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## Navigating the Landscape of Insanity an Analysis of Criminal Responsibility of Lunatics



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**Abstract:** *The issue of criminal responsibility of lunatics is a vexing and intricate subject that has captivated legal scholars, psychologists, medical professionals, and society at large for centuries. It is central to the criminal justice system, as it determines whether an individual can be held accountable for their actions and subject to punishment. Pakistan has common law system inherited by United Kingdom. In this type of administration of justice, the burden of proving guilt of the accused lies upon the prosecution and the accused is presumed to be innocent until proven guilty. However, in certain conditions, the accused has to prove his innocence when the accused takes plea of defense. The law of insanity in Pakistan provides that when a person committed an offence under defective understanding or mental illness, he cannot be prosecuted. In addition, a comparative analysis will be conducted to juxtapose and compare the criminal responsibility of lunatics in various countries or jurisdictions. While legal systems differ in their approaches to criminal responsibility of lunatics, there is a growing recognition of the importance of addressing the mental health needs of individuals within the criminal justice system. The Research paper highlights the potential of exploitation of lunacy laws, the need for legal reform and policy changes to ensure that individuals with mental illness or insanity are treated fairly and appropriately. The Research paper concludes that the criminal responsibility of lunatics is a complex issue that requires a nuanced approach.*

**Keywords:** Lunatic, Lunacy, General Exemption, Criminal Trial, Penal Law, Mens Ria, Criminal Liability, Mitigation

### Introduction

The concept of criminal responsibility is a fundamental principle of criminal law. It presents a quandary as to whether an individual's mental condition at the time of perpetrating a crime should be factored into determining their culpability. A lunatic is an individual afflicted with severe mental illness that results in a detachment from reality. It is a Latin maxim that “*Actus non facit reus nisi mens sit rea*” which means that the act does not constitute guilt unless the mind is guilty. It states that a person cannot be held liable if the mind is not guilty as no guilty mind, no punishment. Sanity is an ingredient in crime as essential as the overt act, and if sanity is wanting, there is no crime<sup>3</sup>. So, if the accused is of unsound mind (insane/lunatic), not capable to understand the consequences of his actions, he is not held responsible. Pakistani legal system recognizes the defense of mental incapacity and provides protection to

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insane/lunatic under section 84 of Pakistan Penal Code 1860(PPC). The legal standards for determining criminal responsibility of lunatics have been developed through case law and legislation. The purpose of this dissertation is to provide a comprehensive overview of this complex and controversial issue. Its significance lies in its impact on the legal, medical, ethical, and social aspects of society. The determination of criminal responsibility for individuals suffering from severe mental illness, such as lunatics, has far-reaching implications for both the individual and society. From a legal standpoint, the criminal responsibility of lunatics is essential in determining the appropriate punishment for their actions. It raises the question of whether individuals who suffer from severe mental illness should be held to the same standard of accountability as those who are mentally sound. This issue also raises concerns about the fairness and impartiality of the criminal justice system. Law discusses insanity regarding different times i.e., at the time of commission of an offence, at the time trial and insanity after conviction. This dissertation aims to provide a comprehensive overview of the legal and psychological landscape of insanity and criminal responsibility of lunatics. It will begin by examining the historical development of the concept of insanity and its application in legal contexts, including the landmark case of McNaughten in England.

## **Lunacy, its History and Kinds**

### **Meaning and Definition of the Term “Lunatic”**

The term ‘lunatic’ is derived from a Latin word ‘*lunaticus*’ means ‘of the moon or moonstruck’. A superstitious belief in medieval Europe was that changes in moon’s phases could cause madness or insanity in certain people, thus those showing mentally unstable behavior, particularly those deemed violent in nature, were branded as afflicted by the moon, moon sick or lunatic. It is an informal term referring to people who are considered mentally ill, dangerous, foolish, unpredictable or of unsound mind. It is synonymous with insanity, unsoundness, madness, mental disorders and mental aberration or alienation.

Insanity, as defined by Black's Law Dictionary, refers to a mental disorder that is sufficiently severe to impede an individual's legal capacity and warrants exemption from criminal or civil accountability. Oxford Dictionary defines insanity as the condition of being mentally deranged, and insanity itself is characterized as a state of serious mental illness that precludes normal societal functioning<sup>4</sup>. In a strict sense, one who has lost the use of reason and has a bad understanding is a lunatic. A person who cannot act or think as a normal human being and his capacity to know things is perverted is a lunatic. *Non-compos mentis* (not of sound mind) is the legal generic term which includes idiot, lunatic, unsound person.

Until 2001 Lunacy Act 1912 was applicable and the main source of law relating to mental illness. It defines lunatic as a person of unsound mind or an idiot<sup>5</sup>. In Pakistani law, some terminologies/phrases/words such as “lunatic”, “insane” and “unsound mind” have been used in the PPC, Cr.P.C and the prison Rules, regarding the mental health of an accused or a convict. But these terms have not been expressly defined in either of these Statutes/Rules. Therefore, the term is generally understood in its broader sense, which includes a wide range of mental illnesses and disorders.

The Mental Health Ordinance, 2001<sup>6</sup> was promulgated in the year 2001 which repealed the lunacy act 1912 and defines the term mental disorder as it means mental illness or any disorder or disability of mind and divides it into three categories i.e., mental impairment, severe personality disorder and severe mental impairment. Mental impairment constitutes a state of mind that has arrested/retarded or incomplete development which does not amount to severe mental impairment but includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned. Severe personality disorder means a persistent disorder or

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<sup>4</sup> Oxford Advanced Learners Dictionary

<sup>5</sup> Section 3(5) of lunacy act 1912

<sup>6</sup> Section 2(1)(m) The Mental Health Ordinance, 2001 (VIII of 2001) (Ordinance)

disability of mind that results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned. Severe mental impairment means a state of arrested/retarded or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned.

In *Noor Husain Vs Ms. Fatima*<sup>7</sup>, To establish lunacy, it is necessary to prove that the person has a mental disorder that renders them incapable of managing their affairs. It is important to distinguish this state of mind from mere mental weakness or lack of intelligence. Someone with an underdeveloped mind cannot be considered of unsound mind under the Lunacy Act. In this particular case, the Additional District Judge asked the alleged lunatic some basic questions and found that, despite some nonsensical responses, he was not insane or of unsound mind as defined by the Lunacy Act of 1912, but rather had a weak or feeble intellect.

As per the 1991 United Nations principles for the protection of persons with mental illness, it is imperative that individuals with a mental illness are treated with respect and dignity. The right to the highest attainable standard of mental health is recognized as a universal right, and it is crucial that these individuals are helped to overcome the societal stigma that hinders their participation in mainstream life if we are to achieve sustainable change.

