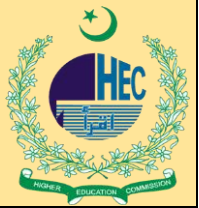




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**Plea of Insanity as A Defence: Analysis of Jurisprudence in Pakistan****Ayiena Yaqoob**

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The widespread issue of rising incarceration is attributed to a number of factors, including a shortage of mental health services and hospitals, legal and social attitudes and stigmas, and a general lack of concern for the needs and rights of mentally-ill persons. The criminal justice system is trending away from rehabilitation and toward brutal, ignorant, and illegal imprisonment tactics. The current Pakistani legal system only recognizes insanity as a defense if the defendant was insane at the time the crime was committed; it does not take into account insanity during the phases of arrest, prosecution, and punishment. This paper aims to explain Pakistan's legal and procedural framework for people with mental illnesses. It will analyze international fair trial principles and standards that govern detention conditions, access to justice, and the right to medical care in the criminal justice system.

Keywords: *Insanity, M'cNaghton Rule, Inalienable Rights, Criminal Lunatic, Lunatic Trial.*

I. Introduction

Under Islamic law, the idea of *mens rea*, or guilty intent, is widely acknowledged. If there is no intention of committing a crime, there is no crime. Due to their confused cognition, people with mental illnesses are incapable of having or not having an intention. Hence, they are not held liable for the crimes they commit (Dols, M. W., 2007). When a situation calls for the application of Shariah law, the verse or surah from the Quran that best exemplifies the law's principles should be taken into consideration first. This is because the Quran is the main source of Shariah law. The Prophet's sayings (hadith) that complement the principles of Sharia Law established in the verses of the Quran are indeed given weight. In chapter 2 and verse 286, Allah Almighty said that ,Allah never puts a weight on a soul that is too large for it to bear; instead, it enjoys all the good things it earns and endures all the bad things it earns(QURAN, Chapter 2, verse 286). Similarly, in chapter 17 and verse 15, Allah says that, "Who receives guidance will receive it for his own benefit; he who goes astray does so for his own loss; nor can the bearer of burden bear the burden of another"(QURAN, Chapter 17, verse 15). Jurists have disagreed over who has the authority to jail an accused person who is mentally ill. Al-Mawardi believed that an investigator's authority varied depending on his position. For instance, if the investigator is a court or official and a person accused of adultery or theft is brought before him, he must conduct additional research because a simple charge is insufficient justification for jail. However, the accused or mentally ill accused may be arrested or detained if the judge decides the evidence is incriminating. Later, if it turns out that the accusation was untrue, the defendant must be freed. In the event of a mentally ill defendant, he must also be freed if his condition rendered him not guilty (Kamali, M. H. , 1998).

INSANITY DEFENCE EVOLUTION AND SUBSEQUENT TEST

The history of the insanity defence may be traced from its roots in Christian ethics and Roman law, through which the insanity defence first appeared in the M'cNaghton rule, although it underwent multiple changes throughout time in the form of different tests. British laws

requiring criminal intent, the M'Naughton rule, and later case law developments (Maeder, T., 1985).

M'C NAUGHTON RULE

Following Daniel M'Naghten's 1843 trial and acquittal on a murder accusation, the M'Naghten rules were created in England. M'Naghten had assassinated the Prime Minister, Sir Robert Peel, as he thought the Tory party was trying to harm him, but unintentionally shot and killed the prime minister's private secretary. Later, he was found not guilty on the ground of being insane. It is considered that the individual is believed to be sane unless proven otherwise, and his actions must be accompanied by a lack of reason due to the "disease of mind" (Corsini, R. J., 2001).

THE DURHAM TEST

A defendant is not guilty if the offence for which he is charged is the result or byproduct of a mental condition, according to the "The Durham Test"; which was proposed by the New Hampshire Supreme Court in 1871. The Durham test overruled the M'Naghten rules. The "product test rule" or "Durham rule" of New Hampshire was recognized on July 1, 1954, and implemented in *Durham v. United States* eighty-three years later (1954). The accused was ruled not to be legally responsible in this case by the court because his illegal actions were the product of a mental disorder (Krahn, A., 1960).

IRRESISTIBLE IMPULSE

Irresistible impulses are a type of moral insanity, and courts understand that there can be no legal culpability without the ability to discriminate intellectually and the freedom of the will. In the *R v. Byrne* case, which was held in 1960, the term "irresistible impulse" was first used in English law. It was said that Byrne was unable to control his aggressive and perverted sexual impulses, which drove him to suffocate and then mutilate a young lady. The appellant was characterized as a violent sexual psychopath. In this case Lord Parker, C.J., expands the meaning of "abnormality of mind" to include individuals who are unable to use willpower to restrain their actions in accordance with their rational (Williams, J. H., 1961).

