

The Provision and Implication of Insanity Defense in Pakistani Laws

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Abstract: The current study sought to explore the provision and implications of the insanity defense in Pakistani laws. This research aims to find the lacunae in the law that aids mentally ill offenders. It also proposes to identify the role of lawyers and forensic psychologists and government institutions in the insanity defense. The study includes understanding and implementing the insanity defense in Pakistani laws and the law system. The study sample involved nine lawyers and four forensic psychologists whose interviews were conducted using a semi-structured questionnaire. Participants were contacted through the snowball sampling technique. The current study concluded that more than one key factor hindered the law system's understanding of insanity defense and mental health. The absence of psychiatric or psychological assessments in the court system suggests a common knowledge of insanity defense and mental health. The case studies overall present the different sides of mental health in Pakistan. The results also inferred that the key factors that had played the role of hindering the development of insanity defense could also enhance the development of insanity defense. The psychosocial factors that influence the hindering of insanity defense are highlighted. The results of the present study indicate a completely different point of view regarding insanity defense for lawyers and forensic psychologists, who can use this knowledge in their professional endeavors.

Keywords: Insanity defense, Pakistan Penal Code, Forensic psychologists, Mental health, Criminal justice System.

INTRODUCTION

Insanity Defense refers to the plea that a defendant can plead in a criminal trial, that the defendant admits the action but asserts the lack of ability to act because of mental condition (Cornell Law School, 2016). The insanity plea is thus to justify mental stability. It has been in practice in most countries. The rehabilitation and health sector developments show that the world acknowledges mental illness (Ali & Saleem, 2014). Insanity plea has been known in criminology and forensic studies across the world (Khan & Khan, Crime and punishment: Pakistan's legal failure to account for mental illness, 2021), but many lawyers and practitioners have defied the study and knowledge behind insanity plea because of low awareness about mental health in Pakistan and considered as a tabooed issue (Ali & Saleem, 2014). There are almost 10 cases reported in the history of Pakistan, and none of them deal with international SOPs. The first case was reported in 2006, and the most recent case of Zahir Jaffar was reported with an insanity plea (Naseer, 2021). After almost 16 years, Pakistan still has not implemented the laws for mentally challenged persons. Pakistan has yet to establish psychological assessments and methodology for the awareness of

mental disorders (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). The lack of literature and research on a given topic substantiates little effort to provide awareness among law authorities in Pakistan. This study intends to highlight the important aspect of the insanity defense in the country that the authorities and practitioners can work on to develop better assessments, techniques, and laws for implementation within the jurisdiction of the human rights charter of the United Nations. Many countries such as the United Kingdom (UK), Australia, United States have developed inclusive laws for the insanity defense (Feuerstein, *et al.*, 2005). They are referred to as standards in explaining the insanity or insanity defense (Ali & Saleem, 2014).

Two concepts would explain the use of an insanity plea in courts. First medical insanity accounts for permanent mental illness (Math, Kumar, & Moirangthem, 2015). Second legal insanity includes the accused consciousness and the power of reasoning and judgment at the time of the crime (Math, Kumar, & Moirangthem, 2015). Although both the concepts look alike, one justifies mental illness, and the other explains the actions performed and proved separately (Mayukhroy, 2019). In criminal law, to establish accountability for the crime, it is vital to demonstrate the actions and intentions of the person that had led to the crime (Gilani, Gilani, Kasi, & Khan, 2005) and the

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onus of responsibility to prove mental conditions are on accused. Understanding such ethical nuances, criminal laws in most countries allows for an insanity defense (Tripathy, 2016). In the legal system, a crime is only a crime if it refers to the intention to commit a crime and the action that fits in describing the crime. There are two general requirements known as “*mens rea*,” which refers to the intention to commit a crime, and “*actus reus*,” which refers to the action that fits an offense (Feuerstein, *et al.*, 2005). Because of a lack of access to the literature regarding laws, there is little data regarding the insanity plea internationally.

There have been significant changes in the insanity plea because of human rights (Amnesty International, 2021). In Australia, the governments have been undertaking reviews of mental health legislation in the light of the principles set out in the UN Convention on the Rights of Persons with disabilities, where several debates have been made upon mental health disabilities and human rights (McSherry, 2014). Before that, mentally disabled persons were accused of their crimes and were put in detention, prison time, or worse, death (Adjorlolo, Oliver, & DeLisi, 2019). The international bodies have been focusing on the trend of this convention and the social, cultural, and political policies to allow the government to explore and implement these laws in correspondence with human rights policies (McSherry, 2008). The 54 Commonwealth Countries had also been developing their domestic laws parallel to international ones (Yeo, 2008). While creating new laws the courts and judiciary had met strong opposition and resistance regarding insanity pleas in developed countries (Adjorlolo, Oliver, & DeLisi, 2019) because of their potential to be unethically used. These countries have given so much importance that they have psychological boards to deal with the cases of the insanity plea and forensic psychologists to deal with such cases (Adjorlolo, Oliver, & DeLisi, 2019).

