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Examining the Efficacy of Plea of Insanity in Criminal Cases of Pakistan

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ABSTRACT
Plea of insanity is a defense taken by accused in the court of law admitting the unlawful act done by him with the argument that the reason of the offence lies behind certain mental illness. Insanity defense renders a vital role in Pakistan's legal system by excusing people with mental incapacity and psychological maladjustment to come up with lack of capacity concerning criminal culpability. However, the acceptance of this doctrine in Pakistan has been scrambled. This paper revisits the substantial, procedural, and evidential law on the plea of insanity in criminal cases of Pakistan coupled with consideration of the judgments and prudence of the criminal courts. This examination investigates the extent of interpretation and acceptance of insanity defense in criminal courts of Pakistan through a subjective and qualitative study. Keeping in view the challenges faced by litigants, cultural dynamics towards psychological instability, the aim of this study is to procure deeper understanding of insanity defense and highlighting the key areas for development to make law enforcement framework more aligned to the restrictions imposed on people with psychological instability.

Keywords: *Insanity, Insanity Defense, Pakistan Penal Code1860, Medical Insanity, Legal Insanity, Criminal Law, Actus rea, Mens rea, Mental disorder.*

Introduction

When people live in society, they are connected to each other and to the state in every way. They reflect this triangular relation having reciprocal rights and obligations towards state as well as to people. The legislature in a state enacts laws to disseminate peace and prosperity in society. Enactment of laws and its implementation work in tandem to achieve balance in society. The crime rate in a society decreases where the laws are fully respected and well enforced. Therefore, it is mandatory for every citizen to abide by laws made in the country so that a peaceful society can be maintained. Resultantly, in a peaceful society subjects reflect healthy attitude (Verger et al., 2015). All these facts reiterate the important argument that only a healthy mind can distinguish between right and wrong and only a such person can comply with the law. An unhealthy mind cannot distinguish between right and wrong and often exposes himself into deviant activities. Criminal liability is the outcome of two elements *Actus rea* and *Mens-rea*. When a person is declared guilty for a certain act, it is imperative under law to prove his guilty mind.

There is a general notion under jurisprudence that people suffering from mental incapacity or any kind of mental illness cannot be held criminally liable because at the time of commission of offence, they were not in a state to distinguish between right and wrong. According to Pakistan Penal Code, 1860 when such a person is brought to the court of law, he can take the plea that he was mentally unstable at the time of commission of offence. This is called plea of insanity which is universally accepted canon of penal law. This research is culminated into two major portions. The first section of the research intends to explore the following question; what legal provisions govern the plea of insanity defense in Pakistan and to what extent do Pakistani courts recognize and accept the plea of insanity as a defense in criminal cases? To answer this question this research purveys an account of historical analysis of the underlying principle behind plea of insanity and the attitude of courts by exploring famous case laws in Pakistan. The second section provides the critical analysis of plea of insanity coupled with substantive recommendations and conclusion for the study.

Exploring the Meaning of Insanity

The word "insanity" typically refers to a state of mental illness or dis-functionality characterized by diminished reasoning, perception, and behavior. In Pakistan, the Punjab Mental Health (Amendment) Act, (2014) defines the term mental disorder as a mental sickness which includes mental impairment, severe personality disorder and any other dysfunctionality of mind. It is the mental impairment that renders the individual with abnormal behavior, wrongfulness of the acts done by them thereby breaking the social norms (Zulfiqar, 2026). In legal contexts, insanity may also have specific definitions and criteria for determining an individual's capacity to be held liable for their actions. The term "insanity" is a broad range of mental health conditions that affect perception, feelings, and behavior (Ajmal et al., 2023a). The plea of insanity is also debated under Islamic law. Islamic law applies to individuals who are mature and mentally sane. Consequently, within Islamic *fiqh*, there are special provisions dealing with infants, minors and “madmen”. These categories are discussed under the spectrum of *Ahliyyah* (legal capacity) (Abdul Rafay, 2026). There is a report by Prophet PBUH narrated by Imam Ahmad that states that *“the liability is lifted for three kinds of persons; the one who is asleep until one wakes up, the child until he becomes pubescent, and the insane person until he becomes sane”* (Abdul Rafay, 2026).

The law dictionary provides the meaning of insanity as; *"any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility".* The Oxford dictionary provides that *"The state of being Insane as seriously mentally ill and unable to live in a normal society"*. In the general perception plea of Insanity is an affirmative defense alleging that a mental disorder caused the accused to commit the crime. In legal terms, insanity defense in criminal law prevents an accused from any civil or criminal liability on the basis of his mental illness (Zulfiqar, 2026). In simple words, this is a plea taken by the blamed that at the time of commission of offence that he was experiencing a psychological illness and was not in a position either to figure out the criminality of the act he was doing or to comprehend the nature of the act. It reflects the absence of *Mens-rea* (criminal intention) in his act as his mental faculty is not mature enough to understand the act. A Latin proverb that *"Actus non facitreus nisi mens sit rea"* implies that the act does not comprise culpability except if the brain is blameworthy. It is a prerequisite to prove his guilty mind if a person is to be held liable for an offence (Badar Yasir, 2021).