Furthermore, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by the United Nations General Assembly in 2015, stipulate that prisoners suffering from mental illness must receive appropriate medical care, including psychiatric care, and should not be subjected to cruel, inhumane, or degrading treatment. These rules emphasize the importance of ensuring that the fundamental rights and needs of individuals with mental illnesses are respected and upheld, particularly within the criminal justice system.

In the past, the UK law defined "mental disorder" to include mental illness, undeveloped or partially developed minds, psychopathic disorders, and other disabilities or disorders of the mind<sup>8</sup>. However, this definition has been changed to a less strict definition, which now considers "mental disorder" to include any disability or disorder of the mind<sup>9</sup>.

The definition of "mental illness" in India is defined as a significant disorder of thinking, mood, perception, orientation, or memory that greatly impairs judgment, behavior, ability to recognize reality or ability to meet the ordinary demands of life. Mental conditions associated with alcohol and drug abuse are also considered mental illnesses under this definition.<sup>10</sup>

### Historical Perspective and Distinguishing Rules

The idea of criminal responsibility for individuals with mental illness has evolved over time and varies across different legal systems. The word lunacy is always taken in the meaning of insanity in history. The earliest known acknowledgement of insanity as a defense to criminal charges was documented in an English legal treatise in 1581. This document stated that if a person who was insane, a natural fool or a lunatic at the time of the crime committed murder, they cannot be held responsible for their actions. In the 18th century, British courts developed the 'wild beast' test which stated that defendants should not be convicted if they had the same understanding of the crime as "an infant, a brute, or a wild beast. The term '*Guilty but Insane*' dates from an assassination attempt on queen Victoria. When the monarch's assailant was found not guilty but under the influence of insanity. A few months later TRIAL OF LUNATICS ACT 1883 was introduced using for the first time the term '*guilty but insane*'. In the 18th and 19th centuries, there was a shift towards a more medical approach to mental illness, and the concept of criminal responsibility began to be reevaluated.

<sup>7</sup> 1984 MLD 438

<sup>8</sup> Mental health act 1983

<sup>9</sup> Mental health act 2007

<sup>10</sup>Section 2(1) (s); Mental Healthcare Act, 2017

## **The McNaughten Rules**

These rules were developed in England in 1843, in Mc Naughten case<sup>11</sup>. Daniel McNaughten was accused and put on trial for the murder of Edward Drummond, the secretary to the Prime Minister of England, Sir Robert Peel. During the trial, it was argued by the defense that McNaughten had been suffering from a mental delusion for many years that Peel was following him, as he was the leader of the "Tory party" of England. McNaughten believed that he had killed Peel, but he had actually killed Drummond. After medical examinations and doctor's testimony, it was established that McNaughten was suffering from delusions of persecution and was declared insane. McNaughten's rules were then established by fifteen judges in 1843 as a result of this case. The McNaughten case laid down three important principles. The first principle states that every person is considered sane until proven otherwise. The second principle states that to claim the defense of insanity, it must be proved beyond a doubt that at the time of the crime, the person was so insane that they did not understand the nature and quality of their act, or if they did understand, they did not know it was wrong. The third principle states that the test of wrongfulness of the act is determined by the person's ability to distinguish between right and wrong, not in general but specifically with regard to the particular act committed. These principles established a test for determining whether a defendant was legally insane at the time of the offense.

## **The Durham Rule<sup>12</sup>**

The Durham rule, also known as the "product test," is the second most important rule regarding insanity after McNaughten. This rule was established in 1953 when Monte Durham, who had a history of mental illness, was convicted of housebreaking. The federal appellate judge overturned the decision and established a new rule, which reformed the previous McNaughten rule. The Durham rule states that an accused cannot be convicted if it is proven that they were suffering from a mental disease or defect while committing the unlawful act, making them either unable to understand the nature of their act or unable to comprehend if it was right or wrong. However, to discourage criminals from exploiting this plea for their benefit, the federal courts have rejected this defense, as it is often abused.

## **Ali Model Penal Code**

After the above mentioned two most important rules the third most important rule that provides basis to the plea of insanity, is known as the American Law Institute (ALI), Model Penal Code. This rule was established in 1972 by a panel of jurist of American Law Institute which became part of the Model Penal Code. This famous rule owes its origin to another famous case, In Case, *United v Brawner*<sup>13</sup>. The defense for insanity remained the same as in previous cases. In 1984, the Comprehensive Crime Control Act was passed by Congress and signed by Ronald Reagan. According to this Act, if someone pleads insanity, they must prove through evidence that they were unable to understand the nature or illegality of the act they committed.

The Lunacy Act of 1912 was the law that governed mental illness in the subcontinent during the British rule. However, the use of outdated terms such as "lunatic" and "asylum" and a focus on punishment rather than rehabilitation were major flaws in the law. In 2001, the Mental Health Ordinance replaced these terms with more medically accepted ones such as "mentally disordered person" and "health facility" and shifted the focus towards rehabilitation. The new ordinance also limited the detention of the accused to 72 hours, during which an evaluation by a psychiatrist must be conducted.

The responsibility of mental health legislation was given to the provinces after the 18th amendment in the Constitution of Pakistan in 1973, and Sindh is the only province that has made significant progress in this regard. The Punjab government enacted a Mental Health Act in 2014, but without significant

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<sup>11</sup>4 (1843) 10 C1 and 200; (1843-60) All ER Rep 229

<sup>12</sup> Durham v. United States; United States Court of Appeals; District of Columbia Circuit. - 214 F.2d 862)

<sup>13</sup> 471 F.2d 969(1972)

consultation with mental health professionals or advocacy groups. The legal situation in the provinces of Baluchistan and Khyber Pakhtunkhwa is unclear since the Mental Health Ordinance Pakistan 2001 has lapsed.

Some provisions related to persons of unsound mind can be found in Section 84 of Pakistan Penal Code 1860 and Chapter 34 of the Code of Criminal Procedure 1898.

### **Distinction Between Legal and Medical Insanity**

According to medical experts, every case of mental abnormality is insanity. According to law of Pakistan, not all persons who are medically insane are legally insane because amongst those who are medically insane, some are able to control sometimes and behave like normal people. He as a normal man plans the crime; they sometimes can even plan better and may execute it even with more care. He knows what he is doing is wrong. We judge a man's responsibility about his *mensrea* (guilty intention). Only those cases where because of insanity, he does not know what he is doing or he does not know what he is doing is wrong, only then, they can be excused. So, amongst all medically insane only a few are legally insane. The law propounds a different test from that in the medical field.