A forensic psychologist/psychiatrist is mainly seen on crime scenes (Feuerstein, *et al.*, 2005) for making assessments in courts to testify (Adjorlolo, Oliver, & DeLisi, 2019). They also provide treatment to clients when they are taken under custody and driven to mental hospitals (Feuerstein, *et al.*, 2005) for the safety of the accused. Courts decide on reports made by forensic psychologists/psychiatrists.

Pakistan is no stranger to challenges in the health care system (Khan & Khan, Crime and punishment: Pakistan's legal failure to account for mental illness,

2021). According to the WHO report (2012-2017), severe withdrawal of health infrastructure was mentioned due to uneven distribution of health facilities, high population growth, and deficient workforce (World Health Organization, 2018). Mental health is no exception. A stereotype has been created for mentally ill people, and sadly Pakistani law system reinforces the stigma; however, Islamic law considers mental illness as an act of defense (Ali & Saleem, 2014). A special legal procedure is provided in Islamic law to compensate those victims who suffer due to the actions of mentally impaired persons (Ali & Saleem, 2014). Insanity in Islamic laws is not considered a separate or distinct category in legal textbooks and is discussed as a cause of legal disability or interdiction (Ali & Saleem, 2014).

It took almost sixty years to bring the terms like mental illness and mental disabilities to the paper in rehabilitation health facilities (Gilani, Gilani, Kasi, & Khan, 2005). Before that, Pakistan used the 1912 lunacy act by British rulers to make judgments (Magha, 2011) for mentally disabled persons, which was replaced by Pakistan mental ordinance 2001 (Khan & Khan, Crime and punishment: Pakistan's legal failure to account for mental illness, 2021). When it comes to prisons, old unhygienic places were turned into prisons to keep mentally disabled people away from ordinary people (Gilani, Gilani, Kasi, & Khan, 2005). No attention or awareness was given to mental illness till the new ordinance of 2001 (Gilani, Gilani, Kasi, & Khan, 2005).

The Pakistan Mental Ordinance (February 20, 2001) as a presidential order (Gilani, Gilani, Kasi, & Khan, 2005) changed the outdated terms with well-fitted definitions that were acceptable culturally, socially, and politically (Gilani, Gilani, Kasi, & Khan, 2005). The ordinance bridged the critical gap in updated terminologies that made people look at mentally disabled people with a different perception other than sympathy. The ordinance brought good use of psychiatrists and psychologists to aid the courts and lawyers in assessments and judgments (Hassan, Nizami, & Hirji, Forensic psychiatry in Pakistan, 2015). It serves the protection of the human rights of mentally disordered persons. It states, “*No patient shall be publicized, nor his identity disclosed to the public through press or media unless such person chooses to publicize his condition (Pakistan Ordinance Law, 2001)*” (Gilani, Gilani, Kasi, & Khan, 2005) for the record safety and privacy of the accused (Hassan, Nizami, & Hirji, Forensic psychiatry in Pakistan, 2015).

Under the ordinance, civil courts must identify any means to understand the motive behind suicide. The civil courts have several cases daily with different backgrounds, most of which are assets, property, divorce, and guardianship of mentally ill persons. One of the hot topics in civil court is Qatl-e-Amd, or intentional homicide (Khan & Khan, Crime and punishment: Pakistan's legal failure to account for mental illness, 2021). However, progress for proper law implementation is low (Junaidi, 2019). The availability of psychological assessments and forensic psychologists and psychiatrists in the law system can spread awareness about mental disabilities (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017).

In Pakistan, a few health and forensic practitioners cannot counter cases of the insanity defense (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). The capacity to defend states that the court appoints a civil surgeon to act as a witness for providing written examination (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). The court can postpone the further hearing until the records regarding the unsound mind of the persons have been made. The medical officer collects data from the inspector, the people who saw the crime, and the relatives who knew the client. It helps the law officer to evaluate the history of the client. It would help him assess further questions (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). In intoxication cases, the client is detained when an officer contacts the court judges to explain the evidence for a decision regarding further trial (Pakistan Penal Code 2001) (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). In intoxication cases, a person must prove that he was intoxicated without his knowledge or will, and if not, he is guilty of the crime committed; the use of toxins itself is also a crime. The experts provide their opinions that will decide the judgments additionally Muslim psychiatrists in the case of Muslim accused (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). Pakistan has a low number of health facilities, and the allocation of hospital beds is based on the courts' assessments carried out by forensic psychologists (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). A medical board sits for discussions that end with the possible diagnosis,

criminal responsibility, and defense capacity (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). Then report is sent to the medical inspector of the prison to present in front of the court.

The Situation of Pakistan for Insanity Plea

In Pakistan, an insanity plea is also used in blasphemy cases, and such cases get huge exposure by media, leakage of personal information, threats to family, and others. Most of the cases highlighted are ended as minority cases. Since no history is present or recorded, there is no evidence that such was the case for the Insanity defense (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017; Amnesty International, 2021). The high court deals with nationally highlighted cases like the case of Zahir Jaffer and Noor Muqaddam. In both scenarios of insanity plea, a person must prove that while he committed the crime, he had a mental disorder (Ijaz, 2020).