THE MPC TEST

The American Law Institute (hereinafter referred as "ALI") created its own insanity defence in 1962 due to problems with the Durham Rule. The Model Penal Code (hereinafter referred as "the MPC") contains the ALI's rule which states that because of a mental illness or defect, a person is not held accountable for illegal behaviour if, at the time of the behaviour, he had the necessary ability to understand the criminal wrongfulness of the behaviour or to adapt the behaviour to the requirements of the law (Maidman, B. R., 2016).

EXISTING LAWS IN PAKISTAN ON PLEA OF INSANITY

The criminal insanity is described as a mental condition that makes it impossible for a defendant to recognise that their behaviour is wrong. When a defendant is proven to be criminally insane, they may raise the defence of insanity. A key objective of the legal system is to protect the innocent. This can be accomplished by adhering to the general idea of preventing crime and, in the end, enforcing the law. A community can advance and become sufficiently capable to contribute to the success of the country when there is peace. The criminal justice system is essential for ensuring the stability and steady development of any society (Khan Mahmood, A., & Ramzan, M., 2017). A common law system from the United Kingdom has been passed down to Pakistan. In accordance with this system, the onus of proof rests with the prosecution to show the accused person is deemed innocent until and unless proven guilty. However, under some circumstances, if the accused enters a plea of defence, he must demonstrate his innocence. According to Pakistan's legislation on insanity, a person who commits a crime while suffering from a mental ailment is not subject to prosecution (Ali, K., 2014). Under the Constitution of Pakistan, every person has an inalienable right of protection and of fair treatment under the law. The Superior Courts have interpreted these rights because of concepts of due process, natural justice, and fair hearing.

On the other hand, the right of having fair trial is specifically inserted in “fundamental rights” chapter of Constitution of Pakistan, after the 18th amendment (Haq, M., & Zafar, N. N. , 2019). In criminal law, every act does not create criminal culpability if it is not undertaken with mala fide intent. Actus rea and Mens Rea are the two factors that make up a crime, so to prosecute someone, it must be proven that both elements were present at the moment the offence was committed, but in section 84 of PPC there is exception to this general rule, that if accused is unable to understand his nature of act, then he would not be held liable on his action(*Id.* at 2).

DETERMINING THE DEFINITION OF INSANITY IN PAKISTAN LEGISLATION

After the independence of Pakistan, the newly created state continued with the lunacy act, which was initially enforced before independence of Pakistan. The focus of this Act was more on confinement rather on therapy. After 1970, proponents of the law change grew active. In 1992, the Pakistani government suggested a new mental health act and sent a manuscript to psychiatrists for feedback, but it was not a final document. Later that year, the Mental Health Ordinance superseded Lunacy Act(Tareen, A., & Tareen, K. I. , 2016). In upcoming pages, there would analysis of some definition related to insanity, that how law deal with insane person who is accused of offence:

A- SUBSTANTIVE LAWS

Lunacy Act

The Lunacy Act 1912 (hereinafter referred as lunacy act) served as the important mental illness law up until 2001. The definition of “lunacy” in the Lunacy Act was very ambiguous and gave rise to a lot of case law. Section 3 (5) of lunacy Act demonstrates about lunatics. According to this section, “A lunatic is an idiot or a mentally unstable person”(Lunacy Act, IV of 1912, s 3(5)). In Muhammad Hanif V. Raja Muhammad Aslam Khan court has decided that the issue of lunacy could not be resolved by just accepting the individual's claim that he was mentally unwell, but should be proved that a person is incapable of managing both his personal and professional activities because of his mental incapacity. There is nothing on record in the respective case to show that the appellant suffered from legal insanity, as he voluntarily appeared in court(Muhammad Hanif V. Raja Muhammad Aslam Khan 2001 CLC 97 Lah (Pak.)). The British were in charge of the sub-continent at the time the Lunacy Act of 1912 was promulgated . There are 2 schedules, 9 chapters, and 99 sections in this act. However, there were some very obvious flaws in this Act, the most significant of which was the usage of outdated terms and concepts like “insane”, “criminal lunatic”, and “asylum”. In addition, this act emphasized more on punishment than the treatment. For instance, section 13-16 of the Lunacy Act of 1912 allowed for the detention of alleged lunatics for up to 10 days and, in some circumstances, up to 30 days with the magistrate's approval before the accused's mental state could be assessed(The Lunacy Act, 1912, LEGAL RESERACH CENTER).

