In Pakistan, the criteria for insanity defense are solely focused on the cognitive deficiency of a person (Ramzan v. Emperor, [1919](#)).

Inferences from the Plea of Insanity

There must be logical proof to establish the plea of insanity. Moreover, each plea of insanity is to be settled on its own certainties and surrounding conditions (State of M.P. v. Ahmadull, 1961). The accused must be insane at the occurrence of the crime (Dahyabhai Chhaganbhai Thakker v. State of Gujarat, [1964](#)). The court must take a wholistic view of evidence presented by the prosecution and the defense and of the attending circumstances before settling the question of insanity (State of M.P. v. Ahmadull, [1961](#)).

The motive of the Accused is Relevant Rather Conclusive in Insanity Plea.

As far as the motive of the accused associated with an insanity plea is concerned, the lack of motive cannot be said a criterion for insanity rather it can be a guiding factor. This factor must be considered along with other essential factors to ascertain the insanity plea by an accused (Hari Singh Gond v. State of Madhya Pradesh, [2008](#)). However, each plea must be settled on its own merits and the facts presented in the plea of insanity (Jai Lal v. Delhi Administration, [1969](#)).

Expert's Testimony to Ascertain Insanity Defense

The court is not bound to conduct a medical examination each time the plea of insanity is raised (Surendra Mishra v. State of Jharkhand, 2011). However, the examination by an expert is necessary when a technical question is involved such as the defense of insanity. The opinion of an expert is important to determine the mental condition of an accused, however, the expert cannot determine the question whether the accused was possessing requisite

mens rea or the accused was unable to distinguish from right to wrong. It is up to the trier of the fact to determine these questions (Ratan Lal v. State of Madhya Pradesh, [1970](#)).

Procedural Law in Pakistan in Case of Plea of Insanity

The Supreme Court of Pakistan in its seminal judgement interpreted many substantial and procedural law aspects regarding the defense of insanity in criminal law in Pakistan. There were a few lacunas regarding the dealing of the plea of insanity by the accused which the Supreme Court of Pakistan thoroughly discussed and interpreted (Safia Bano v. Home Department and others, [2021](#)).

The Procedure of the Trial Court for the Plea of Insanity

Section 464 of CrPC deals with the procedure in case of an insane accused in the Court of Magistrate. It is pertinent by the very section that if the presiding magistrate has a justified and significant reason to believe that the accused is insane then it is mandatory for the magistrate to inquire into the fact and shall get such a person examined by the medical board and then reduce the examination of the board in writing. Section 465 deals with the procedure in case of an insane person's trial before the Court of Session or High Court and lays mandatory procedure according to which the court shall first try the mental state of an accused and upon satisfaction of the fact the court shall postpone proceedings after recording the findings.

It is evident from sections 464 and 465 of CrPC which deals with the trial by magistrate and trial by the court of session and high court respectively that in the case of trial by magistrate it is mandatory that the magistrate, in case of an insane person, will hold an inquiry and upon his satisfaction will refer the matter to the medical board and after examining the medical board and reducing the examination in writing shall postpone the trial; whereas in case of the trial by the court of session and the high court, the court shall examine the accused with insanity and shall postpone the trial upon its satisfaction after the recording of its findings to that effect (Safia Bano v. Home Department and others, [2021](#)).

Can the Trial Court Form a Prima Facie View Regarding Insanity Without Seeking the Opinion of the Medical Expert?

To address this question the Supreme court relied on the interpretation of sections 464 and 465 of CrPC. Whether in the case of a trial before a magistrate or the

trial before the session court or the high court, it is the subjective view of the magistrate or the session court or the high court what takes precedence with the plea of insanity over the other evidence; to address this procedural law question, there are several superior courts judgements. If the magistrate or the court of the session or the high court is satisfied after their preliminary inquiry that the accused is not insane, the courts will go with the trial in the normal manner (Ata Muhammad v. The State PLD, [1960](#)). However, in other judgements the court took a different view and made it compulsory upon the trial court to settle the fact of insanity of an accused with the help assessors i.e., medical board (Sher Afzal v. The State PLD [1960](#)). A similar verdict was given in another case (Abdul Hamid v. the State PLD, [1962](#)).

