

Original Article

Mental Health and Criminal Responsibility: A Critical Analysis of the Insanity Defense

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Abstract

The main aim of this study is to explain the insanity defense concerning the commission of an offense, including the McNaughton Rules, and to identify gaps and outline the legislation provided under Section 84 of the Pakistan Penal Code and legislation regarding mentally ill offenders. Here, we briefly discuss these provisions and the rule or test to provide the reader with a comprehensive understanding. Section 84 of the PPC, under the heading "Actions of an individual with mental incapacity," specifies that an individual who, due to unsoundness of mind, is unable to comprehend the nature of their actions or recognize that they are acting in a manner that is either immoral or illegal, shall not be held liable for any offense committed during that time. This provision is based on the McNaughton Rule. The article highlights that Section 84 of the PPC and the aforementioned test are not sufficient to cover all cases of the insanity defense; they only cover mental disorders in which cognitive faculties are impaired at the time of the offense. The definition of insanity or mental illness is not comprehensive as it does not include various psychological disorders such as schizophrenia, schizotypal, delusional, and other non-mood psychotic disorders as classified under the International Classification of Diseases 10 (ICD-10) by the World Health Organization. Furthermore, the research suggests lacunas by not defining the criminal responsibility of mentally ill individuals in federal and provincial health law.

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1. INTRODUCTION

Mental disorder is expressed as insanity that hinders a person's legal capacity and provides a basis for excusing them from criminal responsibility as defined by Black Law Dictionary. (Black Law Dictionary 8th Ed. p 810). An individual is generally responsible for their actions, but there are circumstances where they can be exempted, particularly when they are unable to differentiate between right and wrong due to mental incapacity. The insanity defense is used to defend against criminal liability for a person suffering from a mental disorder. This defense, provided under section 84 of the Pakistan Penal Code, aims to protect mentally ill accused individuals from prosecution and punishment. The Latin phrase "Actus reus non facit reum nisi mens sit rea" embodies the principle of criminal liability, stating that an act alone is not enough to establish guilt unless there is a guilty mind. The standard rule is that individuals who act without a guilty mind or intention are not held liable under criminal law. However, not every mentally ill person is automatically exempt from criminal liability, and only those with legal insanity can benefit from section 84, as specified by law (2006 SCMR).

Criminal responsibility is articulated through two Latin sayings: "Actus reus non facit reum nisi mens sit rea," signifying that the action alone is not enough to establish guilt, or responsible for wrongdoing unless the mind is guilty, and "Furiosi nulla voluntas est," which means that persons suffering from mental instability or illness have no free will and cannot commit a crime unless the act is done with guilty intent. The general rule is that someone who acts without guilty intent or intention is not liable

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under criminal law.

Recently, jurisprudence has been developed for mentally ill prisoners in the Safia Bano case, which mainly relates to insanity at the trial stage and post-trial (after conviction) procedures. Nevertheless, this particular case did not present any novel occurrences as obiter dicta concerning insanity during the commission of the offense. The identical principle established in the Khizir Hayat case is restated in relation to insanity at the time of the offense. (PLD 2021).

2. LITERATURE REVIEW

The defense of insanity in criminal law has been present since ancient times, first appearing in the 1500s. It developed with the wild beast test by the English Court in the 18th century in the *R v Arnold* case. The insane delusion test was adopted in the *Hadfield* case in the 18th century, but a definite and solid law on insanity was established in the *McNaughton* case in 1843. After World War II, the *McNaughton* Rule was criticized, and other different tests were developed. For example, the Model Penal Code was adopted by the American Law Institute, and the *Durham* test was adopted in 1954 by the State of Hemisphere. All these tests will be discussed later in this research thesis.

This literature review mainly targets two points. Firstly, Section 84 of the Pakistan Penal Code and the loopholes under it, and secondly, mental health laws in Pakistan and the loopholes under them. A detailed view of both these points will also be discussed in this research thesis.

In *Ambi v State of Kerala* (CriLJ 1962), the Kerala High Court held that Committing an action is not considered a criminal offense unless it is carried out with a culpable state of mind. This provision of law uses "unsoundness of mind" to depict all those conditions that influence the cognitive faculty of the mind or the reasoning of a human being.