The test in law is simply, whether because of his insanity he is incapable of possessing *mensrea*? If the answer is yes, he is legally insane i.e., where insanity destroys the cognitive faculty of mind, it is considered insanity in law. The faculty of reasoning and judgement is also considered. An insane person is not punished because he does not have any guilty mind to commit crime. Legal insanity as contemplated in section 84, P.P.C. is different from medical insanity. If the cognitive faculty is not impaired and the accused knows that what he is doing is either wrong or contrary to law, he is not insane. Merely being subjected to uncontrollable impulses or insane delusions or even partial derangement of mind will not do, nor mere eccentricity or singularity of manner.

Two things must be proved, to get protection under section 84 of PPC. Firstly, That the man is of unsound mind, and secondly, that he is not capable of managing his affairs.<sup>14</sup>It is a settled proposition of law that medical (incorporate illnesses such as bipolar diseases), and the legal standards (unable to distinguish between right or wrong or unable to decide that either some act is in accordance with law or contrary to law) of insanity are not identical. From the medical point of view it is probably correct to say that every man at the time when he commits a murder is insane, that is, he is not in a sound, healthy normal condition, but from the legal point of view a man must be held to be sane so long as he is able to distinguish between right and wrong, so long as he knows that the offence he is committing is a wrong thing to do.

### **Insanity Defence in Pakistan**

Currently, in Pakistan's legal system, there are two instances where the insanity defense may be applied. The first pertains to cases where the defendant claims to have been mentally unstable at the time of committing the offense, which is addressed under Section 84 of the Pakistan Penal Code. The second instance deals with situations where the defendant argues that their mental state during the trial was impaired to the point of being unable to adequately defend themselves, as outlined in Chapter 34 of the Criminal Procedure Code. 'Insanity at the time of commission of offence, dealt with section 84 of PPC, and insanity at the time of trial, dealt with chapter 34 of CRPC, are independent matters to be adjudged separately though each relevant to other in formulating conclusions as to state mind of accused.<sup>15</sup>' 'Crucial point of time at which unsoundness of mind should be established is time when offence was committed<sup>16</sup>'.

<sup>14</sup> 2001 CLC 97 LAH; Muhammad hanif vs raja Muhammad Aslam khan

<sup>15</sup> PLD 1960 Lahore 111

<sup>16</sup> AIR 2011 SC 265

## **Criminal Liability of the Insane in Domestic Law (Insanity at the Time of Commission of Offence)**

The Mental Health Ordinance 2001 leaves the crucial question, of the extent of the liability of people who are mentally ill, unanswered. In Pakistan law, a plea of mental insanity under Section 84 of the PPC exempts the accused from criminal liability, irrespective of the offence.

It is reproduced as: “*Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law*”<sup>17</sup>. A person of unsound mind is given complete protection from criminal liability under this section and provides defense to a person who is of unsound mind (medically insane) and incapable to manage his affairs and distinguish between right and wrong (legally insane) at the time of committing the offence.

A perusal of this section would show that it is not every person who is mentally diseased, ipso facto, is exempted from criminal responsibility. Any person who seeks the benefit of section 84 of PPC must prove that at the time of committing the act, he was laboring under such defect of reason as not to know the nature and quality of the act he was doing i.e., the physical nature and quality as distinguished from the moral<sup>18</sup>. Protection under the law is not available where the accused is capable of knowing the nature of his acts or that what he is doing is either wrong or contrary to law.<sup>19</sup> A case would not fall within this section where the accused acted with premeditation and had a motive for the offence<sup>20</sup>. The underlying principle of the section is that an individual with an unsound mind is unable to control their behavior and lacks the ability to arrive at a rational decision or judgment regarding their actions. Due to their mental incapacity, they are unable to comprehend the consequences of their behavior and are thus unable to exercise control over their conduct. This principle recognizes that individuals suffering from mental illness require a different approach in the criminal justice system and cannot be held to the same standard of accountability as those with sound minds. The Lahore High Court ruled that a mentally ill individual cannot be held accountable for their actions if their mental illness impairs their ability to comprehend the nature and repercussions of their actions. In such circumstances, the individual would not be considered criminally responsible for their conduct.<sup>21</sup>

It is also a settled law that the Medical Expert would at the most furnish the Court with data to the existence, character, and the extent of the mental disease. Thereafter the job of the Court to see whether the accused was legally insane at the time of the commission of crime or not. In coming to such a conclusion, the behavior of the accused before and after the commission of the offence should be taken into consideration.

As far as Burden of proof is considered, It is a settled maxim in law that “*Every person is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved*”. If an accused takes plea of insanity in the court during trial, the burden will be upon him to prove that he was of unsound mind and was not capable to manage his *affairs because* of which his case falls under general exceptions of PPC, and he is protected by section 84 of the same chapter.

As per Article 121 of QSO, 121, When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Pakistan Penal Code is on him<sup>22</sup> and the Court shall presume the absence of such circumstances. It means that the onus probandi i.e., burden to prove lunacy or legal insanity as to exempt him from criminal liability, lies upon the person who alleges it i.e., the accused<sup>23</sup>. This can be done by producing evidence and by expert

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<sup>17</sup> Section 84 of Pakistan penal code

<sup>18</sup> khizar Hayat versus the state (2006 SCMR 1755)

<sup>19</sup> 1998SCMR 1582

<sup>20</sup> 1987 PCr.LJ 785

<sup>21</sup> (PLD 1981 Lahore 561) Muhammad Zaman v. Government of Pakistan

<sup>22</sup> 2006 SCMR 1765

<sup>23</sup> PLD 2002 SC 92

opinion, but he is not required to prove the same beyond all reasonable doubts but merely satisfy preponderance of probabilities.<sup>24</sup> Prosecution must prove its case beyond any reasonable doubt. If after an examination of the entire evidence the Court is, of opinion that there is a reasonable possibility that the defense put forward by the accused may be true or that the evidence casts a doubt on the existence of the requisite intention of mensrea which is a necessary ingredient of a particular offence, this will react on the whole prosecution case entitling the accused to the benefit of doubt<sup>25</sup> It is a settled proposition of law that the question as to whether the petitioner was insane at the time of occurrence so as to attract the application of section 84 of P.P.C. is a question of fact to be decided on the facts of each and every case.