Most mentally disabled persons are confined with violent offenders in the same prison in the same cell (Hassan, Nizami, & Asmer, Forensic psychiatric service provision in Pakistan and its challenges, 2017). Because of overpopulation and the unhygienic environment, the mental health of the prisoners and the medical officer working there worsens. There is a need to develop the institutions and implement the laws. The reports are about 15 years old (The newspaper's Staff Reporter, 2019). There are many cases in the history of Pakistan where many mentally ill persons were sentenced to death. Some were so tortured they became mentally ill; in some cases, the appeal was not heard, and, in some cases, their life ended in prison. *Imdad Ali's* plea of insanity was denied in the famous case by declaring that schizophrenia was not a permanent ailment (Tripathy, 2016). Another similar case of Muneer Hussain in 2001 was delayed for six years for the high court to hear his appeal (Justice Project Pakistan, Yale Law school, , 2016). Delaying the appeal violates not only international laws but also fundamental human rights. *Kanizan Bibi*, another well-known case, was arrested for taking part in murdering the employer's wife and children (Ijaz, 2020) . The family of Kanizan Bibi had stated that their daughter was wrongfully arrested, and the real culprits who had a feud with the employer upon a land had been released upon bribing the police (Justice Project Pakistan, Yale Law school, , 2016). She was held in custody for 11 days, and when she was brought in front

of the magistrate, she was in blood-stained clothes, which showed the extremity of torture she must have faced while in prison. Her appeal was pending for 26 years. The torture impacted her mental health, and she has lost her sense of mind. She is unable to feed herself. She has no sense of clothes. She barely recognizes or responds (Justice Project Pakistan, Yale Law school, 2016). Case of Muhammad Amin, who was a minor (juvenile), was arrested for murder back in 1998 and was sentenced to two death row, one for going against the Pakistan Penal Code and the second in terms of terror attack (Justice Project Pakistan, Yale Law school, 2016). However, in the human rights charter, juveniles and minors should not be sentenced to death but must be detained for rehabilitation. The court rejected his appeal. So were the cases of Muhammad Azam and Moinuddin. All of them were sentenced to lifetime persons.

Nowadays, the case of Zahir Jaffar has been accused of rape and murder of the victim at his house (Qamar, 2021). The accused had a history of drug abuse and rape cases. He was taking therapies from an organization that provides rehabilitation services to drug dealers (Desk, 2021). The case hasn't been closed yet, because the accused refused to take responsibility for the crime and is denying that he was not sane when he committed the crime and was on drugs. However, recent reports have shown that he was completely sane, the weapon had his fingerprints, and he kept the victim at his house. He killed her, and while doing that, he was on a call with the victim's mother. The case is still running in appeal and is not concluded yet. No statistical data is available for the number of mentally disabled persons sentenced to death. There are no figures on how many prisons are detaining mentally disabled persons and how much more will come (Ijaz, 2020). There is a need to provide proper discipline to police stations and the officers. The laws should also be strict so they cannot think of deceiving the law and courts. The institutions deceive not only national laws but also international laws. In Pakistan, the death penalty is given even to criminals who deserve an insanity plea, but their pleas are denied or rejected (Zafar & Haq, 2019).

In Pakistan, the government's total expenditure on mental health is 0.40% of the total health expenditure (Khan & Khan, Crime and punishment: Pakistan's legal failure to account for mental illness, 2021). The World Bank reports that the current expenditure on health cases is 3.20% of the overall budget (World Health Organization, 2021). WHO has provided funds to

Pakistan for the development of the health infrastructure. Especially for the mentally disabled persons. The results are again shocking. They are that there had been no data reported to WHO on mental health (Khan & Khan, Crime and punishment: Pakistan's legal failure to account for mental illness, 2021), and policy is an unclear implementation of mental health frameworks (World Health Organization, 2018). The infrastructure of government hospitals is overpopulated and underdeveloped, so only poor people visit them. Private hospitals are also present to support the health infrastructure in the best way they can but are expensive to afford. (World Health Organization, 2018) leaving no choice for underprivileged people to go to government hospitals to aid their pain. Other than that, many non-profit organizations run, support, and spread awareness for mental health and rehabilitation centers. In Islamabad alone, more than ten clinics and rehab centers specialize in mental health. Justice Project Pakistan's (JPP) relentless work in the field has made the Pakistan government ban the death penalty for mentally disabled persons (Justice Project Pakistan, Yale Law school, 2016).

Significance of the Current Study

The study has highlighted the most critical issues and ideologies concerning the insanity plea. This research is to implement the work of forensic psychologists in their field. This research focuses on the role of government and institutions. Lacking in the health sector aids mental health issues still considered taboo in our society. A person who is mentally ill is viewed as a deficit in society. People take the mentally disabled persons to religious healers, as they think they can be healed by some religious scholar who has no medical or clinical experience but can deal with supernatural powers. While in other cases, the accuser gets treatment and rehabilitation services, even commits murder, and hides behind the insanity plea like in the Noor Muqaddam murder case (Qamar, 2021). This study helps to understand the barriers to an insanity plea and develop knowledge regarding mental illness and local laws. Though, a court has its ways of proceeding with the hearings. The prisons are being overpopulated (The newspaper's Staff Reporter, 2019). This study also aims to broaden further aspects of insanity defense that help in highlighting practical issues encountered in courts. The Pakistani courts have decided to reform mental health rulings to avoid more human rights violations (Ijaz, 2020).