In the case of *Queen Emperor v Lakshman Dagdu* (1886), the Bombay High Court held that even though the accused committed the wrong out of irresistible impulse, and even though physicians were in favor of the accused, it still was not sufficient to bring the case of the accused under the ambit of Section 84 of the IPC. This same view was adopted by the Supreme Court of Pakistan in the *Khizir Hayat* Case (2006 SCMR).

It is suggested that in the present era, medical science and psychiatry have developed and discovered more than 160 psychological disorders. In all cases, cognitive reasoning may not be defective. There are various psychological disorders in which persons know that what they are doing is contrary to law, but they cannot control their irresistible impulse. Such types of mental disorders cannot be dealt with under Section 84 of the PPC and the *McNaughten* Rules.

To cover up such types of mental disorders, the Superior courts should adopt a new approach. The courts should either change their judicial viewpoint or shift their judicial paradigm from the 180-year-old *McNaughton* Rule and adopt a new approach suitable to cover all kinds of mental disorders. Alternatively, our legislature should bring a new amendment in the PPC that can cover all other kinds of mental disorders which cannot be covered under the aforementioned provision of law.

Before Mental Health Ordinance 2001 (herein after referred to as MHO 2001), mental illness was dealt under Lunacy Act 1912, this Act was replaced by Mental Health Ordinance 2001 (hereinafter referred to as MHO 2001) because it contained out date terms like lunatic, and detention period for mentally ill person was 10 days, with permission of magistrate can be detained for 30 days in some cases and Lunacy Act also did not provided concept of rehabilitation rather it focused on punishment. After enactment of MHO in 2001 some defects were encountered but still this piece of legislation is not complete code to deal with mental health issues. This ordinance also contains flaws which are discussed in detail in this research paper.

The research will explore the following questions:

- What terminologies are used in health legislation and criminal law to define mental health disorders for criminal liability?
- What are the gaps in evaluating criminal responsibility to assess different tests for judging mental health conditions in various laws?
- What different approaches are used to assess mental state when investigating a crime?
- What amendments have been made to provincial health legislation following the 18th amendment?

3. RESEARCH METHODOLOGY

Qualitative research methodology is used to collect and analyze data for this research paper. Relevant data on various approaches or tests adopted by other jurisdictions on the insanity defense is reviewed and analyzed. Drawbacks are pointed out in the said provision of law and the mental health legislation of Pakistan. Literature on Section 84 of the PPC and mental health legislation is reviewed, and relevant data is collected from different research articles, journals, newspapers, scholarly articles, and case laws of the Superior Courts of Pakistan and India. This data is collected, analyzed, and presented using the aforementioned research methodology.

The criminal law of Pakistan is mainly founded on the Pakistan Penal Code hereinafter referred to as (PPC) and the Code of Criminal Procedure hereinafter referred to as (CRPC), the terms used for mentally ill accused are "lunatic," "insane," and "unsound mind." Nonetheless, the statutes and rules do not contain clear definitions for these terms. The Pakistan Mental Health Ordinance 2001, on the other hand, offers explanations for terms such as "mental disorder," "mental impairment," "severe personality disorder," "severe mental impairment," and "mentally disordered prisoner." However, with the implementation of the 18th constitutional amendment, health matters were devolved to the provinces., and respective governments formulated their own mental health laws, such as the Sindh Mental Health Act 2013.

Moving further, let's examine the different terminologies linked to the research topic.

Insanity: The term "insanity" itself is not defined in any law of Pakistan As per the definition provided by Black's Law Dictionary, insanity refers to a mental disorder of such magnitude that it hinders an individual from possessing legal capacity and exempts them from criminal or civil liability. (Black's Law Dictionary, 8th Ed., 2008, p. 810).

Unsound mind: The Pakistan Penal Code does not define the term "unsound mind," but the Superior Courts have treated this term as equivalent to insanity. According to Black's Law Dictionary, The definition of "unsound mind" refers to an adult who, due to mental incapacity, is unable to manage themselves or their affairs. This category encompasses individuals who are insane or intellectually disabled. An individual who cannot make decisions or look after themselves is considered to be of unsound mind." (Black's Law Dictionary, 2nd Ed.).