### **Trial of Lunatics (Insanity at the Time of Trial) Section 464-475 Criminal Procedure Code**

The defense of insanity may also be raised not as a defense to the crime charged, but in order to show that the accused is unfit for trial. The special proceedings for lunatics are initiated when the court itself has reason to believe that that the accused is of unsound mind and not capable to make his defense or where such a plea is raised, an inquiry into unsoundness of mind of the accused is made and he is examined by a medical officer who is then examined by the court as witness. During the period of inquiry, the accused may be released on bail or detained in safe custody or detained in a lunatic asylum under section 466 CRPC. If the court finds that lunacy is feigned one, the court is competent to reject such plea.

If the accused is found to be insane and not capable of making his defense during the trial, he is declared as unfit to plead and the proceedings are postponed under section 464 or 465 CRPC, till he recovers. This is because the accused being of unsound mind is incapable of understanding the proceedings and lacks the capacity to direct his lawyers during the proceedings.

If the accused is fit and sound during the trial or the postponed trial is resumed under section 467 by the court itself or on the application of sureties (if he is released on bail) or under section 473 on the application of inspector general of prisons (in case accused is detained in jail i.e., a safe custody) or any two visitors of asylum (in case he is detained in lunatic asylum) that accused is now fit to plead and the court on his appearance is satisfied that accused is capable to make his defense, the trial shall resume and proceed under section 468 CRPC. 'When trial is resumed it should be commended *de novo*'.<sup>26</sup> But if the court finds him unfit to plead the trial is again postponed. The case shall now proceed under section 469, at the resumption of trial or in other case the accused is already fit to be able to make his defense and the court is satisfied that he was suffering from legal insanity at the time of committing the offence, then the court shall record a verdict of acquittal of the person on the ground of lunacy by specifically mentioning that he committed the offence or not under section 470 of CRPC. 'The lunatic after the verdict of acquittal is not released, not because he is a convict but to prevent him from doing harm to society or himself'.<sup>27</sup>

Whenever an accused person is acquitted, he is not to be set at large, the procedure provided in section 471 is followed<sup>28</sup> that is: Firstly, he may be Detained in safe custody in such place and manner as the Magistrate or Court thinks fit and shall report the action taken to the Provincial Government. Secondly, he may be Detained in a lunatic asylum in accordance with such rules as the Provincial Government may have been made under the Lunacy Act, 1912. A lunatic person who is detained in safe custody during the postponement of trial or after his acquittal may be delivered to some of his relative or friend. But this decision shall entirely be at the discretion of the provincial government. The relative or friend who desires

<sup>24</sup> AIR 2011 SC 627

<sup>25</sup> PLD 1962 Dacca 467 State v. Balahari Das

<sup>26</sup> 2 Weir 582+6 Suth W.R.(Cr.)3

<sup>27</sup> AIR 1922 Mad. 54

<sup>28</sup> A.B. Muhammad vs Emperor (AIR 1922 Mad. 54)

to get such custody of lunatic shall apply to the government and shall give the security that the person delivered shall firstly, be properly taken care of and prevented from doing injury to himself or to any other person, and secondly, be produced for the inspection of such officer, and at such times and places, as the Provincial Government may direct, and thirdly, in the case of a person detained under Section 466, be produced when required before such Magistrate or Court. 'It is the sole prerogative of the government to decide whether to deliver the accused or not to the care of his relative or friend'.<sup>29</sup>

### **The Role of Mental Health Experts in Assessing a Defendant's Mental State**

In such an investigation, the opinion of medical experts is indispensable. To this end, the Court must arrange for the accused to be assessed by a Medical Board, which will be appointed by the Provincial Government and composed of qualified medical specialists in the area of mental health. The purpose of this assessment is to determine whether the accused is capable of comprehending the trial proceedings and presenting their defense. The report or opinion of the Medical Board must not be a mere diagnosis of a mental disorder or the absence of one; it must be a detailed and structured report that specifically examines psychopathology, if any, in the individual's mental functions of consciousness, intellect, thinking, mood, emotions, perceptions, cognition, judgment, and insight. The head of the Medical Board must then be examined as a witness in court, and the examination must be recorded in writing.

Overall, the legal framework in Pakistan provides for the recognition of the insanity defense and the detention of the accused in a mental hospital for treatment. However, the implementation of these provisions may vary depending on the individual circumstances of the case and the availability of mental health resources in the country. In conclusion, the insanity defense in Pakistan is a complex and sensitive topic that requires careful consideration from both legal and medical perspectives. Throughout this chapter, we have explored the various aspects of the insanity defense in Pakistan, including its legal framework, challenges in its application, and the importance of expert testimony in determining mental state.

It is evident that the insanity defense plays a crucial role in ensuring a fair and just legal system that considers the mental health of individuals accused of crimes. However, there are inherent difficulties in defining and assessing insanity, particularly within the context of Pakistan's legal system, where cultural and societal factors can influence perceptions of mental illness.

Despite these challenges, it is imperative for Pakistan's legal system to continue evolving to incorporate a comprehensive understanding of mental health and its impact on an individual's culpability. This can be achieved through ongoing education and training for legal professionals, as well as collaboration between the legal and medical communities.

Moreover, the provision of adequate mental health resources and support services is vital to prevent and address mental illness, ultimately reducing the likelihood of criminal behavior. It is crucial for Pakistan to prioritize the promotion of mental well-being and the provision of accessible mental healthcare for its citizens.

In conclusion, the insanity defense in Pakistan requires a balanced approach that respects the rights of the accused while safeguarding the interests of justice. By fostering a multidisciplinary understanding of mental health and establishing a supportive legal framework, Pakistan can strive towards a fair and

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<sup>29</sup> AIR 1935 Oudh 143



compassionate system that upholds the principles of justice and human rights for all individuals, including those affected by mental illness.

### **Criminal Responsibility of Lunatics in Foreign Laws**

The concept of criminal responsibility for individuals with mental illness or insanity is recognized in many international legal systems. It is widely accepted that punishing an individual who is not responsible for committing a crime is a violation of their basic human rights and fundamental rights enshrined in the constitution of nearly every country in the world.

It is generally acknowledged that an individual who is incapable of committing a crime due to mental incapacity should be exempted from punishment. This recognition is based on the premise that it is unfair to hold someone responsible for actions that they were not capable of comprehending or controlling due to their mental condition. Thus, exempting mentally incapacitated individuals from punishment is a fundamental principle of justice and human rights.

Under international law, the determination of criminal responsibility for mentally ill or insane individuals is typically governed by the principle of "diminished responsibility." This principle recognizes that while an individual with a mental illness or insanity may have committed a criminal act, their ability to understand the nature and consequences of their actions, as well as their ability to control their behavior, may have been impaired by their mental condition.