Objectives

1. To define and highlight the issues and ideologies concerning the insanity plea in Pakistan.
2. To find out lacunae in law that aid mentally ill offenders.
3. To identify the role of lawyers, forensic psychologists, and government institutions in the insanity defense.

Research Questions

1. Is there any channel prescribed by the law through which mental illness is defined?
2. Are there any psychological methods used to help in identifying mentally ill persons?
3. How does the law aid mentally ill, offenders?
4. Does the court give the punishments to the mentally ill offenders justified?
5. Is the law system addressing mental health in courts as it should be?
6. Are forensic psychologists' services being used in court and other lawful institutions in the cases of Insanity defense?
7. Have there been any cases reported for the insanity defense in Pakistan?
8. Are there any governmental institutions that have been aiding mentally disabled offenders?

METHODOLOGY

Research Design

The current study is qualitative. The semi-structured open-ended interviews of the lawyers and forensic psychologists were conducted.

Sample

The sample comprised nine lawyers and four forensic psychologists. The data from lawyers were taken from the Islamabad Bar association, Sargodha Bar association, and Lahore Bar association. The data from forensic psychologists were taken from different positions, where only one was from prison in Lahore. The sample was selected using the snowball sampling technique.

Instrument

A semi-structured interview questionnaire was developed to assess the different parameters related to the insanity defense, such as awareness, professional settings, the court system, the role of government, case studies, and laws regarding mental health.

Procedure

The researchers submitted applications to lawyers and forensic psychologists before the data collection to the research. The researchers informed the participants before the meeting to communicate a common meeting time to take the interview. The interviews were recorded by taking the consent of the participants, and their names won't be published but only their statements. The researchers interviewed nine lawyers from Islamabad, Lahore, and Sargodha Bar associations and four forensic psychologists from different working positions. After building satisfactory rapport and clearing the study's objectives, they were briefed about the nature of the research and explained their right to participate and withdraw. The participants' verbal consent was taken, and they were assured anonymity and confidentiality. They were assured that the interview would have no effect on their cases and that the nature of the interview was solely research and exploration. Participants were given instructions to be clear and honest in their responses, and if they had difficulty understanding any question, they could ask the researcher. The flexibility was given to the participants in case they further wanted to explore and define the topic in a way that could also aid the research. After the interview, the participants were debriefed as the nature of the interview was sensitive. The recorded interviews were transcribed for analysis purposes. The interviews were detailed, considering different aspects of Insanity Defense.

Analysis Scheme

This study utilized thematic analysis (Braun & Clarke, 2008). The data acquired through interview recordings and audio were transcribed and coded. The potential themes were initially identified through re-reading the transcriptions and familiarizing them. Secondly, the codes were reviewed to retain the themes representing diverse factors, including subthemes. The research questions helped select the relevant themes for analysis in this stage. Thirdly, the quotes that were congruent with 23 the relevant themes were identified. Then the themes were

reviewed to define and name them, and lastly, the write-up was done. The thematic analysis method was used to explore in-depth characteristics of the factors in Insanity Defense. The factors like awareness, the role of the court, and laws regarding mental illness. Understand the nature of Insanity Defense in Pakistan and how it leads to other factors associated with Insanity, including punishments and media exposure. The identification later led to understanding how more than one factor is involved in upholding and downgrading Insanity Defense in Pakistani law.

RESULTS

The interviews with lawyers and forensic psychologists shared common and uncommon beliefs concerning the insanity defense. Following themes were generated through the thematic analysis method. Figure 1 represents the superordinate themes of the study, showing the provision and implication of the Insanity Defense in Pakistani law.

DISCUSSION

The current study is a qualitative study that examined the provision and implication of the insanity

defense in Pakistani laws. The study highlighted some important key factors that have been under the radar and were the main reason for neglecting mental illness and the insanity defense. Concerning the findings of this study, understanding of insanity, law and the court system, the role of media and government, the importance of forensic psychology and psychological assessments, and case studies are prevalent factors for the provisions and implications of the insanity defense. We infer that the insanity defense was a unique term for participants. Only the lawyers in the study knew the term insanity defense is a law topic taught in law colleges, and insanity cases are also being reported (Cornell Law School, 2016). However, in contrast, forensic psychologists could not justify or define the term properly. The reason is neither did they have to learn or hear about that term nor have they ever worked on such cases of insanity (Yasir, 2021) scarcity of research about forensic psychology in the local context results in ignorance of many lawyers about mental illness but only the layman’s understanding of it. And the forensic psychologist knows most about mental illness and can provide a descriptive understanding of what it is (Aftab, 2020). The Superordinate theme of forensic psychology and the need for assessments (Table 1) highlighted the



Figure 1: Superordinate Themes of the study Provision and Implication of Insanity Defense in Pakistani Law.