Lunatic: According to section 2(5) of the Lunacy Act 1912, "lunatic means an idiot or a person of unsound mind."

Mental Health Legislation

The Lunacy Act of 1912 was substituted by the Mental Health Ordinance of 2001. Following the 18th amendment of the Constitution, health was devolved to the provinces, making it the responsibility of provincial assemblies to enact suitable laws. Presently, each province has its individual legislation concerning mental health, like the Sindh Mental Health Act of 2013 and the Punjab Mental Health Act of 2014. (Shaikh,2015)

Now, the researcher will discuss legal and medical insanity, Section 84 of the PPC in light of judgments of Superior Courts, and defects in the said provision of law along with the McNaughton Rules. Before we delve into the distinction between legal and medical insanity and the aforementioned provision of law, we will first discuss the McNaughton Rules, which are the subject of our criticism under this chapter.

To understand the concept of insanity, it is necessary to first examine Section 84 of the PPC: " Any action committed by an individual who, due to mental incapacity, is unable to comprehend the nature of the deed or recognize that it is morally or legally incorrect, shall not be considered as an offense.

In Ambi v State of Kerala (1962), the Kerala High Court held that An act is not considered a crime unless it is performed with a culpable intent. This provision of law uses "unsoundness of mind" to depict all those conditions that influence the cognitive faculty of the mind or the reasoning of a human being. This law makes a distinction between legal and medical insanity. A person suffering from any disorder of the mind, such as emotion or fear, is not covered under Section 84 of the PPC (1962 CriLJ).

In the case of Queen Emperor v Lakshman Dagdu (1886), the Bombay High Court held that even though the accused committed the wrong out of irresistible impulse, and even though physicians were in favor of the accused, it still was not sufficient to bring the case of the accused under the ambit of Section 84 (1886 ILR 10 Bom).

Section 84 of the PPC is based on the McNaughten formula, which only covers cases of mental illness

in which the cognitive faculty of the mind is defective. The person should have a loss of reasoning power at the time of the commission of the offense and should not know the nature of the act, whether it is contrary to law or not. However, any person who is mentally ill but had the reason at the time of the commission to know that what he/she is doing is contrary to law, but cannot prevent himself/herself due to an irresistible impulse, cannot be absolved from criminal liability under the said provision of law.

In the matter of *Balhari Das v. the State*, it was determined by the court that an individual's mental illness alone does not exempt them from criminal responsibility. This is due to the distinction between the medical and legal interpretations of insanity. To invoke the protection of Section 84 of the PPC, one must establish legal insanity rather than solely being mentally ill or medically insane.

Legal insanity occurs when an individual becomes incapable of reasoning and exhibits concerns at the time of the incident in question. On the other hand, medical insanity refers to a person's mental unfitness. It is important to note that legal insanity, as defined in the relevant law, is distinct from medical insanity. If the cognitive faculty of the mind remains intact and the accused is aware that their actions are either morally wrong or against the law, they cannot be considered insane. Mere uncontrolled impulses or insane delusions are insufficient to classify the accused under Section 84 of the Pakistan Penal Code (PLD 1962).

It is essential to note that the presence of unsoundness of mind must be proven at the time the offense was committed. Both our highest courts and the Supreme Court of India have ruled that in order to demonstrate that actions taken do not constitute offenses under Section 84, it must be definitively established that the accused was unable to comprehend the nature of the act due to unsoundness of mind at the time of the act (*Sheralli Wali Muhd v. The State of Maharashtra*).

Drawbacks Under Mental Health Legislation And Mcnaughten Rules

There are various psychological disorders in which individuals know the nature of their actions but cannot control their irresistible impulses. Such types of mental disorders cannot be covered under Section 84 of the PPC or the McNaughten formula, which is considered outdated in this modern era of science and technology. Before delving deeper into the discussion, let's review what the McNaughten rule is.