Mental Health Ordinance, 2001

Mental Health Ordinance promulgated in 2001 (*hereinafter referred as MHO*)and it repealed the Lunacy Act. This ordinance defines mental disorder along with other definitions in section 2(1)(m). The section explains, :

“Any mental condition or disability is referred as a mental disorder, which includes mental illness, severe personality disorders, severe mental illnesses, and other mental disorders. Other definitions are also defined in this section, which includes, severe personality disorder, , and mental impairment. Mental illness is defined as a condition of delayed or incomplete mental development but not severe one, this also involves significant impairment of social and cognitive functioning, and is associated with unusually aggressive or irresponsible behavior. Apart from that, severe mental impairment is defined as a state of stopped or incomplete mental development, which includes severe impairment of intellectual capacity and social functioning. a severe personality disorder is defined as a chronic mental illness that makes

the person excessively aggressive or severely irresponsible. This provision did not include an exemption for mental illness brought on by promiscuity or other immoral behaviour, sexual perversion, or drug or alcohol abuse"(The Mental Health Ordinance, VIII OF 2001, s2(1)(m)).

In the case of *Aurangzeb v. Public*, despite outlining all of the physical and mental problems and saying that he was not mentally ill as defined in section (2)(1)(m) of MHO 2001, the medical report failed to provide an appropriate diagnosis. However, it was clear that the court used its discretion in deciding the points brought by the appellant regarding his brother's incapacity and mental state, which included matters involving his property and legal proceedings. In this case, it was determined that the court would have the discretion to determine whether or not the defendant was mentally unsound where there was a conflict between the medical report and the opinion of his or her sanity during cross-examination(*Aurangzeb v. Public* 2006 PLD Pesh 116 (Pak)).

Pakistan Penal Code 1860

The Pakistan Penal Code 1860, in Section 84, mentions about the exception that is given to unsound persons. This section says that, offence committed by the person when he has mental disorder, and he is not able to understand the nature of his act, in that condition his actions will not make him criminal(The Pakistan Penal Code, XLV of 1860, s. 84). Invoking section 84 requires meeting four requirements: committing an offence; being mentally unstable; being unaware of the nature of the offence; and being unable to distinguish between right and wrong. In *Mehrban v. The State*, the court determined that the legislature intentionally used the phrase "unsoundness of mind" rather than the word "insanity," which is used in section 84 of PPC 1860 to give insanity a broad definition. The term "unsoundness of mind" is said to encompass almost all mental illnesses that affect the mind(*Mehrban v The state* 2002 PLD SC 92 (Pak)).

Qanun-e-Shahadat Order, 1984

Qanun-e-shahdat Order 1984 (*hereinafter referred as QSO*), in section 121 mentions that, whenever a claim is made about the mental state of accused during the commission of his crime, it will deal within the scope of section 84 of PPC. The onus of proof will be on defence, which come under exceptions, according to section 121 of QSQ. . In onus of proof, defence has to explain that the accused has a mental illness at the time of commission of crime, which prevents him from understanding the nature of his action that it is legal or against the law(Qanun-e-Shahadat Order, X of 1984, s. 121). When assessing the weight of the prosecution's burden of proof under Article 117 QSO 1984, it is an accepted concept that the prosecution must show its case against the defendant beyond reasonable doubt(Qanun-e-Shahadat Order, X of 1984, s. 117). The Lahore High Court elaborates in the landmark case of *Ghulam Yousaf v. The Crown*, that the "reasonable possibility" of the defence being true seems to be distinct from a "reasonable doubt" in section 464, 465 and 466 of CrPC, about whether the defence is true and is on a somewhat higher level of probability(*Ghulam Yousaf v. The Crown* PLD 1953 Lah 213).

B-PROCEDURAL LAWS

Prison Rules 1978

The Prison Rules 1978, also discuss the definition and types of mental patients.

- i. According to Rule 433, a mental patient is a person who is an idiot or has an unsound mind. In this rule, the term mental patient has the same meaning , as the word lunatic has in lunacy act in its section 3 of sub-section 5(PAKISTAN PRISON RULES 1978, Rule 433).
- ii. Rule 434 mention about the categories of mental patients. There are two categories of mental patients, i.e., non-criminal and criminal. Non-criminal mental patients are those who did not commit any crime but the court sent the person for medical observations under lunacy act, although lunacy act has been replaced by the mental

health ordinance. On other hand, criminal-mental patients are those patients who are accused of the commission of crime (PAKISTAN PRISON RULES 1978, Rule 434).

