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Insanity Plea in Pakistani Law

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by

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1. Introduction

In the realm of forensic psychology 'Insanity Plea' refers to a defense used by criminal defendants where they argue that they should not be held legally responsible for their actions due to mental health problems or disorders. This provision is modelled after the famous M'Naghten Rule. Under this rule, defendants must be either unable to understand what they were doing when the crime occurred, or unable to understand that what they were doing was wrong. Different countries have different views on how this defense should apply beyond the moment a crime is committed. Some believe that insanity should only matter at the time of the crime while others are of the view that if someone is mentally incapable during the trial and is unable to understand the trial procedure then there is still no use of punishing them.

Pakistan incorporated this defense in section 84 of Pakistan Penal Code (PPC), 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 them incapable of knowing the nature of the act.

In Pakistan, around 20 million people are believed to be suffering from mental disorders including anxiety, sleep disorders, schizophrenia, Alzheimer's disease, clinical depression, etc. This huge number makes it imperative to explore and question the crucial relation between the frame of mind of a person and the law.

2. Legal Framework

Apart from section 84 of PPC which deals with the mental condition of the accused at the time of commission of offence, Chapter XXXIV of Criminal Procedure Code (Cr.P.C), particularly sections 464 and 465 deal with considering the mental state of the accused before the commission of offence or during the trial. If the court suspects that the accused is mentally incapable of defending themselves, these regulations require an assessment

into their mental state. This process involves a medical examination by either a Civil Surgeon or Medical Officer appointed by the Provincial Government who will determine if they are mentally unfit to proceed with trial/inquiry. During this period, any ongoing legal proceedings will be postponed until after the results from the evaluation have been finalized. If deemed unfit for trial, their case may be delayed until the time when they recover while remaining in custody unless granted bail as necessary. Furthermore, if there appears to have been indications of mental incapacity during commissioning of the offence, an investigation will still take place and upon being found accurate would result in acquittal. The Court shall then make known its verdict on how much liability lies with respect to involvement in these said offences.

Further development came in 2001 when the Mental Health Ordinance, 2001 (VIII of 2001) (Ordinance) was promulgated which defined the terms “mental disorder”, “mental impairment”, “severe personality disorder”, “severe mental impairment” and “mentally disordered prisoner”.

However, after the passage of 18th Amendment, ‘Health’ became a Provincial subject and respective Governments of Sindh, Punjab, Khyber Pakhtunkhwa and Balochistan promulgated their own Acts in this behalf. These laws also define the terms “mental disorder” and “mentally disordered prisoners”. The Ordinance was adopted by the Province of the Punjab and amended through the Punjab Mental Health (Amendment) Act 2014.

3. Illustrative Cases of the Insanity Plea in Pakistani Jurisprudence:

i. Imdad Ali’s case:

The defendant (Imdad Ali) was indicted by the Sessions Court for committing the murder of Hafiz Muhammad Abdullah in 2001. Despite having a history of schizophrenia, Imdad was given the death penalty for murder. Some crucial evidence of his insanity was excluded during his first trial, for example, his wife’s deposition and previous examinations. His mental illness was only acknowledged after several appeals and a Supreme Court review. This case highlights the challenges and inconsistencies in how the legal system addresses mental health issues.

ii. Kaneezan Bibi’s case:

Kaneezan Bibi, convicted of several murders and given the death penalty in 1991, had her plea of mental illness disregarded both at trial and in the first round of appeals. Her schizophrenia was not identified until the Chief Justice issued a Suo motu notice order requesting medical examinations. To guarantee that mental health claims are appropriately considered, proactive judicial intervention is necessary, as this case demonstrates.

iii. Ghulam Abbas's case:

Prior to receiving his death sentence for murder, Ghulam Abbas suffered from a mental illness and an intellectual disability. His mother sought a stay of execution and a medical review based on Article 184 (3) of the Constitution which was granted. This case is a clear example of flaws in the trial process and the need for higher courts to address mental disorders in capital punishment cases.

4. Challenges in the Pakistani legal system:

- **Legal Interpretation Inconsistencies:**

The application of Section 465 of the Code of Criminal Procedure (Cr.P.C.) and other relevant sections varies significantly across cases. Legal professionals and judges frequently have divergent interpretations of the mental health-related provisions, which results in inconsistent decisions. This can be seen in the case of Imdad Ali where the trial court never deemed it necessary to assess his condition, although it was quite apparent that the man was in a state of mental illness.

- **Societal Perceptions:**

Pakistan remains a conservative society with a high level of stigmatization surrounding mental health, which affects legal approaches. The negative attitudes towards individuals with mental health issues may influence legal professionals and impact the outcomes of cases involving the insanity plea. This societal bias affects how allegations of mental illness are addressed in court.