Mcnaughten Test

In Pakistan, the McNaughton Rules are incorporated into criminal law. These rules originated from a case involving McNaughton, who, in 1843, killed Edward Drummond, the secretary of England's Prime Minister, Mr. Robert Peel. McNaughton was tried in court and pleaded not guilty by reason of insanity, a plea that was accepted by the court. This test, also known as the "right-wrong test," marked the first use of the insanity defense, making it a landmark case in this area.

The McNaughton Rules establish that " Each individual is considered to be of sound mind and possessing an ample level of rationality to be held accountable for offenses, unless proven otherwise to the jury's contentment. " (*R v McNaughton (1843) 8 E.R. 718*). This test, in use since 1843, is one of the oldest methods used to determine insanity. Its core principle is that every person is presumed sane unless proven otherwise, and the burden of proof rests with the defendant or accused.

The McNaughton rule focuses on the cognitive faculties of the mind or a defect in reasoning rather than physical impairment or loss of control. It seeks to determine whether the defendant could distinguish between right and wrong at the time of committing the offense. The key element of this test is to establish that the accused was suffering from a "defect of mind" while committing the crime. The accused must have been cognitively impaired to the extent that they could not differentiate between right and wrong.

There are various viewpoints regarding the definition of "wrong." One such definition is "legally wrong," which means that the person did not know whether their act was illegal or legal. Another definition is "morally wrong," which means that the person did not know that their act was unacceptable or inappropriate to society. However, this rule only recognizes legal wrong (*R v McNaughton (1843) 8 E.R. 718 (1843)*).

In 1884, U.S. legislation adopted the Irresistible Impulse Test for individuals who were mentally unstable, departing from the McNaughton Rule. This defense was established in the landmark case of *Lorena Bobbitt (1993)*, where the defendant cut off her husband's reproductive organ while he was asleep, intending to harm him. Her defense argued that she had been a victim of domestic violence throughout her marriage and had also been raped by her husband before committing the crime. They claimed that she was unable to control her actions due to an irresistible impulse, despite being fully aware of her

actions. The court ruled that she was not guilty by reason of insanity, as she was deemed unstable and suffering from a mental illness.

The UK, where the McNaughton Rule originated, has made various changes regarding the insanity defense and has criticized this rule. However, our Superior Courts still blindly follow this rule. Neither the legislature is willing to bring changes in Section 84 of the PPC nor are the Superior Courts deviating from the outdated McNaughton Rules. This raises questions about both the legislature and our judiciary

Under the current legal framework in the United Kingdom, the criminal justice system recognizes the existence of sane automatism. This concept allows individuals to potentially avoid criminal liability if they can demonstrate that they lacked conscious control over their actions when they committed the alleged offense, due to reasons unrelated to their mental state. This defense is commonly referred to as sane automatism within the legal context. The United Kingdom also has the concept of diminished responsibility, which is a partial defense to murder where the accused did not control their actions due to a mental abnormality, under Section 2 of the Homicide Act 1957.

Despite these existing legal provisions, the United Kingdom Law Commission published a discussion paper on July 23, 2013, for the reform of the defense of insanity and automatism, based on lack of capacity. They themselves widely criticized the McNaughton Rule for a number of reasons, such as its lack of clarity on whether the defense of insanity is available to all mentally ill individuals.

In the discussion paper published on July 23, 2013, by the United Kingdom (UK) Law Commission for law reform, views from other jurisdictions were also considered. The Atkin Committee suggested that The inclusion of the irresistible impulse should be incorporated into the McNaughton Rules, affirming that an individual facing criminal charges is deemed not responsible for their actions if they committed the act under an impulse that they were unable to resist due to mental illness. The Royal Commission on Capital Punishment identified the inadequacy of the McNaughton Rules in addressing situations "where a person is aware that their actions are contrary to the law or unlawful."

In 1913, a committee comprising lawyers and physicians convened and proposed a test that could be universally applied to all forms of mental illnesses. During this discussion, it was asserted that a crucial mental aspect of any crime is volition, which implies that the individual has the capacity to choose whether to act or refrain from acting. If, in a given case, medical evidence indicated that the defendant was suffering from a mental disorder and, as a result, was irresistibly compelled to commit harm, and if it could be established from such evidence that the defendant was indeed so compelled, then the essential element of volition was absent, and the defendant should be acquitted.