Provincial Legislation On Mental Illness

Following the 18th Amendment to the Constitution of Pakistan of 1973, the issue of health became a provincial affair, on which provincial governments enacted their own legislation on health, and this also included the area of mental patients. Terms like "mental disorder" and "prisoners with mental disorders" are also defined in statutes which describe about mental patients. The Punjab Province established the Mental Health Ordinance in 2001, which was later revised to become *The Punjab Mental Health (Amendment) Act 2014*, alongside, *The Balochistan Mental Health Act 2019*, *The Khyber Pakhtunkhwa Mental Health Act 2017*, and *The Sindh Mental Health Act 2013* all legislated about mental patient in almost identical manner (Meagher, J. F., 1923).

TRIAL OF CRIMINAL AND NON CRIMINAL UNSOUND OFFENDERS IN PAKISTAN

On the basis of its classification, Cr.P.C gave us three kinds of substantive trial procedures: trial by magistrate; trial by Session court/ High court; and summary trial. Apart from that, there are two more provisions which elucidate about trials. First, a lunatic trial; and second, a trial of a person who cannot understand the proceedings. Section 464 to Section 475 of the CRPC give explanation about the trial of lunatics. The court has to deal with three questions before the trial of a lunatic: First, did the accused have any mental disorder during the commission of crime? Second, was the defendant able to make his defence at the time of the trial or even understand what was going on? Third, did the accused develop a mental illness after the crime was committed? If the accused was unable to understand his actions during the commission of his offences, then the trial of that person will be held under section 84 of the PPC, because of the exception law gave to accused due to his unsoundness. But if the accused becomes insane after the commission of the offence and during his actions he is able to understand his actions, the court will proceed with his regular trial. In this case, he will not fall under the exception for lunatics. If the accused was unable to comprehend the trial and did not submit his defence, his case will be heard under the CRPC, which includes sections 464 to 475 (The Code of Criminal Procedure, V of 1898, s. 464 - 475). Section 464 addresses the trial of people who are insane. For the trial under this section, it is necessary that the person be insane. Apart from that, in the early stages of trial, if the plea is raised, the court will hear the trial of insanity. The magistrate will conduct an investigation on his behalf and forward the results to the civil surgeon or government-appointed medical officer. If it is discovered during the investigation that the person was insane, the trial will be postponed. Section 46 mentions about the initiation of the trial of lunatics by the session court or high court. The difference between the inquiry of the magistrate and that of the high court and the session court is that the court has discretion whether to send the inquiry to a medical surgeon or not, but for a magistrate it is mandatory. If the trial is postponed, the court will either order the insane accused to be released if he was not dangerous under the surety of a caretaker or to be kept in safe custody, i.e., a lunatic asylum, according to Section 466. The court would then demand a report on his recovery under section 467. If the report shows his recovery then, the trial will resume, under section 468. If there is no recovery, the procedure mentioned under sections 464, 465, and 466 will be repeated. Under section 469, if the court finds that he will not be recovered under the ambit of section 84 of the PPC, then under section 470 he will be acquitted from the trial by the court. If he was dangerous, he would be transferred to a lunatic public hospital or, on surety, he would be released with a caretaker (Id).

INTERNATIONAL STANDARDS ON INSANITY DEFENSE

History of insanity defense, has been both crucial and contentious. According to the insanity hypothesis, those who are mentally ill and unable to fully understand their actions shouldn't be punished since doing so would be unfair and violate the principle of *mens rea*. Insanity

defence , first, it enables the mentally ill to get rehabilitation. Second, it keeps dangerous people out of society and, through appropriate treatment, lessens the threat they offer to society. The insanity defence also prevents the mentally ill from being pushed into a prison system where they would not get sufficient care(Kachulis, L. , 2016).