Section 465 refers to two stages. At first the court must be satisfied regarding the mental state of a person and the second stage comprises of the assessment of the insanity of the accused. In the case of affirmation, the second phase starts. The answer to the question whether the court was bound to hold an inquiry every time the plea of insanity is taken, and the supreme court answered the question in negation. Mere application for the plea is insufficient and it must appear to the court too that the person is having a mental defect, and it must be assessed with the help of assessors. The court may hold an initial inquiry in case an accused is insane by asking him/her some questions (Safia Bano v. Home Department, and others, [2021](#); Emperor v. Durga Charan Singh, [1938](#); Emperor v. Bahadur, [1928](#); Nabi Ahmad Khan v. Emperor, [1932](#)).

The evaluation by the court must be exercised in a judicial fashion and it must not be based on mere speculations. The satisfaction of Court in this regard is a must. However, the court is not bound to evaluate insanity just because such a plea is raised rather it must satisfy itself to that effect (Munshi Khan v. The State [1982](#); Abdul Wahid alias Wahdi v. the State, [1994](#); Sirajuddin v. Afzal Khan & another PLD [1997](#); Fauqal Bashar v. the State, [1997](#)). The criterion of reason to believe is higher than the one for mere suspicion but less than that of proof (Moulvi Fazlul Qader Choudhury v. Crown PLD, [1952](#)).

Moreover, whenever the claim regarding the insanity of an accused is made expressly or came under the observation of the court the court shall be taken it seriously. Furthermore, if the parties fail to raise an insanity plea, the court may take cognizance of mental state of the accused (Slaimuddin v. The State, [1985](#)). After making a prima facie tentative opinion it is mandatory for the court to get the mental condition of an accused assessed by the medical board. As far as the opinion of the Medical Board is concerned it must not

mere a diagnostic report rather a detailed explanatory report covering all the fundamental aspects of the mental condition of an accused with insanity. Furthermore, the head of the medical board shall be examined and cross-examined as per the relevant provisions of the evidence and the court shall write the examination. The accused is also allowed to produce expert witness on his behalf. Likewise, the prosecution is also allowed to present the evidence to further its cause (Safia Bano v. Home Department and others, [2021](#)).

Latest Developments

The supreme court of Pakistan in his recent judgment interpreted a few procedural law points which deals with insanity. In case of the plea of insanity is taken by an accused, the court must make the assessment through the relevant material rather than taking a subjective view of insanity of an accused. Even if the plea of insanity is not being raised by the parties, the court can take cognizance itself. After making an assessment, if the court finds that the mental health of an accused is doubtful, it is obligatory upon the court to get the person examined by medical board. The medical board must submit a detailed report which would be subject to cross-examination by the opposite party. In this regard the examination of an accused by medical board is obligatory (Safia Bano v. Home Department and others, [2021](#)).

Execution of Prisoners Suffering from Mental Disorders

In Pakistan there is no expressed statutory provision which put restriction on the execution of a mentally ill convict. However, there are certain provisions i.e., rule 107 and 362 of the Prison Rules, which can be taken as implied restrictions against execution of a convict with mental illness. Rule 107 (iv) of Prisons Rules makes it compulsory for the superintendent of the prison to submit the mercy petition to the relevant authorities, in case of mentally ill prisoner. While the Rule 362 of Prisons Rule gives a right to the prisoner of writing a will before execution which is not possible in case the prisoner is of unsound mind. Relying upon these statutory rules and considering the decisions from other jurisdictions (Ford v. Wainwright, [1986](#); Pannetti v. Quarterman, [2007](#); Madison v. Alabama, [2019](#); Shatrughan Chauhan and another v. Union of India and others, [2014](#)).

The court held that carrying out the death sentence in case of mentally disordered prisoner will serve neither any purpose nor will meet the ends of justice as a condemned prisoner is not capable of

comprehending the rationale and reason behind his/her punishment due to mental disorder. Thus, execution of a mentally ill prisoner is banned permanently after making it unconstitutional by the apex court of Pakistan in 2021. This was the long contentious legal issue the apex court decided in this recent judgement.

Conclusion

The section 84 of Pakistan Penal Code bars the courts from punishing a person suffering from mental disorder for the crimes he committed. Unlike Pakistan

this principle of criminal law is settled across the jurisdictions. However, a person cannot be ipso facto exempted from his criminal liability for the crimes he committed rather there are some substantial, procedural, and evidential legal requirements before a person cannot be freed of criminal charges because of his insanity. The recent seminal judgement of the supreme court of Pakistan discussed and settled many lacunas surrounding the insanity defense in criminal law in Pakistan with much needed legislative and institutional directions and recommendations to the relevant stakeholders (Safia Bano v. Home Department and others, [2021](#)).

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