All these points raise questions about the work of our legislature and criminal judicial system. The criminal judicial systems and legislative bodies of other countries, such as the United Kingdom and the United States, have been continuously working since 1887 to change the outdated McNaughton Rules either through court decisions or legislative work. This point can be clearly understood from this research paper, in which we will discuss different approaches adopted by other jurisdictions to avoid this outdated English rule. However, the criminal judicial system of Pakistan still follows this aforementioned outdated law.

The Pakistan Penal Code was enacted in 1860 by the British Raj, and at that time, the McNaughton Rule was enshrined under Section 84 of the PPC. It has been 162 years since this law was enacted, but our legislature has not made a single change to the said provision of law related to insanity. This is a matter of pity and shame for our criminal judicial system.

New Approaches Adopted By Other Jurisdictions To Avoid Mcnaughten Rules

There are different tests or rules to determine whether an accused person knew the nature of the act contrary to law or not. Pakistan, with its sixth-largest population globally, is home to around 50 million individuals afflicted by mental health disorders. This sizable population represents one of society's most marginalized and vulnerable segments (Reporter, 2016). Pakistan is presently grappling with a significant crisis concerning the legislative and policy framework regarding mental health issues. While various categories of mental health disorders are recognized worldwide, our focus is primarily on two types: mental illness and insanity (Zulqar, 2018). However, the scope under Pakistani law is limited and fails to address all facets of mental illness. Consequently, a defendant or accused can only plead insanity if it meets the requirements for the insanity defense (Zafar and Haq, 2018).

As we have already discussed and criticized the McNaughton Rules above, it is evident that these rules do not cover various mental disorders but only those in which the cognitive faculties of the mind are

impaired at the time of the commission of the offense, leading to a loss of reasoning power. To address this limitation, jurisdictions in other courts have adopted different approaches to interpret insanity. They have tried to cover various mental disorders through their judicial interpretation and have developed new tests, deviating from the outdated English law. Some of these approaches are discussed below.

Irresistible Impulse Test

In the landmark judgment of the Supreme Court of Alabama in the case of *Pearson v State*, for the first time in 1887, the irresistible impulse test was established. It was established that even if a person knew the difference between right and wrong but, due to a mental disease, could not control his actions, if they committed a crime, they were not guilty by reason of insanity.

Through this test, the Court deviated from the outdated English law and adopted a new approach to interpret insanity. Under this test, various commentators suggested that not only cognitive impairment of the mind but also other mental disorders would be taken into account in the case of insanity, such as irresistible impulse (Equivalent Citation 81 Ala 577).

Durham Test

In 1954, the U.S. Court in the case of *Durham v. United States* created a test known as the "product test" or "but-for test," which was devised by Judge David L. Bazelon to deviate from the old McNaughton Rules. In this instance, it was determined that an individual who is accused cannot be held accountable for any actions carried out due to a mental impairment. This examination assesses whether the accused was suffering from a mental disorder at the time of committing the offense. However, later in 1972, the same court in the case of *United States v. Brawner* rejected those rules and replaced them with the American Law Institute's Model Penal Code test (Equivalent citation 214 F.2d 862).

Model Penal Code Test

The Model Penal Code Test, also known as the American Law Institute test or "ALI Test" or "Substantial Capacity Test," is provided under section 4.01 of the Model Penal Code of the American Law Institute. This provision of the Model Penal Code deals with the insanity defense, and this test is much broader than the McNaughton Rules. Fifty percent of the states along with the federal government have embraced this examination due to its adaptable characteristics in assessing insanity. This evaluation is a fusion of the McNaughton Rule and the Irresistible Impulse Test. This test was first used in *Hinckley v. United States* (D.D.C. 1981). In this case, the accused was prosecuted for attempting to assassinate President Ronald Reagan to impress actress Jodie Foster and raised the plea of insanity. The Court acquitted him by reason of insanity. In this test, two elements are at work: similar to McNaughton's Irresistible Impulse test, the defendant must have a mental disease or defect at the time of committing the crime. Additionally, the defendant must experience cognitive impairment and a loss of control over their actions. This test asserts that a person is not accountable for a criminal act if, due to a mental disease or defect, they lack substantial capacity to either understand the criminality of their conduct or adhere to the requirements of the law. This test is comprehensive in determining insanity. Unlike the McNaughton Test, which debated the definition of "wrong" as criminally or legally wrong, this test is clearer in its definition. Another distinction is the use of the word "appreciate" instead of "know," implying that a person's emotional aspects are also considered in evaluating their mental capacity (Sec. 4.01 Model Penal Code and D.D.C. 1981).