Chief Justice Shaw's opined that A person must possess the necessary mental capacity and intelligence to have criminal intent and purpose in order to commit a crime. However, if their mental faculties are severely impaired to the extent that they lack a conscience or willpower, or if their intellectual abilities are temporarily obliterated due to mental illness, they cannot be held responsible for their criminal actions and are not subject to punishment.<sup>30</sup>

The specific legal framework and standards for determining such responsibility may vary depending on the country or legal system in question.

### **Insanity Under Law of United States**

A person cannot be tried, adjudged to punishment, or punished for a public offense while he is insane<sup>31</sup> and A lunatic or insane person without lucid intervals shall not be found guilty of any crime or misdemeanor with which he may be charged; provided, the act so charged as criminal shall have been committed in the condition of insanity<sup>32</sup>. The legal principles and frameworks related to criminal responsibility of lunatics in the United States have been the subject of extensive research. The most well-known standard for determining criminal responsibility of lunatics in the United States is the M'Naughten Rule, Durham Rule, and the Model Penal Code.

In the United States, the criminal responsibility of individuals with mental illness or insanity is governed by federal and state laws. The Insanity Defense Reform Act of 1984 outlines the federal standard for determining criminal responsibility, which considers a defendant not guilty by reason of insanity if they had a severe mental illness or defect at the time of the offense that prevented them from understanding the nature and consequences of their actions or from knowing that their actions were

<sup>30</sup> (1884) 7 Metc. 500) *Commonwealth v. Rogers*

<sup>31</sup> *California: Annotated Penal Code, 1901, sec 1367*

<sup>32</sup> *Revised Statutes, 1908, sec 1612 (Colorado law)*

wrong. If found not guilty by reason of insanity, the defendant is usually committed to a mental health facility instead of being sent to prison. At the state level, the standards for determining criminal responsibility may differ depending on the jurisdiction. Some states use the same standard as the federal government like California and Colorado, while others have their own standards for determining criminal responsibility of individuals with mental illness or insanity.

According to Underhill's Criminal Evidence, insanity or lunacy is considered a defense to a criminal charge in the United States, as criminal intent requires a sound mind. The determination of the existence, character, and extent of insanity or lunacy is typically left to the jury as a question of fact. If a defendant provides evidence of their insanity or lunacy, they are entitled to an instruction that they may be found not guilty by reason of insanity or lunacy.

### **Insanity Under English Law**

In English law, a plea of insanity can be raised by the defendant, either by claiming insanity directly, raising a defense of automatism, or by raising a plea of diminished responsibility. Regardless of the way in which the plea of insanity is raised, the same test is applied, as established by the M'Naughten Rules. According to these rules, to establish a defense on the grounds of insanity, it must be proven that at the time of the offence, the accused was suffering from a defect of reason due to a disease of the mind, to the extent that they did not know the nature and quality of the act they were doing or did not know that it was wrong. The M'Naughten Rules remain the principal method of determining insanity in English law.

The Trial of Lunatics Act 1883 was the next development which allowed the jury to find a defendant guilty but insane at the time of the crime and keep them in custody as a "criminal lunatic". Queen Victoria requested this change i.e., from not guilty but insane to guilty but insane, in the verdict to act as a deterrent to mentally ill individuals who attacked her. This phrasing remained in use until the Criminal Procedure (Insanity) Act 1964.

In cases where it can be demonstrated that an individual, at the time of their commission or omission of an act that would otherwise be considered a criminal offense, was experiencing a mental deficiency that impaired their ability to comprehend the nature and quality of the act or omission, or that they did not realize that what they were doing was incorrect due to a mental illness, such a person would not be held legally accountable for their actions.<sup>33</sup>

The next development was the Criminal Procedure (Insanity) Act 1964 which provides that a defendant is not guilty by reason of insanity if, at the time of the offense, they were suffering from a mental disorder that impaired their ability to understand the nature of their actions or to control their behavior.

### **Insanity Under Swiss Law**

A person who has a mental illness, idiocy, or serious impairment of their mental faculties and is unable to understand that their actions are against the law or is unable to act accordingly, cannot be punished for their actions<sup>34</sup>. This provision is much broader and is better suited for the defense of insanity.

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<sup>33</sup> report of royal commission on capital punishment [1949-1953]; para 458 at page 157)

<sup>34</sup> Section 10; Swiss penal code

### **Inanity Under Law of France**

If an accused person was in a state of madness at the time of the act or was compelled by a force that they were unable to resist, then there is no crime or offense.<sup>35</sup>

### **Insanity Under Georgia Law**

A lunatic or person insane, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: Provided, the act so charged as criminal was committed in the condition of such lunacy or insanity; but if a lunatic has lucid intervals of understanding, he shall answer for what he does in those intervals as if he had no deficiency<sup>36</sup>.

### **Insanity Under Indian law**

No offence can be attributed to a person who, due to unsoundness of mind at the time of the act, was incapable of knowing that they were doing something wrong or acting contrary to the law<sup>37</sup>. In the case of *Hazara Singh vs State*, even though Singh believed that his wife was unfaithful to him and poured nitric acid over her in a state of disturbance, medical evidence suggested that he had ordinary knowledge of right and wrong. Thus, he was convicted of murder despite the defense of insanity/lunacy.<sup>38</sup>

In conclusion, exploring the criminal liability of lunatics in foreign laws has provided us with valuable insights into how different legal systems approach the issue of mental illness within the context of criminal responsibility. Throughout this chapter, we have examined various legal frameworks and standards employed by different countries, shedding light on the complexities and challenges surrounding this topic.

One recurring theme is the recognition that mental illness can significantly impact an individual's capacity to understand the nature and consequences of their actions. Foreign laws have acknowledged the need for a fair and just system that accounts for the unique circumstances of individuals suffering from mental illness, emphasizing the importance of diverting them away from traditional criminal prosecution and towards appropriate mental health interventions and treatment.

Ultimately, the examination of foreign laws surrounding the criminal liability of lunatics underscores the need for a comprehensive and nuanced approach to mental health within legal systems. It highlights the importance of considering individual circumstances, promoting access to mental health resources, and striving for a balance between protecting society's interests and providing appropriate care and support for those suffering from mental illness.

As our understanding of mental health continues to evolve, it is crucial for legal systems worldwide to adapt and develop frameworks that are responsive, compassionate, and guided by scientific advancements. By doing so, we can aim to strike a delicate balance that upholds the principles of justice, safeguards the rights of the accused, and promotes the well-being and rehabilitation of individuals affected by mental illness within the criminal justice system.