Table 1: Thematic Findings, Sub-Themes, and Frequencies of Participants' Responses (N= 9 Lawyers) (N= 4 Forensic Psychologist)

Superordinate Themes	Sub-Themes	Frequencies	Verbatim
1. Understanding of Insanity defense and fakeness in it	Understanding of term	10	<i>"It protects the offenders who commit crime because of any mental disturbance."</i>
	Lack of Knowledge	3	<i>"A lawyer like me even does not know what it is."</i>
2. British laws and Pakistan laws with their amendments and implication	Understanding the difference	7	<i>"We have adopted foreign laws."</i>
	Implementation	5	<i>"All these paperwork type laws, where are they implemented, we do know."</i>
3. Addressing mental health in court	Stereotype in court	4	<i>"It is difficult to talk on such issues."</i>
	Court openness	6	<i>"There is no pitfall in these cases in courts."</i>
4. Punishments and their justifications concerning crime and human rights	Should not be punished	4	<i>"Such people should not get any sentence."</i>
	Justified punishments	4	<i>"People were given capital punishments for such crimes in older times."</i>
	Not justified punishments	4	<i>"No such punishments should be given to these people who violate their human rights."</i>
5. Forensic psychology and the need for assessments	Role of a forensic psychologist	7	<i>"There is no specialist forensic psychologist available who can work on such cases."</i>
	Assessment and their reliability	5	<i>"No reliable tests are available to assess such people's personality or state of mind."</i>
6. Understanding of professional role and insanity defense	Negative influence	2	<i>"because of this, no fruitful judgments are passed in such cases, and they ended without any clear result."</i>
	Unavailability of professional	6	<i>"We even do not know whom to contact in such cases."</i>
	Experience and case handling	2	<i>"Crime is being done. Now it is only a professional psychologist who can tell what the mental health of criminal at the time was they committed that crime."</i>
7. Role of media and exposure of the case	The positive part of media	3	<i>"Social media plays a potent role in bringing these cases to public attention."</i>
	The negative role of media	11	<i>"The rat race of rating in media sometimes exploits the whole news."</i>
	The positive impact of exposure	3	<i>"Exposure gives the general public the awareness of mental health issues."</i>
	The negative impact of exposure	6	<i>"Overexposure sometimes puts the lives of criminals and their family members in danger."</i>
8. Role of Government and duties	Roles and responsibilities	7	<i>"Government has made institutions and laws as per their needs."</i>
	Aids and services	5	<i>"Government also play part Internationally in such cases."</i>
9. Recent cases and history	Heard any case	9	<i>"Case of Imdad Ali"</i>
	Recent cases	8	<i>"Now a day, the case of Noor Muqaddam is highlighted in National and International media." "Zahir should be punished." "Case of Noor is taking more time for no reason."</i>

point where courts do not hire any psychological board, and the lawyers must make psychological assessments based on their knowledge. Because of the low numbers

of health practitioners in Pakistan (World Health Organization, 2021), the cases of insanity do not get psychological assessments as they should. This shows

the inability of the Pakistan court system to address the insanity cases properly and not acknowledge the psychological boards and assessments in court as well (Aftab, 2020). Because of recent cases and development in the health sector, forensic psychologists have been working on federal and Punjab side cases. However, there is still a long way to cover the whole of Pakistan. The Superordinate theme of British laws and Pakistan laws with their amendments and implications (Table 1) inferred that the lawyers acknowledged that Pakistan has been using British laws from the start. The participants stated that Pakistan has developed its laws and made some amendments to their religion and culture. The mental health ordinance 2001 that became the first-ever law for the insanity defense in Pakistan has been in use with changes incorporated from time to time (Ali & Saleem, 2014). However, the implication of this ordinance was an issue. In most cases, the court and the institutions cannot implement the law, resulting in reported fakeness in such cases. However, provinces Punjab and Sindh have made their mental health ordinances, and forensic psychologists and lawyers have worked on this together (Tareen & Tareen, 2016). To avoid any fakeness and wrong judgments of such cases. Court has been coming to the aid of forensic psychologists and psychological assessments. The superordinate theme addressing mental health in court (Table 1) has identified mental health treatment in the courts. It is treated as a stigma in society. It is considered hard to understand the defense and other mental health-related terms (Ahmad, 2021). However, advancements in the health sector and court systems are opening the venues for such cases. The court provides exposure and working to the cases and the psychologists. The court allows the lawyer to work with forensic psychologists on such cases and make a better understanding (Tareen & Tareen, 2016). The Superordinate theme of government roles and duties (Table 1) pointed out that advancement has now played its role, and the government has also decided to take part in acknowledging mental illness matters. Before the mental illness matters, the government to take part in any case until and unless the case gets international attention that may bring changes to diplomatic relationships. The advent of mental health has started to get the government's attention. And in that matter, media plays a great role. The punishments were quite severe before the mental illness got acknowledged. The participants reported many offenders acknowledged before knowing they deserved the insanity plea. The lack of data provided little statistics on mental health and the capital punishments