Recommendations

Every crime has a mental component known as volition, which refers to the ability to choose whether to act or not. If medical testimony in a case indicates that the defendant was suffering from a mental illness and, as a result, was irresistibly compelled to commit harm, and if we can determine from such testimony that the defendant was indeed compelled, then the essential element of volition was absent, and the defendant should be acquitted.

As we have seen, there are more than 160 psychological disorders in which it is not necessary that cognitive reasoning would be defective. To cover such types of mental disorders, our Superior Court should adopt a new approach. They should either change their judicial viewpoint or shift their judicial paradigm from the 180-year-old McNaughton rule and adopt a new approach that is suitable to cover all kinds of mental disorders. Alternatively, our legislature should bring a new amendment to the Pakistan Penal Code that covers all other kinds of mental disorders which cannot be covered under this provision

of law (Section 84 of the PPC). I am not suggesting that the irresistible impulse test should be adopted or that any other approach should be adopted. But I would suggest that our legislature should incorporate a new definition of insanity in the PPC, which could cover various mental disorders in which the act is not involuntary or without volition, which is a main element of the crime.

Neither the Mental Health Ordinance 2001 nor provincial mental health laws define the criminal liability of mentally ill convicted prisoners, particularly regarding whether mentally ill condemned prisoners can be executed. On this point, our mental health laws are silent. This issue was also faced by the Supreme Court in the Safia Bano case, in which the court sought assistance from the Convention on the Rights of Persons with Disabilities (CRPD) of 2006, the 10th edition of the International Classification of Diseases issued by the World Health Organization (WHO), and Rule 109 of the Nelson Mandela Rules for prisoners.

I propose that Pakistan should follow India's example and pass a legislation on the Rights of Persons with Disabilities, incorporating internationally recognized standards such as the latest edition of the International Classification of Diseases issued by the WHO. Additionally, Pakistan should align its mental health legislation with the nationally and internationally accepted standards set by the WHO, just like India did with its Mental Healthcare Act 2017.

As the definitions of insanity and unsound mind are not defined in any law, and the definition of mental illness is not comprehensive and concise under the Mental Health Ordinance 2001 and provincial laws on mental health, I suggest that the definition of mental disorder or illness be amended and determined in accordance with internationally accepted standards. The latest edition of the International Classification of Diseases issued by the World Health Organization should be incorporated into the new proposed legislation.

Section 6 of the Sindh Mental Health Act 2013 states that the provincial government may establish psychiatric facilities for the assessment, admission, treatment, rehabilitation, care, and safety of mentally disordered persons. It also mentions separate units for individuals aged 18 years, children, adolescents, the elderly, and convicted offenders with mental disorders. Firstly, there is non-implementation of this provision of law, which is a failure on the part of the provincial government. Secondly, the word "may" is used in this provision, which should be replaced with the word "shall." Currently, health and psychiatric institutions in our country are poor, and by using the word "may" in this provision, it gives discretion to the government for establishing psychiatric facilities. It is suggested that the provincial government should ensure compliance with this provision of law, and the provincial assembly should replace the word "may" with "shall." The use of "may" is seen as an attempt to absolve the provincial government from liability in case of litigation for the implementation of this provision of law.

Under section 10 of the Mental Health Ordinance 2001, only the right of one appeal against involuntary admission is provided, which would be heard by a local magistrate, and the period for filing the application is fourteen days. The exact same provision exists under section 10(6) of the Sindh Mental Health Act 2013 and in other provincial mental health Acts. Here, in the aforementioned provision, the right of a second appeal is inserted, and the time period for filing the application is also extended. Secondly, under the provision of 19(2), the period of forced detention is 72 hours. This period of forced detention is reduced from 72 hours to 24 hours.