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<sup>35</sup> Article 64; penal code of France

<sup>36</sup> *Code of 1911, vol. ii, sec. 35*

<sup>37</sup> Section 84; Indian Penal Code

<sup>38</sup> AIR 1958 PH 104

## **Criminal Liability of Lunatics in Islamic Law**

Islamic law acknowledges the idea of criminal accountability for those suffering from mental illness or lunacy, although the exact procedures for dealing with such individuals can differ depending on the particular country or legal jurisdiction involved. According to Islamic law, a person is deemed responsible for their actions if they are found to possess the capability to comprehend the character and effects of their actions and to have the competence to govern their conduct. This capacity is generally evaluated on an individualized basis, considering the person's mental health condition and other pertinent factors. The Quran is the main source of shariah law and any circumstance that needs to be dealt with under the mantle of Islamic law ought to be first referred to a verse or surah from the Holy Quran that evidences the framework of law. Firstly, there is explicit evidence in the Quran regarding the principle that an individual will only be held criminally responsible for the act or acts that he has personally committed.

‘On no soul doth Allah place a burden greater than it bear; it gets every good that it earns, and it suffers every ill that it earns’ (chapter2: 286)

‘Who receiveth guidance receives for his own benefit; who goes astray doeth for his own loss; nor can bearer of burden bear burden of other.’ (chapter17: 15)

The Quran also differentiates between types of offences that can be committed with or without the requisite mensrea. The concept of an unintentional crime or act is still unlawful even though the individual did not have the requisite mensrea at the time he was committing the crime. The offender erroneously commits the offence without the intention to violate the law.

‘And there is no blame on you concerning that wherein you made a mistake, (what counts is) the intention of your hearts.’ (Chapter 33:5)

Weight is also given to the sayings of the Prophet (P.B.U.H) i.e., hadith that bolster the framework of shariah law stated in the verses of the Quran. He said about unintentional offences,

‘My people are not accountable for what is done by mistake and inadvertently.’

Another hadith, narrated by Ibn `Abbas: The Prophet (peace be upon him) said,

The pen has been lifted from the three; the sleeper until he awakens, the child until his first wet dream, and the insane person till he can reason.’<sup>39</sup>

This Hadith indicates that a mentally ill person is exempt from criminal responsibility until they regain their senses and are deemed capable of understanding the consequences of their actions.

According to one of Islamic legal maxims which read thus: “Whoever is deprived of legal capacity is exempted from a legal obligation”. Therefore, a person who lacks the faculty of reasoning, due to insanity or any other cause, is not obliged to perform any Islamic duties or subjected to Islamic penalties. As per Islamic Penal law, punishment is not enforced upon an insane person because they do not meet the necessary condition of being sane to receive punishment.

Numerous Islamic legal scholars have contributed to the discourse on the criminal responsibility of lunatics under Islamic law. Schools of law such as the Imam Abu Hanifa, Imam Malik, and Hambal have a perspective that deliberate homicide is accidental if committed by a lunatic or a minor, and the offender should pay Diyat. However, the Shafi’i School of Law regards the same act by a lunatic as intentional and not accidental. Although for the fact that he is insane it is considered as a defense for him to exempt him from civil liability.

Historically, there have been examples of Islamic legal scholars and judges who have recognized the impact of mental illness on criminal responsibility. For instance, the medieval Islamic scholar Abu Bakr al-Jassas argued that a person suffering from a "complete derangement of the mind" should not be held accountable for their actions.

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<sup>39</sup> (Sunan Ibn Majah, Book of Punishments, Hadith 2003)

In his work titled "Foreign Psychiatry in Islamic Jurisprudence", Kutaiba S. Chaleby underscores the importance of establishing the necessary mental state at the time of committing a criminal offense in order to hold an individual accountable under Shariah law. He notes that the concept of mens rea, or guilty mind, is well-established in Islamic law, and that the absence of intent precludes the commission of a crime. Since individuals with mental illness or insanity are deemed to lack the capacity to form intent due to their impaired reasoning, they are not subject to criminal liability for any offenses they may commit under Islamic law.

He also writes that insanity in Islam can be classified into three different categories namely absolute, intermittent, and partial. Absolute insanity constantly renders an individual unable to formulate any resolve or make use of his reason properly, if at all. It is most likely to affect all cognitive cerebral functions including conception and perception. It is thus classified as the individual who could have been born with it or suffered from it at some point in life. Intermittent insanity is when not all reasoning factors are affected by the mental ailment. The individual can be seen lucid at times and in control, at a reasonable level, of his conception, perception, and cognition, but at other moments can be at complete loss of control with regard to his mental facilities. During his phases of lucidity, however, the individual will be completely responsible for all his actions but not those when he is in a state of mental disorder. Partial insanity is when the individual is fluctuating between states of comprehension and then insanity. Thus, he will be able to comprehend his actions in the former state and unable to do so in the latter. He is in touch with some aspects of reality but doesn't have a cerebral grasp on other circumstances of his environment. Therefore, he will be held legally responsible for those occurrences and actions that he is aware of in his reality but exempt from those that were committed when his reasoning was crippled due to his state of mental disorder. Periods of absolute insanity can be suffered by the individual.

Chaleby further asserts that there exists a consensus in Islamic law regarding the criminal responsibility of individuals with insanity, which holds that an insane person cannot be held accountable for any action committed. Therefore, according to Islamic law, the insane are exempt from any duty or punishment, and the penalty is suspended until the person has regained their sanity.

Islamic law exonerates the offenders if it could be proved that the criminal act was committed when the offenders were suffering from defects as insane. The three elements that constitute the concept of mensrea of a criminal offence in shariah need to be taken into consideration. The first one is **Qudra**; *the individual must have the ability to commit the offence*, **Ilm**; *the actual knowledge on the individual's part that the act he was carrying out constituted of a crime* and finally **Qasd**; *that the individual must have acted with the intent to commit the crime*.

With regard to the above-mentioned factors, Professor Rudolph Peters writes in his book, 'Crime and Punishment in Islamic law'; "it implies that minors and the insane are not held responsible for their offences because they are presumed not to be aware of the unlawfulness of their acts and, moreover, lack criminal intent". Peters elaborates that minors and those suffering from mental illness are incapable and unable to form an intention that could legally constitute the requisite mensrea for committing an offence. "there's no mensrea if the perpetrator of an offence, according to law, lacks the intellectual capacity to realize fully the implications of his conduct. This is the case with minors and insane".