Legal Framework Concerning Plea of Insanity under Substantive and Procedural Law of Pakistan

The statutory provision governing the insanity defense is provided in section 84 of Pakistan Penal Code (PPC), 1860. The section 84 of PPC, 1860 provides that *"Nothing is an offence which is done by a person who, at the time of doing it, 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".* Additionally, this section is read with sections 464-471 and 473-475 of the Criminal Procedure Code (CrPC), 1898 that provides complete procedure in case of accused being lunatic. In order to successfully raise the plea of insanity under Section 84 of the PPC, 1860, several prerequisites must typically be met. These preconditions may be different, depending on the jurisdiction and the specific events of the case (Ajmal et al., 2023a). However, general prerequisites are given below:

- In order to prevent criminal liability on the basis of insanity, the accused must prove it in the court of law by demonstrating that he was going through a mental disorder or severe mental illness when the offense was committed. This could include conditions such as schizophrenia, bipolar disorder, or severe depression**.**
- The accused must establish the fact that, due to his mental illness, he was unable to understand the criminal nature and the consequences of the acts done by him.
- Additionally, the accused may argue that his mental disorder impaired his ability to control his actions, even if he was able to understand the nature of his conduct. This means he could not refrain himself from committing the offense.
- To establish the claim of insanity, it is imperative for accused person to support his claim through the testimony of qualified mental health professionals.
- Evidence such as medical reports, records and witnesses are *sine qua non* of the establishment of claim of insanity. This evidence should establish the existence of a diagnosed mental disorder and demonstrate its impact on the accused mental state when the offense was committed.

Historical Analysis of Underlying principle

Defense of Insanity was incorporated in PPC, 1860 for securing the rights of the individual's suffering from any mental incapacity that hinders his sense to differentiate between what is right and what is wrong. People suffering from any mental disorder are not legally liable for any act done at the time of commission of offence by arguing that he was not in the state of mind to understand the nature of act. Moreover, in order to ensure justice, Article 10-A of the constitution of Pakistan, 1973 protects the fundamental rights of the individuals by giving right to fair trial and due process of law (Ajmal et al., 2023b).

This defense was first established in McNaughton's case in 1843. In this case, Daniel McNaughton, attempted to murder the Prime Minister. Consequently, he succeeded in killing his private secretary. Later on, the court declared him innocent on the basis of insanity defense. Taking into account his mental condition, court acquitted him but the public expressed the anger about his acquittal. Then, the House of Lords asked a panel of judges to make rules for governing insanity defense. These rules are called McNaughton Rules (Badar Yasir, 2021). According to the expert opinion by Dr. McPhail by considering the rules that the accused relying on the insanity defense must prove followings; he had defect in reason, act caused by a disease of mind, and the accused did not know the nature and quality of his act (McPhail, 2022). Later on, the Durham rule, also regarded as the "product test," is another important rule regarding insanity after McNaughten case.

This rule was established in 1954 in *Durham's v. United states.* In this case, the accused Monte Durham, who had a history of mental illness, was convicted of housebreaking. This rule highlights the mental disease behind the commission of crime rather than right wrong principle as established in McNaughton's rule (Foerschner, 2010). In Durham rule, federal appellate court stated that an accused cannot be convicted if it is proven that he was suffering from a mental disease or defect while committing the criminal act owing to which he became unable to understand the nature and consequence of the act. Later on, it was criticized and abandoned in 1970's because of the ambiguities and vagueness. Consequently, the criticism was letting the doctors and not the judges to decide the fate of the case (Jr., 1955).

The presumption attached to plea of insanity is that every person is sane unless proven otherwise (Adjorlolo et al., 2019). It means that it is the duty of accused person who is taking the plea to prove that when the offence was committed, he was not in a condition to decide the nature of the act and what would be the consequences of such act. Moreover, according to Article 121, Qanoon-e-Shahadat Order, 1984 (QSO 1984), the burden of proving the plea lies on the shoulders of the person who is taking the plea as a defense. In instances where the plea of insanity is invoked, the accused bears the burden of proof. Similar to other exceptions outlined in Chapter IV of the PPC, 1860 the responsibility to establish the defense lies with the accused (Yaqoob & Khadam, 2025).