for mental health. Super ordinate theme Punishments and their justifications concerning crime and human rights (Table 1) highlighted this matter. There has been no case of the insanity defense in the history of Pakistan where the offender's condition improved. The punishments mostly were hanging, 41 life imprisonment, or being killed by a mob in case of blasphemy cases. The Superordinate theme Role of media and exposure of the case (Table 1) infers that the media's role has always been crucial in every scenario, as in insanity defense cases. Such cases should get huge exposure and must be dealt with with extreme care. The participants stated that if media can play its role right, half of the problem can be solved. The media should be educated enough to deal with such cases and not hamper the data as they have been. The results showed that the media has not been doing its job as it should. In fact, upon the leakage of crucial evidence, the media is not there to take responsibility for its actions. The Superordinate theme Recent cases and history (Table 1) infers that the history of such cases can be found easily, either on the internet or on some other media platform. The results stated that Imdad Ali had been a known case in the history of Pakistan for the insanity defense. The details of the cases showed the interest and awareness regarded the insanity plea. The recent case of Noor Muqaddam has been on air and has played a big role in portraying the role of mental illness and the insanity defense in Pakistan. Whatever the case details were, it has been made clear that there are no reforms in Pakistan. Though Pakistan has developed its laws and many other key factors related to the insanity defense still, it's a long way to go. The findings of the current study suggest that the insanity defense is still in the process of development so are the matters associated with it. Forensic psychologists need a proper understanding of the term so that they and lawyers can work on many cases involving mental health issues. The court should also come up with services aided by forensic psychologists, and such services must only be used for the betterment of law and the offenses. The current study's findings suggest that most lawyers understand the term insanity defense in the light of laws. Whereas forensic psychologists could not describe the insanity defense in the light of the law. They provided a detailed understanding of mental illness and the terms related to the insanity defense and mental health. The key factors identified during the study that impact the insanity defense were understanding and awareness of the insanity defense, laws and their implementation, the court system, the punishments and the stigma of mental health, the role

of government, and the role of media. The results clarified that the lawyers did not lack any understanding because of their profession and dealing with cases. Forensic psychologists did not understand the insanity defense in court and other settings. But they did provide detailed descriptions of insanity cases in jails and forensic hospitals. It leads to confusion about the role between lawyers and forensic psychologists.

LIMITATIONS AND RECOMMENDATIONS

The current study should be interpreted with some margins. First, the study included a brief sample from lawyers and forensic psychologists due to restrictions on meeting with lawyers and forensic psychologists amidst COVID-19 and other factors. Data collection was difficult due to the topic's nature and the participants' availability. Most participants had only heard of the insanity defense. Still, they had not taken or had an experience with such a case except for two of the participants who had experience with the insanity defense. It was difficult to contact forensic psychologists. The data were collected from three major cities of Pakistan, Islamabad, Lahore, and Sargodha, and may not represent a larger sample. The study also eliminated the socioeconomic status factor as it wasn't representative of the study. The interviews were very detailed.

Since this study was only focused on the insanity defense and its provision in Pakistan, further research can explore the role of insanity in criminals committing crimes. This study focused on an in-depth understanding of the insanity defense and its provision-related factors in Pakistan. It thus utilized the qualitative method, further research using a quantitative approach to understand the role of insanity in criminals and their personalities in committing the crime. Results of the study include that there is not much awareness regarding insanity defense in Pakistan, not even in courts for most reasons. The use of psychological assessments in assessing criminals' personalities and crimes was nowhere to be seen, leading to fakeness in cases and misuse of insanity plea. Further research can focus on the offense and the role of insanity and further explore the part of psychological assessments in assessing the insanity plea and criminal behaviors in faking it in the local context.

IMPLICATIONS

From Pakistan's perspective, there has been no research concerning the implication and provision of

the insanity defense. The current study has provided unique information regarding the condition of the insanity defense in Pakistan, its awareness, and its implication. The findings of this study can prove extremely valuable to the executives and policymakers for implementing the insanity plea in Pakistan. An important discovery of this study was that even the professionals were unaware of their job roles, which contributed to the confusion of roles and responsibilities. Every factor was checked among the participants: level of awareness, case studies, laws and their implementations, the role of court and government in insanity plea, and case studies, including the recent case of Noor Muqaddam. However, the participants provided positive influence and some reality check on the laws, but there were still some restrictions and gaps in the study. Such gaps were because of lack of awareness, social and professional responsibility, and wrong card play by government officials, media, and courts.

The government should focus on constituting the psychological board in courts, prisons, and other law institutions not only for cases for insanity defense but also for providing rehabilitation services to officers and criminals. The focus should be on interrogating in a current manner by using the proper psychological assessments and insights and handing out appropriate punishments and the well-being of the criminals diagnosed with insanity. Policymakers can present laws to ensure the criminal's and family's adequate safety. The government should enhance the nation's health sector so that further research can be carried out and more mental health practitioners should be made. Government should create jobs for forensic psychologists in law institutions. Government should ensure resources for the betterment of the impaired people to protect them from potential crimes. The government should ensure the proper hearing of cases where social pressure hinders the court decisions and doesn't discredit the nation's laws in international courts. This research also highlights the importance of a forensic psychologist for criminal testimonies. The crime and the criminal behavior can only be best understood and controlled with the help of forensic psychologists. However, there was very little implication for forensic psychologists in law institutions because of a lack of awareness about mental health. The forensic psychologist's role in rehabilitation services is also pivotal. Besides, the mental health field should be given its due importance to improving the psycho-social well-being of Pakistani people. From the

current study, it can be inferred that mental health is an essential aspect of life, and its importance does not limit to clinical settings. Its application also leads to forensic settings.