In modern times, many Islamic countries have incorporated provisions for the assessment of mental health into their criminal justice systems. For example, Saudi Arabia has established a system of forensic psychiatry to evaluate defendants' mental capacity to stand trial and to determine the degree of their criminal responsibility. However, some critics have argued that there is still a lack of consistency and transparency in the application of these provisions, and that individuals with mental illness or lunacy may still be subject to harsh and inappropriate punishments. Overall, the issue of criminal responsibility for individuals with mental illness or lunacy is a complex and evolving area of Islamic law, and one that requires careful consideration of both legal and ethical principles.

## **Exploitation of Lunacy Laws**

The accused persons at various times can try to exploit and abuse the special proceedings and laws provided for lunatics in order to postpone the trial, circumvent the punishment for their offences and get the protection provided for lunatics under s.84 of PPC. 'Particularly, the duty is cast upon the court to see if the lunacy is real or feigned one'.<sup>40</sup>

## **Potential of Explitation**

The Special proceedings under the CrPC fail to define what constitutes 'lunacy' and 'unsoundness of mind'. The failure to adequately define these terms allows individuals to exploit the provision, since numerous mental ailments may come under its purview. Section 464 of the Criminal Procedure Code in India mandates a psychological evaluation by a Civil Surgeon or medical officer when an inquiry is initiated. This inquiry is a prerequisite to adducing further evidence regarding the charge and is a preliminary step before trial proceedings can resume. The importance of this inquiry is highlighted by the fact that the trial must be suspended until it is concluded. This procedure may also be used as a means to delay court proceedings, as demonstrated in the recent Zahir Jaffer case. During the trial proceedings of Zahir Jaffer case (Noor Muqaddam's murder case), The defense team for Zahir Jaffer utilized Section 465 of the Code of Criminal Procedure (CrPC) 1898 as a final legal option. They argued that Jaffer had a mental illness and could not understand the nature of his crime at the time of committing it, which could exempt him from the death penalty. The team sought to rely on the insanity defense and asked the court to conduct a mental health examination of Jaffer. However, the court ruled that Jaffer did not have a mental disorder, and the plea was only a delay tactic to avoid criminal responsibility. This case exemplifies how the use of Section 465 can be seen as a tool to prolong legal proceedings.

In certain cases, it can be difficult to determine whether the accused is capable of standing trial. For example, in the case of Wali Dad Khan v the State, the accused applied for a postponement of the trial on the basis that he was suffering from hypomania and lunacy. The accused submitted photocopies of documents in support of his lunacy, but the Trial Court did not believe them. The Trial Court rightly disbelieved the documents submitted by the accused because they did not suggest that the disease carried by the accused was a permanent suffering from insanity, which would make him incapable of making his defense. The counsel for the complainant produced documents before the Trial Court relating to a transaction in the Revenue Department, which reflected an impression that the accused was of sound mind and was fit enough to understand the proceedings of the trial. In these circumstances, the Trial Court rightly dismissed the application filed by the accused.<sup>41</sup>

Lastly, there's no check and balance on the testimony of the medical officer which is of utmost importance for the satisfaction of the court that a person is either a real lunatic or a feigned one. But this can be exploited in many aspects. For instance: he, the medical officer, can be bribed or forced to give false evidence in court of law by powerful or influential accused.

## **Distinguishing Features Between True and Feigned Insanity/Lunacy**

The legal system in Pakistan has various measures in place to detect and deter feigned lunacy, including medical examinations, psychiatric assessments, and the use of expert witnesses in court. The detection of insanity is one of the responsible duties of medical officer. The following are distinguishing features between true and feigned insanity: Firstly, feigned insanity typically manifests abruptly and is motivated by ulterior motives. In contrast, genuine insanity often has underlying factors that can be discerned through a thorough case history. Secondly, feigned insanity entails the deliberate display of misleading symptoms, particularly when being observed, with a complete cessation of such symptoms when unobserved. Thirdly, feigned insanity does not exhibit a consistent symptom pattern indicative of a specific type of mental illness. Impostors typically mix and match symptoms of different types of mental

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<sup>40</sup> 1996 law notes 143

<sup>41</sup> 2011 PLD Page-153

illness, which is not characteristic of genuine insanity. Fourthly, excessive physical exertion emulating manic frenzy in feigned insanity results in exhaustion, sweating, and sleep. However, individuals experiencing genuine insanity are capable of enduring such exertion for extended periods without fatigue and may overemphasize their symptoms. Fifthly, malingerers do not necessarily exhibit unclean habits. They may engage in behaviors such as smearing feces and filth in their surroundings if they have witnessed similar actions in genuinely insane individuals. Patients with preserved personality traits, such as those with paranoid schizophrenia, are likely to remain tidy and clean. Sixthly, malingerers may harbor resentment toward frequent examinations out of fear of being discovered, unlike neurotic or psychotic individuals who are often more amenable to frequent examination. Seventhly, certain individuals, such as beggars and petty thieves, may feign deafness and mutism to avoid punishment when apprehended. Scrutiny is essential in such cases.

In conclusion, the topic of the exploitation of lunacy laws sheds light on the potential for abuse and manipulation within legal systems designed to protect individuals with mental illnesses. Throughout this discussion, we have examined cases and instances where unscrupulous individuals have taken advantage of the vulnerability of those deemed mentally unfit, using the existing laws for personal gain or control.

The exploitation of lunacy laws raises significant ethical and human rights concerns. It underscores the importance of establishing robust legal safeguards, strict oversight, and accountability mechanisms to prevent such abuse. It is imperative to ensure that the determination of mental capacity and the appointment of guardians or conservators are conducted in a fair, transparent, and unbiased manner, with the best interests of the individual at the forefront.

Additionally, this topic highlights the need for comprehensive education and awareness programs surrounding mental health, empowering individuals to recognize their rights and seek appropriate assistance. By promoting a better understanding of mental health issues within society, we can work towards dismantling the stigma associated with mental illness, thus reducing the potential for exploitation.

Furthermore, collaboration between legal and mental health professionals is crucial in developing effective policies and procedures that safeguard the rights and well-being of individuals with mental illnesses. By fostering interdisciplinary dialogue and cooperation, we can establish a more robust and compassionate legal framework that protects the rights and dignity of all individuals, regardless of their mental health status.

In conclusion, addressing the exploitation of lunacy laws requires a multifaceted approach that includes legal reforms, public awareness campaigns, and collaboration among various stakeholders. By striving for a more equitable and just society, we can ensure that the laws intended to protect individuals with mental illnesses are not misused or manipulated, and that those affected receive the support and assistance they need to lead fulfilling lives.