Overall, mental health legislation in all four provinces of Pakistan and Islamabad Capital Territory (ICT) does not meet the standards set at the international level. Even the Mental Health Ordinance 2001 is still applicable in the ICT without any changes, which raises questions about the effectiveness of our legislature. The National Commission for Human Rights launched a report on 24 August 2022 on mental health and human rights. The aim of this report was to identify gaps in mental health policy and legislation. The Chairperson of the National Commission for Human Rights (NCHR), Rabiya Javeri Agha, announced the formation of a draft Mental Health Bill, which would serve to update the Mental Health Ordinance 2001 in the Islamabad Capital Territory and serve as a model for updating the provincial mental health Acts. However, neither the federal government nor provincial governments have taken any steps to update mental health laws. It is suggested that mental health in Pakistan has remained a neglected area in the past, and now our legislature should take steps to bring mental health legislation in Pakistan in conformity with nationally and internationally accepted standards.

4. CONCLUSION

This research primarily focuses on two main points. Firstly, it elaborates on the concept of the insanity

defense provided under section 84 of the Pakistan Penal Code (PPC) and highlights the defects in this provision and the McNaughton Rules. Additionally, it discusses the different approaches or tests adopted by other jurisdictions to avoid or deviate from the McNaughton Rules. As we have already discussed and criticized in detail in this research paper, the section 84 PPC and the aforementioned test are not sufficient to cover all cases of the insanity defense. They only cover mental disorders in which the cognitive faculties of the mind are impaired at the time of the commission of the offense. This means that at the time of the offense, the individual did not know the nature of the act or whether it was contrary to law due to unsoundness of mind, in other words, they had lost their reasoning power at the time of the incident. However, if at the time of the offense, the person, although mentally ill, knew the nature of the act and that it was contrary to law but committed the act due to an irresistible impulse or any other mental disorder in which cognitive faculties are not impaired, then they cannot claim the benefit of section 84 PPC.

In the Safia Bano case (PLD 2021 SC 488), the Supreme Court of Pakistan reiterated the decision in the Khizir Hayat case (2006 SCMR 1755), wherein the court held that not every person who is mentally diseased is automatically exempted from criminal liability under section 84 of the Pakistan Penal Code (PPC). The individual must prove that at the time of committing the act, they were laboring under such a defect of reason that they did not know the nature and quality of the act they were doing. Otherwise, every person is presumed to be sane and possess a sufficient degree of reason, as mentioned under the McNaughton Rules.

Secondly, this research paper discusses the laws on Mental Health in Pakistan and the defects within them. This second point of the research is extensively discussed, wherein the brief history and development of mental health laws from the Lunacy Act 1912 to the Mental Health Ordinance 2001 and provincial laws on mental health are reviewed. Additionally, defects under these laws are pointed out, such as the definition of insanity or mental illness not being comprehensive and concise. These laws do not cover various psychological disorders like mental, behavioral, and neuro-developmental disorders, such as schizophrenia, schizotypal, delusional, and other non-mood psychotic disorders, as contained in the International Classification of Diseases 10 (ICD-10) given by the World Health Organization.

Competing Interests

The authors did not declare any competing interest.

References

A. A., Niazi, F. U., & F. R. (2022). Insanity Defence in Criminal Cases in Courts in Pakistan. *Global Legal Studies Review (GLSR)*, VII(IV), 6.

A. T., & Tareen, K. E. (2016, August 1). Mental health law in Pakistan. Retrieved from <https://www.ncbi.nlm.nih.gov: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5618880/#r1>

Adil, K. (2022, March 25). Policing and Safia Bano Case. Retrieved from Research Society of International Law (RSIL): <https://rsilpk.org/2022/policing-and-safia-bano-case/>

Ali, A. (2013, May 7). 'Plea of Insanity' As a Defense In Pakistan (Analysis of the celebrated Judgments of Superior Courts). Retrieved from Social Science Research Network (SSRN): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2261610

Bada, S. (n.d.). Insanity Defense: Past, Present, and Future. Retrieved from www.ncbi.nlm.nih.gov: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4676201/>

Case Studies on Insanity in Indian Law. (2021, September 27). Retrieved from <https://www.lawteacher.net: https://www.lawteacher.net/free-law-essays/medical-law/lunacy- or-unsound-mind-mental-abnormality.php>

Durham v United States (Court of Appeal July 1, 1954). Ambi v State of Kerala (1962 CriLJ 426) (July 17, 1961).