Medical Expert Opinion and psychiatric Evaluation

Expert testimony from mental health professionals and psychiatric evaluation is imperative to assess the impacts of mental illness. In Pakistan, under sections 464-465 CrPC, 1898 psychiatric evaluation or inquiry is necessary if there is a reason to believe by court that such inquiry is requisite to establish the mental illness. As section 464 of CrPC, 1898 renders powers to magistrate that when he has reason to believe that the accused is unable to defend himself due to unsoundness, he shall inquire

into the fact and shall cause such person to be examined by the civil surgeon of the district. During this assessment, medical history of the accused, including current medications, is reviewed thoroughly. The accused is inquired about any familial history of mental illness or mental disorders, once it is proved then bearing in mind section 84 of PPC, 1860 accused escapes the criminal liability. In contrast, the nature of this expert opinion is corroborative and not conclusive. The question whether the accused is innocent or guilty remains with the court (Munir & Wright, 2023).

Critical Analysis

In recent times, the superior courts in Pakistan reflected a progressive approach to consider the insanity provisions. Under the preview of criminal law, the application of the plea of insanity has been shaped by a series of landmark legal decisions that have established precedent, clarified legal principles, and addressed the complexities surrounding mental health and criminal responsibility and on the other hand also underscores the gaps in the criminal justice system. These case laws serve as guiding beacons, illuminating the path for legal practitioners, scholars, and judicial officers tasked with navigating the intricacies of insanity defense within the Pakistani legal system. Against this backdrop, this paper embarks on a journey to explore the rich tapestry of relevant case laws on insanity defense in Pakistan. From seminal judgments that have shaped the contours of legal standards to recent decisions that reflect evolving societal attitudes towards mental health, each case offers valuable insights into the application of the insanity defense and its implications for justice and fairness.

Noor Mukadam case

Noor Mukadam case is a high-profile and well-known case in Pakistan that garnered notable attention in country and beyond. This case involves the brutal murder of 27 years old Noor Mukadam on 20 July 2021. According to the investigation in this case, she was forcefully kept in a house in Islamabad for many hours by accused Zahir Jaffar. He tortured her and then murdered her brutally. This incident sparked the public outrage over gender-based violence against women. When the trial against the accused began, the lawyers of the accused Zahir Jaffar took a plea of Insanity invoking section 465 of CrPC, 1898 read with other relevant sections that accused is mentally ill that he did not know the nature of the act done by him when the offence was committed (Mehtab, 2026). However, the trial court dismissed their plea stating that:

"Not every person who is mentally disturbed or is suffering from some mental illness(es) is, ipso facto, exempted from criminal liability. Any person who seeks to benefit of section 84 of PPC, 1860 must prove that at the time of committing the act, he was laboring under such defect of reason as not to know the nature and consequences of the act he was doing".

Additional session judge Atta Rabbani decided the case and announced the judgement on February 24, 2022. According to the judgement, Zahir Jaffar was sentenced to death along with 25 years' imprisonment for rape. Besides, the watchman M. Iftikhar and gardener M. Jan were awarded imprisonment of 10 years for the offence of abetment. Later on, higher courts also upheld the decision of trial court. The cases like this also attracts public attention due to the unnecessary outcry of media (Pirzada, 2026). This mounts pressure on law enforcement and judiciary that sometimes has possibility to disrupt justice. In this case, when the challan was submitted to the court, public pressure mounted on the judiciary, police as well as media. Thousands of people started discussions about the

case on social media. In this situation, it was forgotten that justice is an entire machinery and it is very important to fulfill all the requirements of law. People called this an *"open and shut case"* contrarily it was not.

In the eye of law, everyone is innocent until proven guilty. To meet the requirements of law and demands of justice, it is necessary to look at every aspect of the case carefully and meticulously. However, it was not so in this case (Ali & Saleem, 2014). The trial commenced on 12th of October and court announced the judgement right after four months. This reflected that it was an extraordinarily speedy trial. Owing to the public and media pressure, the court decided this case in a hurry. However, the broadside view regarding this case also reflect the detestable flaw that the system can only deliver when someone is keeping an eye on it.

Safia Bano case (PLD 2021 SC 488)

Safia Bano v. Home Department, Government of Punjab is a landmark judgment in the history of Pakistan. This case was about a ban on the execution of a death sentence of persons who are mentally sick. This case was filed by Safia Bano on behalf of her husband. Her husband's name was Imdad Ali who was awarded death sentence for murder. Imdad Ali was diagnosed with schizophrenia when he was in jail. Previously, no Court had recognized it a permanent mental disorder. Based on this illness, Safia Bano argued that this would be unjust if a person with mental illness were to be executed with death sentence.