HISTORY ON PLEA OF INSANITY

In terms of criminal law, mental illness had little legal significance before the fourteenth century. The historian Henrici Bracton coined the phrase "wild beast test" in the 1200s. The first documented English case involving an acquittal due to insanity was decided in 1505. One of the earliest cases in which the words "right against wrong" or "Beast test" were used was *Rex v. Arnold*, which occurred in England in the 18th century. The requirement for the defendant was to be completely deprived of his memory and intellect and to have no more awareness of his actions than an infant. The Arnold case is cited as precedent for the rule that a claim of insanity as a defence does not entitle the accused to not guilty judgement in the absence of a determination of complete insanity (Math, S. B., Naveen Kumar, C., & Moirangthem, S. , 2015). The notion of insanity did not get scholarly attention until the 1700s, despite these early examples and occasional commentary on the topic. "Man is inherently gifted with two great powers: intelligence and liberty of choice", declared the scholar Lord Hale in 1736. " The consent of the will is what determines whether human activities are acceptable or guilty(*Id*). English courts still adhere to the norm despite significant changes to it. Numerous states still adhere to a certain version of the ancient M'Naghten Rule despite harsh criticism of the rule. The M'Naghten test's primary flaw is that it was created under the archaic theory that reason played a crucial role in regulating social conduct. Modern psychiatry and psychology place a strong emphasis on the idea that a person's social conduct is more influenced by how they have learnt to act than by their knowledge or understanding. The M'Naghten Rule is still in effect in America and England despite this apparent criticism(Maidman, B. R. (2016). The legal insanity defense: Transforming the legal theory into a medical standard. *BUL Rev.*, 96, 1831). The following are the sections or principles of international treaties and conventions which deal with the defence of mentally ill offenders.

CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES

Convention on the rights of people with disabilities (*hereinafter referred as CRDP*) encourage to respect for the inherent dignity of all people with disabilities and to ensure that they can all fully and equally enjoy all human rights and fundamental freedoms. The following articles of the CRPD, demystify about the rights of disabled people:

Discrimination is defined under article 2 . According to this article, discrimination on the basis of disability is defined as any distinction, exclusion, or restriction based on a disability that has the intention or effect of preventing someone from acknowledging, exercising, or benefiting from their human rights and fundamental freedoms in the political, economic, social, cultural, civil, or other spheres. All other forms of discrimination are also included, as the refusal of reasonable accommodation(Convention on the Rights of Persons with Disabilities, 2008, Art. 2). State parties to this agreement are subject to a general duty as stated in article 4. This article mandates that States parties to guarantee and enhance the full enjoyment of all basic freedom and rights for all individuals with disabilities, free from any form of discrimination based on a person's disability. State parties should commit to take all necessary measures to put an end to discrimination against individuals with disabilities by any group or private enterprise in order to accomplish this(Convention on the Rights of Persons with Disabilities, 2008, Art. 4). Disabled individuals are discussed in article 5 in terms of equality and nondiscrimination. The text of this article states that state Parties should prohibit any discrimination on the basis of disability and ensure access of protection against discrimination on all grounds that is fair and effective for people with disabilities. Discrimination under the provisions of the current Convention shall not apply to specific

measures required to hasten or achieve de facto equality for people with disabilities(Convention on the Rights of Persons with Disabilities, 2008, Art. 5).

Access to justice for the disabled is discussed in Article 13. In order to enable effective participation of people with disabilities as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. State Parties should ensure that individuals with disabilities have effective access to justice on an equal basis with others, according to this article. Procedural and age-appropriate adjustments are part of this. In order to help ensure that people with disabilities have effective access to the legal system. States Parties should support appropriate training for those working in the justice administration field, including police and prison staff(Convention on the Rights of Persons with Disabilities, 2008, Art. 13). The liberty and security of individuals with disabilities are discussed in Article 14. According to this article, states parties are required to ensure that people with disabilities enjoy the same rights as everyone else, including the right to liberty and personal security. They shouldn't be illegally or unfairly denied their freedom. If there are limitations on their freedom, then such limitations must be lawful; the presence of a disability is no excuse to such limitations. People with disabilities are entitled to protections under international human rights law and must be treated in accordance with the objectives and principles of current Convention, including making reasonable accommodations on an equal basis with others, if their freedom is taken away in any way(Convention on the Rights of Persons with Disabilities, 2008, Art. 14).