CONCLUSION

Past research has entirely focused on defining the insanity defense and the role of the insanity defense in the government. Their main focus was to highlight the role of the critical factors associated with the insanity defense. However, there have been no studies on the insanity defense in Pakistan. The current research has highlighted that even though the insanity defense is a much-needed law for mentally disabled offenders, the stigma of mental health in the law system has hindered the development of the insanity defense. The findings are only specific to the provision and implication of insanity defense in Pakistani laws. The story of the insanity defense in Pakistan depends upon the understanding of insanity defense, law implementation, the role of the court system and government in an insanity defense, and the role of media and case studies. There is a dire need for psychological boards, forensic assessments, and psychological assessments to assess these cases. Understanding the insanity defense with its provision and implication can be done and improved by working on the highlighted factors of the current study.

REFERENCES

- Ardjorlolo, S., Oliver, H. C., & DeLisi, M. (2019, October 21). Mentally disordered offenders and the law: Research update on the insanity defense, 2004-2019. *International Journal Law Psychiatry*. <https://doi.org/10.1016/j.ijlp.2019.101507>
- Aftab, S. (2020, April 29). *Inclusion Of Forensic Mental Health Experts In Criminal Justice System Of Pakistan*. Retrieved from Dunya News: <http://blogs.dunya.com/26749/>
- Ahmad, A. T. (2021, January 20). *Stigma of Mental Health Illness in Pakistan*. Retrieved from Recorder: <https://www.recorder.com/news/40053488>
- Ali, A., & Saleem, M. (2014). "Plea of Insanity" as a Defense in Pakistan (Analysis of the Celebrated Judgments). *International Journal of Humanities and Social Science*, 270-278.
- Amnesty International. (2021, February 10). *Pakistan: Supreme Court judgement bans executions of prisoners with mental disabilities*. Retrieved from Amnesty.org: <https://www.amnesty.org/en/latest/press-release/2021/02/pakistan-supreme-court-judgement-bans-executions-of-prisoners-with-mental-disabilities/>
- Braun, V., & Clarke, V. (2008). Using Thematic Analysis in Psychology. *Qualitative Research in Psychology*, 77-101. <https://doi.org/10.1191/1478088706qp0630a>
- Britannica. (2018, January 4). *theft*. Retrieved from Britannica.com: <https://www.britannica.com/topic/theft>
- Cornell Law School. (2016, Jan 14). *Legal Information Institute*. Retrieved from Law.cornell.edu: https://www.law.cornell.edu/wex/insanity_defense#
- Desk, W. (2021, December 6). *Noor Mukadam Case: Was Zakir Jaffer Spotted Bribing?* Retrieved from Brandsynario: <https://www.brandsynario.com/noor-mukadam-case-latest-updates/e-lawresources>. (2017, June 17). *The Law of Burglary*. Retrieved from e-lawresources: <http://www.e-lawresources.co.uk/Burglary.php>
- Feuerstein, S., Fortunati, F., Morgan, C. A., Coric, V., Temporini, H., & Southwick, S. (2005). The insanity defense. *Psychiatry (Edgmont)*, 24-25. doi:PMC2993532
- FindLaw's team. (2019, March 20). *Theft Overview*. Retrieved from FindLaw: <https://www.findlaw.com/criminal/criminal-charges/theft-overview.html>
- Gilani, A. I., Gilani, U. I., Kasi, P. M., & Khan, M. M. (2005, September 20). Psychiatric Health Laws in Pakistan: From Lunacy to Mental Health. *Plos Med*, 1105-1109. <https://doi.org/10.1371/journal.pmed.0020317>
- Hassan, T., Nizami, A. T., & Asmer, M. S. (2017). Forensic psychiatric service provision in Pakistan and its challenges. *BJ Psych International*, 40-44. <https://doi.org/10.1192/S205647400000177X>
- Hassan, T., Nizami, A. T., & Hirji, S. (2015, May 27). Forensic psychiatry in Pakistan. *International Journal Law Psychiatry*, 95-104. <https://doi.org/10.1016/j.ijlp.2015.05.001>
- Hopper, S., & McSherry, B. (2001). The insanity defence and international human rights obligations. *Psychiatry, Psychology, and Law*, 161-173. <https://doi.org/10.1080/13218710109525016>
- Ijaz, S. (2020, September 22). *Pakistan Court's Mental Health Ruling Promises Reform*. Retrieved from Human Rights Watch: <https://www.hrw.org/news/2020/09/22/pakistan-courts-mental-health-ruling-promises-reform>
- Junaidi, I. (2019, June 19). *President approached to halt execution of mentally ill Ghulam Abbas*. Retrieved from DAWN: <https://www.dawn.com/news/1488622>
- Justice Project Pakistan, Yale Law school, . (2016). *A "Most Serious Crime": Pakistan's unlawful use of the death penalty*. Allard K. Lowenstein international human RIGHTS CLINIC, Yale law School. Yale: Justice Project Pakistan. Retrieved from https://law.yale.edu/sites/default/files/area/center/schell/2016_09_23_pub_dp_report.pdf
- Khan, R. Q., & Khan, A. M. (2021). Crime and punishment: Pakistan's legal failure to account for mental illness. *BJ Psych International*, 94-96. <https://doi.org/10.1192/bji.2020.30>
- Khan, R. Q., & Khan, A. M. (2021, Nov). Crime and punishment: Pakistan's legal failure to account for mental illness. *BJPsych International*, 94-96. <https://doi.org/10.1192/bji.2020.30>
- MacroTrends. (2021, August 25). *Pakistan Crime Rate & Statistics 1990-2021*. Retrieved from MacroTrends.net: <https://www.macrotrends.net/countries/PAK/pakistan/crime-rate-statistics>
- Magha, B. (2011, February 16). *The Lunacy Act, 1912*. Retrieved from nasirlawiste: <http://nasirlawiste.com/laws/la1912.htm>
- Math, S. B., Kumar, C. N., & Moirangthem, S. (2015). Insanity Defense: Past, Present, and Future. *Indian Journal Psychol Med*, 381-387. <https://doi.org/10.4103/0253-7176.168559>
- Mayukhroy. (2019, June 7). *Difference between medical and legal insanity*. Retrieved from Legal Service India: <https://www.legalserviceindia.com/legal/article-5693-difference-between-medical-and-legal-insanity.html>
- McSherry, B. (2014). Mental Health Laws: Where to from Here? *Monash University Law Review*, 175-197.