Gandhar, R., & S. A. (2021). Insanity Defence. *International Journal of Advanced Research in Management and Social Sciences (IGARMSS)*, 10(10), 19.

Govindarajan, m. m. (2022, August 12). legal insanity v. medical insanity. Retrieved from

Hameed, U. (2017). Protecting Due Process Rights of mentally Disabled. *Pakistan Law Review*, Eight, 15.

Jhandyana, C. M. (n.d.). The manual of mental health laws. Mansoor book house. *R v McNaughten* (1843).

Khan, A. W. (2014, July). Plea of Insanity as a defence in Pakistan. *International Journal of Humanities and Social Sciences*, 4(9 (1)), 9.

Khizir Hayat Case, 143 (supreme court June 21, 2006).

Mehmood, M. I., & H. K. (2022). Changing Paradigms: Criminal Responsibility in Mental Health Laws of Pakistan and UN Conventions on the Rights of Person with Disabilities. *Journal of Development and Social Sciences*, 3(4), 10.

Model Penal Code (section 4.01). (n.d.). Retrieved from
<http://individual.utoronto.ca/>:
http://individual.utoronto.ca/dubber/web/website/respons/Model_Penal_Code.htm

NCHR Launches Report on Mental Health and Human Rights, 'Malpractice in Mental Health in Pakistan: A Call for Regulation'. (2022, August 24th). Retrieved from National Commission for Human Rights (NCHR):
https://www.nchr.gov.pk/press_release/nchr-launches-report-on-mental-health-and-human-rights-malpractice-in-mental-health-in-pakistan-a-call-for-regulation/

Qadari, S. H. (2017). *Pakistan Penal Code 1860*. Mansoor book house.

Queen Empress v Lakshman Dagdu (1886 ILR 10 Bom 512) (Bombay High Court 1886). Parsons v State 1887 (Supreme Court of Alabama July 28, 1887).

Safia Bano Case (Supreme Court 2021).

Saikia, D. (2018). Insanity Defence in Criminal Cases. *International Journal of Law Management and Humanities (IJLMH)*, 1(3), 5.

Sana Farrukh Shaikh, 2015 Mental Health Legislation in Light of National and International Obligations, Volume II retrieve on 20th March 2024
<https://humanrightsreviewpakistan.wordpress.com/volume-ii/>

School, C. L. (2020, March). Insanity Defense. Retrieved from Legal Information Institute (LII):
https://www.law.cornell.edu/wex/insanity_defense

State v Balahari Das (PLD 1962 Dacca 467) (Supreme Court 1962). United States v John Hinckley, Case no 81-306 (November 17, 1981). Bapu @ Gajraj Singh v State of Rajasthan, 13 13 2006 (June 4, 2006).

The Insanity Defense. (n.d.). Retrieved from lumenlearning.com:
<https://courses.lumenlearning.com/suny-criminallaw/chapter/6-1-the-insanity-defense/>

The Insanity Defense. (n.d.). Retrieved from open.lib.umn.edu:
<https://open.lib.umn.edu/criminallaw/chapter/6-1-the-insanity-defense/>

Yasir, B. (2021, June 14). Insanity Plea in Pakistan: An Unsettled Loophole. Retrieved from
www.paradigmshift.com.pk

Zafar, n. n., & m. h. (2018, July). mentally ill prisoners in pakistan's criminal justice system: analysing fair trial & due process standards. Retrieved from
<https://humanrightsreviewpakistan.wordpress.com/mentally-ill-prisoners-in-pakistans-criminal-justice-system-analysing-fair-trial-due-process-standards/>

Zulfiqar, H. (2018, July). Mental illness in the Pakistani Legal System retrieved from
<https://humanrightsreviewpakistan.wordpress.com>