PRINCIPLES FOR MENTAL HEALTH

The purpose of Principles for the protection of persons with mental illness and the improvement of mental health care is to promote mental health of disabled persons in health care. The following principles explain about the protection of mentally ill offenders:

Everyone has a right to the best feasible mental health care, and this care must be offered as a component of the entire health and social care system, according to Principle 1. Every person who has a mental illness, or who is undergoing treatment for one, should be treated with the respect(Principles for the protection of persons with mental illness and the improvement of mental health care, 1991, Principle 4). This convention's fourth principle states that in order to determine whether or not a person has a mental illness, internationally accepted medical standards must be used. A person's political, economic, or social position, or membership in a particular racial, ethnic, or religious group, or any other factor is unrelated to mental health state. Family or work conflict, disregard of political, social, cultural, or moral norms, or denial of religious beliefs should not taken as a reason to make a mental illness diagnosis(Principles for the protection of persons with mental illness and the improvement of mental health care, 1991, Principle 5). The medical examination is covered in Principle 5. According to this principle, no one should be forced to have a medical examination to ascertain whether or not he have a mental illness, unless the procedure is authorised by domestic law(Principles for the protection of persons with mental illness and the improvement of mental health care, 1991, Principle 5). Based on individual competency and a certified independent medical evaluation, domestic law may allow a court or other competent authority to order their admission to a mental health facility. Patients seeking treatment for a mental illness are required to follow Principle 11(Principles for the protection of persons with mental illness and the improvement of mental health care, 1991, Principle 20).

UNITED NATION DECLARATION ON THE RIGHTS OF DISABLED PERSONS

Principle 4 of the Declaration on the Rights of Impaired Persons states that people with disabilities have the same civil and political rights as everyone else, and Article 7 of the Declaration on the Rights of Mentally Retarded Persons states that it is unlawful to limit or suppress a person's civil or political rights because of their mental disability(Declaration on the Rights of Disabled Persons, 1975, Principle 4).

DECLARATION ON THE RIGHTS OF MENTALLY RETARDED PERSONS

Principle 6 and Principle 7 directly demonstrate the rights of mentally retarded people. A person with mental impairment has the right to be shielded from exploitation, abuse, and cruel treatment, according to principle 6 of this declaration. If someone is accused of any crime, he must be granted with right of fair trial and full recognition of his mental ability(Declaration on the Rights of Mentally Retarded Persons, 1971, Principle 6). According to principle 7, when it becomes essential to restrict or deny few or all of a mentally retarded person's rights due to the severity of their handicap, or when it becomes impossible for them to exercise all of their rights meaningfully, the steps are taken to carry out the limitation or denial of rights must be accompanied by suitable legal protections against all types of abuse(Declaration on the Rights of Mentally Retarded Persons, 1971, Principle 7).

NELSON MANDELA RULES

The Nelson Mandela Rules are the basic standards set by The United Nations for the treatment of prisoners. People who are imprisoned while suffering from severe mental problems will get worse, irrespective of whether they will eventually found to be innocent or not. They should not be detained in prisons, according to rule 108 of the Nelson Mandela Rules. They should be taken as quickly as possible to a mental health facility. Other prisoners with mental illnesses or health issues if required should be examined and treated in specialized facilities under the direction of licensed healthcare professionals, apart from that, other prisoners who need mental health treatment should get it(The United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015, Rule 109).

LANDMARK JUDGEMENT-SAFIA BANO CASE (PLD 2017 SC 18)

On January 21, 2001, in the Burewala area of Punjab, Imdad Ali shot Hafiz Muhammad Abdullah to death with a rifle. The next year, a trial court gave Ali, who was 42 at the time, a death sentence. He received many diagnoses of paranoid schizophrenia during the course of his 18-year imprisonment, and numerous medical studies over the years have verified that he is actively showing psychotic symptoms and is "a treatment-resistant case." The final four years of his detention was spent in solitude. He is being held in the district jail's hospital cell due to the severity of his mental disorder. On July 26, warrants were issued for his execution, and on August 1, his wife Safia bano filed appeal at the Multan bench of the Lahore High Court, requesting a stay of execution while her husband's mental condition was being treated. On August 23, 2016, the Supreme Court dismissed such an argument. She made the same appeal before the apex court. On September 27, 2016, the verdict of the high court was affirmed by a three-judge Supreme Court panel presided over by Justice Anwar Zaheer Jamali, who was then Pakistan's Chief Justice. According to the Supreme Court, a mental illness like schizophrenia does not render the death penalty unnecessary. Later, leading attorneys and rights organizations contested the ruling. On letter of UN to Pakistan (dated 26 september 2016), it was mentioned, that if Ali's death sentence was carried out, it would mark a further deviation by Pakistan from the international trend toward the elimination of the death penalty. The Punjab government filed a review appeal against the decision in response to the harsh criticism of the finding. To consider a petition for a review of the judgement, former Pakistan Chief Justice Saqib Nisar assembled a bigger bench. The Supreme Court of Pakistan heard many cases beginning in September 2020, and on February 10, 2021, it reduced the death penalty of Kanizan and Imdad to the life time imprisonment. It also issued extensive recommendations to support the rights of unsound defendant(The Inspector General of Prisons Punjab Vs. Mst. Safia Bano & others PLD 2021 SC 488 (Pk.)).