- **Procedural Complexities:**

There are several procedural hurdles in proving mental illness like the need for thorough medical examinations and navigating complex legal processes. These issues are aggravated by difficulties in accessing mental health resources and professionals. For instance, in the cases of Imdad Ali and Kaneezan Bibi, they had to wait a long time and file numerous appeals to receive adequate medical care and a fair re-evaluation of their mental health.

5. Legal legitimacy

The Pakistan Penal Code (PPC), the legal framework governing the insanity defense, specifies in Section 84 that people who commit crimes while suffering from mental illness and are unable to comprehend the nature or consequences of their actions should not be prosecuted. The International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities (CRPD) both contain provisions that are consistent with this principle. These agreements emphasize how important it is to consider the accused person's mental health at every stage of the legal process, from questioning to trial and sentencing. However, the practical application of this law raises significant ethical concerns.

Legal and ethical concerns:

- **Obsolete definitions & interpretations:**

The reliance on such definitions, for example, the outdated definition of schizophrenia in the Imdad Ali case, shows that the legal practices lag behind the modern knowledge in psychiatry. This results in disparities in the way legal provisions are implemented.

- **International standards and practices:**

Other jurisdictions, such as the US and India have developed their approaches to consider the mental state of defendants during legal proceedings. The "Guilty but Mentally Ill" verdict in the US and India's practice of delaying executions for mentally ill individuals demonstrate more humane and ethical approaches to justice.

- **Potential for Misuse:**

The possibility of some individuals feigning insanity to evade punishment calls to question the legitimacy of this plea. This issue requires a precise and rigorous mental health assessment procedure to differentiate between genuine cases and fraudulent ones.

Legal Procedures and Discrepancies:

- **Communication Barriers and Legal Representation:**

Defendants with mental illnesses frequently experience difficulties in communicating with their lawyers, which can seriously impair their ability to mount a strong defense. This is especially true in circumstances where defendants may unintentionally surrender their right to appeal due to their mental state.

- **Inconsistent Application of the Law:**

Inconsistent rulings caused by procedural delays and differing interpretations of mental health statutes in different cases only add to the complexity of legal matters for defendants with mental illnesses.

- **Problems with Diagnosis:**

Diagnosing mental illnesses can be challenging and subject to misconceptions, as noted by Dr. Mowadat Hussain Rana in the Safia Bano judgement. This difficulty may result in legitimate cases being overlooked while fake ones are validated.

Global Approaches to the Insanity Plea: A Comparative Analysis

Other nations take a different tack, but Pakistan has recently placed a strong emphasis on the humane treatment of mentally ill people thanks to rulings like Safia Bano, which include halting executions and establishing guidelines for similar cases in the future. The "Guilty but Mentally Ill" verdict in the US strikes a balance between mental health care and punishment, and the insanity defense results in hospitalization rather than incarceration. India has also demonstrated a shift in favor of more humane treatment, permitting commitment to mental health facilities rather than jail time and postponing executions until mentally ill people understand the severity of their punishment.

Therefore, even though Pakistan is changing the way it handles mental illness in legal settings, other countries like the US and India have already put in place more organized and considerate systems.

6. Recommendations:

- Unlike physical illness, mental illness is not understood adequately in the society even in the enlightened faction, hence this misconception must be removed. Mental illness, which is considered a curse rather than a disease, can be cured through proper care and treatment based on scientific assessment methods, diagnostic laboratories, and radiological tests.
- The myths regarding mental illness should be eradicated via workshops, seminars. Organize initiatives to promote community apprehension and reduce negative societal attitudes towards mental illness through public awareness campaigns
- In the case of criminal lunacy, the determination whereof must not be left with courts even though tentatively as envisaged in Section 465 & 466 of Cr.P.C.
- Criminal lunatics must be kept in a conducive environment as there are no criminal lunatic wards established in prison or in any mental health institution.
- Since any mental health institution does not admit any criminal lunatic due to lack of required facilities, their custody must be given to their closest relative for their due care and treatment and to prevent them from causing injury to others.
- Mental health laws in vogue do not cater to the problems a criminal lunatic faces, hence these laws need to be improved.
- The existing laws and rules regarding criminal lunatics must be implemented and enforced vigorously. However, all procedural rigors in treating criminal lunatics must be softened.

7. Conclusion

In conclusion, while legal frameworks exist for addressing mental health issues within the criminal justice system, there is a gap between legislation and implementation. The situation calls for further development in understanding and effectively addressing mental health concerns firstly among the public and then specifically among those accused of crimes. Swift action is necessary to bridge these gaps and ensure that individuals suffering from mental illness receive appropriate care and are treated fairly within the judicial system. Additionally, it should be considered that resolving this issue will also raise Pakistan's political status in the international community, reflecting it as a country that values human rights.

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