- McSherry, B. M. (2008). International Trends in Mental Health Laws. Law in Context Special Issue. In B. M. McSherry, & B. McSherry (Ed.), *International Trends in Mental Health Laws: Introduction* (1 ed., pp. 1-9). Leichhardt NSW: Federation Press. Retrieved from <https://research.monash.edu/en/publications/international-trends-in-mental-health-laws-introduction>
- Naseer, T. (2021, November 17). Noor Mukadam murder: Zahir Jaffer refuses legal representation again, insists on counsel of own choice. Islamabad, Federal, Pakistan.
- Pace, francesco;Giulio D Urso; Carla Zappulla; Ugo Pace. (2019, 5 8). *Springer Science+Business Media, LLC, part of Springer Nature 2019*. Retrieved from Springer Science+Business Media: <https://doi.org/10.1007/s12144-019-00294-x>
- Qamar, D. R. (2021, November 14). *Noor Mukadam Case: CCTV Footage Released Despite Strict Orders*. Retrieved from Brandsynario: <https://www.brandsynario.com/noor-mukadam-cctv-footage-released-despite-strict-orders/>
- S, P. (2019, august 13). *What are the elements to the crime of Theft*. Retrieved from mytutor.uk: <https://www.mytutor.co.uk/answers/22944/A-Level/Law/What-are-the-elements-to-the-crime-of-Theft/>
- Sentencing Council. (2020, march 28). *What is the difference between theft, robbery and burglary?* Retrieved from StencingCouncil.co.uk: <https://www.sentencingcouncil.org.uk/blog/post/what-is-the-difference-between-theft-robbery-and-burglary/>
- Tareen, A., & Tareen, K. I. (2016). Mental health law in Pakistan. *BJ Psych International*, 67-69. <https://doi.org/10.1192/S2056474000001276>
- The newspaper's Staff Reporter. (2019, april 28). *'Inmates with mental disorders increasing'*. Retrieved from DAWN: <https://www.dawn.com/news/1478845>
- Tripathy, S. (2016, October 26). *The Imdad Ali case: Why executing a mental patient is severely problematic*. Retrieved from DAWN: <https://www.dawn.com/news/1292121>
- World Health Organization. (2018, March 21). *Health service delivery*. Retrieved from <http://www.emro.who.int/pak/programmes/health-service-delivery.html>:
- World Health Organization. (2021, December 6). *Global Health Expenditure Database*. Retrieved from World Health Organization International: <https://apps.who.int/nha/database>
- Yasir, B. (2021, june 14). *Insanity plea in pakistan: An unsettled loophole*. Retrieved from paradigmshift: <https://www.paradigmshift.com.pk/insanity-plea/>
- Yeo, S. (2008). The insanity defence in the criminal laws of the commonwealth of nations. *Singapore Journal of Legal Studies*, 241-263. Retrieved from <http://www.jstor.org/stable/24870263>
- Zafar, N. N., & Haq, M. (2019, june 13). *Mentally ill prisoners in Pakistan's criminal justice system: Analysing fair trial & due process standards*. Retrieved from University College Lahore Human Rights Review: <https://humanrightsreviewpakistan.wordpress.com/mentally-ill-prisoners-in-pakistans-criminal-justice-system-analysing-fair-trial-due-process-standards/>

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