ANALYZING PAKISTAN LEGISLATION THROUGH CASE LAWS

No one should be deprived of their life or freedom unless it is necessary and in accordance to law, both international and regional statutes consider this principle. As constitution of Pakistan demonstrate the parameters of legal defense of those who are detained and placed under custody in its article 10. And ICCPR in its article 9(1) expound about that there should

not deprivation of liberty and no one should be subject to the arbitrary arrest or imprisonment". The definition of insanity is very rigorous in Pakistan. As in Imdad Ali's case, twelve years after the murder, government-approved doctors found that the accused had schizophrenia. However, Pakistani law, specifically section 84 of the Pakistan Penal Code, only protected those who were suffering from mental diseases at the time of the crime. In **Emperor v Bahadur** (Emperor v. Bahadur AIR 1928 Lah, 796), the trial court was instructed to stop the case and conduct an independent investigation into the accused's insanity if there was reason to suspect or it looked like the defendant was mad and therefore unable to provide a defence. Similarly, in **Muhammad Naseem v. The State** (Muhammad Naseem V. The State 1982 SCMR 754 (Pk.)), the defense attorney contends that the appellant was insane and unable to present a defense at the time of the trial. It was brought to the court's attention that in the initial trial they neglected to analyze if the accused was unsound mind or able to present his defense and this error vitiated the trial. Insane people are protected from being tried in court by the provisions of sections 464 and 465. To prevent anyone who is insane from being tried and sentenced to punishment, the legislature had established a shield. The rules are based on the idea that an accused person must be aware of or comprehend the charge and provide any defense, including innocence, if applicable. The rule is allied to the principle of *Audi Altera Partem*. According to the *Audi Altera Partem*, no person should be judged without a fair hearing. Hence, the court rejected the appeal.

In light of international fair trial and due process standards, the safeguards for "mentally disordered" defendants come under scrutiny. Section 465 of the Criminal Procedure Code is a major flaw in the system because it allows for the suspension of the trial if the defendant is found to be "incapable of making his defense" when proceedings are brought under Section 464 of the Criminal Procedure Code. In contrast, when a defendant pleads a plea of insanity under Section 84 of the Penal Code, they run the risk of getting caught in a legal limbo that could lead to protracted incarceration without trial, which would be against their right to a fair trial.

In **Lal Khan v. Crown** (Lal Khan v. Crown PLD 1952 Lah 502), it was argued that the defendant would be entitled to a conviction if the evidence presented by the defendant about the plea of insanity under s. 84 raised a reasonable doubt to the prosecution's case. Accordingly, in order to assess the defendant's guilt, the Court must have the complete evidence in mind, the evidence for the accused and evidence for the prosecution, and enable the one to meet the other squarely, that you should not be too pedantic about the burden of proof. In, **Mubarak Ali V. Muhammad Hachi Mian** (Mubarak Ali V. Muhammad Hachi Mian PLD 1967 Dacca 701), court held that the mere admission of the accused does not obligate the magistrate under Section 464 or the court under Section 465 to conduct the investigation and determine the presence or absence of insanity. An inquiry is warranted only when the magistrate has cause to suspect or when it is obvious to the court that the accused is mentally defective. At the moment, there are no separate procedures in Pakistan to hold competency hearings. The judges in court assess an accused person's ability to stand trial. For people in Pakistan who are facing trials while experiencing a mental handicap, competency hearings are an absolute necessity. When a person cannot understand the exact reason for the prosecution, there is no point in prosecuting them. This complies with ICCPR and CRPD, which forbid discrimination against anybody based on physical impairment or any other criteria. In **Afzal Khan vs. The State** (Afzal Khan vs. The State 1996 PCrLJ 1366 (Pesh. High Court)), Peshawar High Court considered the same evidence in case which was accessible at the time of the trial but was not presented in court. The appellate court used Chapter 34 of Cr.P.C. proceeded that the defendant was of unsound mind and could not stand trial, and that lead to a declaration that the trial procedures were illegal and court ordered for a fresh trial.