As a result, the Supreme Court ruled that no death sentence can be executed against a person suffering from mental illness. A person who is not capable of understanding that whether what he is doing is right or wrong, is mentally ill and a death sentence cannot be executed against such person. Moreover, the court also suggested some prison reforms before execution of the sentence including better mental health facilities in prison and training in forensic psychology. The judgment focused that absence of such things and proper medical evaluation violates the right to fair trial and human dignity.

This was the first case that had given due importance to mental health in Pakistan and tried to align the mental health care standards with international standards for mental health. This judgement was appreciated by experts all over the world. The United Nations and other forums around the world also appreciated this landmark decision. It was due to this reason that the Supreme court paid attention to the psychological disabilities of people and ensured the right to fair trial and due process of law, to follow the example set by the Supreme Court of Pakistan. Resultantly, experts called on the governments and judiciaries to incorporate the decisions of Supreme court of Pakistan into their laws (Tripathy, 2026).

Kanizan Bibi Case, 1991

Kanizan Bibi case is one of significant cases in the history of Pakistan concerning mental health. This case uncovers the retarded approach of judiciary to tackle the cases regarding prisoners and accused with mental illness. Kanizan Bibi, a 46 years old house made was arrested in Islamabad on murder charges of her employer's wife and five children. She was awarded death sentence under section 302(b) and 34 PPC, 1860 by trial court when she was suffering from mental illness (schizophrenia). No one filed plea on her behalf about her mental health. This fact was not known at the time of her

conviction. After spending almost 30 years in prison, Punjab Institute of mental health conducted medical examination and declared that she was suffering from severe mental illness.

Later on, in 2018 a judge of Supreme Court took a Suo moto notice of her case and examined the case thoroughly. Finally, in 2021 the supreme court commuted her sentence after decades. This was grave negligence on the part of Pakistan's judicial system. This case highlights the importance of mental health evaluation before giving sentence to any accused that weather is he fit for that sentence or not. Mental healthcare in Pakistan is completely neglected. There is no support for people suffering with mental illness. There are many people in Pakistan who are suffering from mental illness. That's why they do certain things that are illegal in eye of law. Unfortunately, instead of getting treatment, they are punished and sent to jail. Therefore, our government and criminal justice system require to pay attention to this issue and fill the gaps that are causing innocent and mentally sick people to be imprisoned.

Medical science has become very advanced and consider mental healthcare is also a fundamental right of every person. The world recognizes this reality and is working a lot to ensure this right. Likewise, the justice system of a country should be strong enough to ensure this right and examine a case well before giving sentence to any accused. Unfortunately, there is no such thing in Pakistan's case. From 2006 till now, there are many cases reported in Pakistan with an insanity plea (Maryam Ali Abbasi, 2022) that reflect the mixed attitude on behalf of judiciary by accepting spasmodically the plea of insanity. Pakistan still has not met the international standards for mental health and measures for mentally ill prisoners and accused. Pakistan has not yet established effective mental health evaluation systems and methods for the awareness of mental diseases. Pakistan should promote a research culture on mental healthcare. The current research in this field is not up to the mark resulting to the failures of law-making authorities to understand and make laws. This study, taking all these factors into account, seeks to find a solution that how the mental healthcare sector in Pakistan can be improved through better evaluations techniques, and laws for implementation within the jurisdiction of the human rights charter of the United Nations.

According to Pakistani law, insanity can be raised as a defense but still there are many loopholes covering the meaning, interpretation, judicial inquiry, and medical inquiry by relevant psychological experts due to which mental health issues are not properly covered. As can be seen in the cases given above, disease like schizophrenia was not recognized as mental health issue for many years. This is all because of lack of research in mental health field.

Conclusion

Awareness regarding mental illness in our society is requisite to protect the fundamental rights of people. The operationalization of law through law-enforcement agencies would be effective by considering the suitable transformations including awareness and training programs. Therefore, it is important to make laws covering mental health and recognize that every person who is charged with a crime must undergo a proper psychiatrist evaluation. The examination to determine whether he has any kind of mental illness or not, and to ensure the administration of justice, legislators should first realize the dire need of awareness regarding psychological issues. The connection between insanity and law at implementation stage remains weak in Pakistan. This needs a multi-pronged strategy, doctors, mental health practitioners, lawyers, and judiciary have a vital role to strengthen

this weakness. Every person suffering from mental illness has the fundamental right to be dealt in accordance with law. There is a need to enhance the role for forensic practitioners and psychologists in law institutions. The legislators need to legislate laws regarding to clarify their roles in assisting the police and judiciary to determine the insanity. Capacity building, of relevant stakeholders such as police, judges, and prison staff, is required to minimize their pre-conceptions and mis-conceptions about forensic mental health and plea of insanity. There is a dire need to reform the laws in order to give due importance to the mental health in Pakistan to improve the psycho-social well-being of the people.

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