According to Supreme Court's ruling in Imdad Ali case, his schizophrenia was a temporary mental disorder which cannot be taken as a complete loss of cognitive capabilities that

justifies leniency at the execution stage. The Supreme Court of Pakistan's strategy may have two significant repercussions. If the defendant's attorney is not attentive and, if the defendant exhibits signs of madness, the defendant can be convinced to surrender his right to appeal. Second, during post-trial and post-conviction hearings, the deluded suspect might not be able to communicate with his attorney efficiently. It goes without stating that both of these scenarios have effects on the fairness of trials under the Pakistani Constitution Article 10-A. In **Riazat Ali alias Gogi Sain V. The State** (Riazat Ali alias Gogi Sain V. The State PLD 1985 Cr. C. 542) ' When the accused's medical examination revealed that he was depressed, the doctor stated that until a neuro psychiatric test and report were completed, no conclusive judgement could be made on the accused's sanity. The argument that the accused's trial was invalidated because section 464 of the Criminal Procedure Code was not followed was rejected since depression cannot be equated with insanity.

This pre-trial privilege is not clearly mentioned in the procedural rules of Pakistan. The Juvenile Justice System Ordinance 2000 ("JJSO") is the only one that clearly lays out the steps regarding the arrest of a child, which includes notifying the child's parents about his arrest along time, date, and court where the child is appearing. JJSO was established to defend the rights of children involved in criminal litigation, notwithstanding its limitations in terms of execution. Similar steps must be taken for those who are mentally ill, albeit they do not require additional laws and instead require safeguards like standard operating procedures or rules. In Pakistan, there is no protection for someone who is insane at the time of their arrest, questioning, trial, or punishment. Psychologists claim that it is possible to influence and compel an accused person with mental illness to confess. Patients with mental illnesses tend to be very submissive and unable to effectively communicate with their attorneys. Therefore, they run a serious danger of experiencing injustice, oppression, and prejudice when being questioned. This is a breach of the ICCPR and the CRPD, as both promote equality and demand that disabled individuals should have full access of legal competence.

RECOMMENDATIONS

- i. There should be medical board to examine, assess, and rehabilitate prisoners, including those who are currently on trial and those who have been found guilty, if requested by the jail authorities. Furthermore, medical board should also be authorized to examine defendants who have been referred by the trial court for examination.
- ii. In view of the constantly developing nature of medical knowledge, governments should make the required changes to pertinent legislation.
- iii. In Chapter 34 of the Cr.P.C. and Prison Rules, the terms "civil surgeon" and "medical officer" should be changed to "Medical Board." Additionally, it is required that the medical board will consist up of qualified psychologists and psychiatrists.
- iv. Government should establish and inform a medical board to assess whether a sentenced prisoner has a mental disease or not, during under trial.
- v. In order to evaluate, treat, and rehabilitate detainees and convicts who have developed mental illnesses while in custody, the government should set up forensic health facilities for them.
- vi. There should be a medical board for the assessment and evaluation of convicted convicts on death row who are suffering from mental illness.
- vii. Forensic mental health assessment training programmes and short certificate courses should begin right away for psychiatrists, clinical psychologists, social workers, police, and prison employees.
- viii. The FJA in Islamabad and provincial judicial academies should organize training on mental illness, including forensic mental health evaluation, for trial court judges, prosecutors, attorneys, and court personnel.

CONCLUSION

In Pakistan, there is just one defense available for those who are mentally challenged, and there is the possibility of acquittal if the accused is determined to be insane or unable to comprehend the gravity of his acts during the commission of a crime. Insanity defense is a form of compromise between society and the law. Society believes that individuals who violate the law should be held accountable and dealt with appropriately, but it also recognizes the rights of those who are mentally ill as they are afflicted with disorders that prohibit them from determining whether what they are doing is right or wrong. Because the most important component of an offense, the presence of the guilty mind, is missing in such cases, they should be treated medically but cannot be penalized or held legally responsible for their illegal behavior. It demonstrates a compromise between society as a whole and the law because neither society approves of certain actions nor does it want to penalize individuals who are mentally ill and unable to consider their actions. From the above mentioned analysis, it is observed that in Pakistan, there is no protection for someone who is insane at the time of their arrest, questioning, trial, or punishment; pre-trial privilege is not clearly mentioned in the procedural rules, there are no separate procedures in Pakistan to hold competency hearings, in light of international fair trial and due process standards, the safeguards for “mentally disordered” defendants come under scrutiny. It is obvious that the decision in Imdad Ali's case has opened a new chapter in the treatment of mentally ill convicts in modern jurisprudence. It takes an unprecedented step by providing security to one of the most marginalized and stigmatized groups.

Conflict Of Interest Statement:

Authors had declared no conflict of interest.

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