### **Recent Cases Related to the Subject**

#### **Nawab Khan v the State (Criminal Appeal No.1 of 2007, decided on 9th April 2009)**

The accused murdered his niece, and confessed to the crime before the Judicial Magistrate, the confession was proven to be voluntary in nature. Although the confession was retracted, it strongly corroborated the circumstances and medical evidence. The accused applied for his acquittal on the grounds of unsoundness of mind, through his examination by a Civil Surgeon. He was examined by the Medical Board at Banu but since no conclusive opinion could be formed, he was referred for examination by a Standing Medical Board in the Police and Services Hospital, Peshawar. Due to the report provided by the medical board, the proceedings against him were stopped by order since he was found unfit to plead his case in a Court of law. However, eventually upon another examination, the Standing Medical Board stated " on the basis of staff observation and mental state assessment is of the opinion that presently he is stable and knows the nature and consequences of the crime. Therefore, he is presently able to plead his case in the Court of law. After the observations of the Standing Medical Board, the accused was put on trial once again. The court was of the view that the prosecution had successfully proven its case against the convict/appellant beyond

reasonable doubt and the impugned judgment of conviction is the result of correct appraisal of evidence brought on record. The court also held that the “plea of insanity of the appellant being afterthought is without force and not appealing to reason. There is nothing on the record to show that the appellant was insane at the time of committing the crime and the opinion of the Medical Board reflects his mental condition after the occurrence.”

“The prosecution had been able to successfully prove its case against him, while his only plea of insanity at the time of occurrence was not proved. The insanity developed during the trial is quite different from that at the time of occurrence. There is nothing on the record to show that the appellant or any of his relatives had raised such a plea of insanity”.

### **Muhammad Idrees Vs State 42**

The accused in this case was diagnosed with schizophrenia and displayed aggressive and disturbed behavior. Multiple psychiatrists advised that he be kept alone in a ward, and the trial proceedings were suspended for some time due to his medical condition and unsound mind. Given these circumstances, it is unlikely that the accused knew the nature of the alleged act, and there was no evidence to suggest that he understood the difference between right and wrong at the time of the incident. As a result, he is entitled to the concession of S.84, P.P.C. The incident was sudden, and the person who lodged the F.I.R. was not an eyewitness and did not name any witnesses. It is possible that an eyewitness was created as an afterthought to protect the jail staff. The medical evidence did not support the testimony of the prosecution witness, who was a jail warden. Although the pieces of the pitcher allegedly used to kill the deceased were recovered, they were not sent for forensic examination. Due to the accused's serious psychiatric illness at the time of the incident, he was considered unpredictable and dangerous by the Standing Medical Boards. Therefore, it is unlikely that he knew the nature of his actions or that they were contrary to the law. This degree of insanity brings the case within the exception. Moreover, there was no reliable evidence that could lead to the conviction of the accused. Therefore, he deserves acquittal due to the lack of proof against him. The conviction and sentence of the accused were set aside, and he was set free.

### **State of Rajasthan Vs Vishnu Ditta 43**

Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability.

### **Conclusion**

I will conclude this dissertation by the words of major hafiz Zafar Iqbal on mental abnormality and criminal liability of the accused, “mental abnormality affects criminal liability of an accused person with varying degrees depending upon the nature and severity of mental abnormality. Total mental abnormality is no doubt recognized as a valid defense in almost all societies in their respective legal systems, but irresistible impulse or diminished responsibility is though recognized as a partial defense and a mitigating factor, is undergoing a transitional stage and reduces the culpability and criminal liability of an accused person to some extent. What matters, in order to exempt a person from punishment, is the legal insanity of the accused at the time of commission of offence.<sup>44</sup>

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<sup>42</sup> (2011 PCRLJ Page-925)

<sup>43</sup> (2012 SCMR Page-1768)

<sup>44</sup> PLD 2000 journal 201



An examination of the definitions for mental illness provided for in the domestic and foreign laws establishes the fact that the terms “mental illness” or “mental disorder” are both used to refer to mental ailments and are defined by medical science. It is with the developing nature of medical science that the scope of these terms may also evolve. Therefore, we are of the view that a limited definition of the terms “mental disorder” or “mental illness” should be avoided, and the Provincial Legislatures may, to better appreciate the evolving nature of medical science, consider to appropriately amend the relevant provisions of mental health laws to cater for medically recognized mental and behavioral disorders as notified by WHO through its latest edition of ICD. It has been noted that the evolution of medical science and human rights has sensitized society to stigmatic labels such as “unsound mind”, “lunatic” and “insane”. Latest legislations all over the world do not use such terms. Therefore, we consider it appropriate to direct that the terms “unsoundness of mind” and “unsound mind” occurring in PPC, Cr.P.C. and the Prison Rules be substituted with term “mental disorder” or “mental illness”. The term “lunatic” wherever occurs shall also be substituted appropriately.

The provisions of CRPC are too narrow and make no provision for a case where one’s emotion and the will are so affected as to render the control of cognitive faculties ineffectual. The present law only looks at the cognitive and moral aspects of defendant’s actions but ignores the irresistible impulse that may be forcing him to commit the act. An insane may often know the nature and quality of his act and that law forbids it but yet commit it as a result of mental disease. That is why the courts must adopt a broader view of lunacy. It is important to note that the trial of a lunatic or mentally incompetent person is conducted with sensitivity and care, and the person’s rights and dignity are protected throughout the process. The law provides for the protection and welfare of such persons, and they are entitled to fair treatment and due process of law.

In conclusion, the issue of criminal responsibility of lunatics is complex and multifaceted, and legal systems around the world have taken different approaches to address this issue. The legal principles and frameworks related to criminal responsibility of lunatics in the United States, United Kingdom, Islamic law, and Pakistani law have been reviewed and recent case law related to criminal responsibility of lunatics in Pakistan has been analyzed. The research findings highlight the need for legal systems to balance the rights of individuals with mental illness or insanity with public safety concerns. It is clear that more attention needs to be given to addressing the mental health needs of individuals within the criminal justice system. This requires a multi-disciplinary approach that involves not only the legal system, but also mental health professionals, policymakers, and society as a whole.

### **Case laws**

- Inayatullah v. state 2005 PCr.LJ. 33 Peshawar
- Khushi Muhammad v. jamaat Ali PLD 1984 Supreme court 54
- Major hafiz Zafar Iqbal PLD 2000 Journal 201
- Muhammad v. emperor AIR 1922 Mad 54 A.B
- NOOR JAHAN V. STATE PLD 1980 PESH 103
- Khizar Hayat Versus the State, 2006 SCMR 1755
- Muhammad Idrees vs state 2011 PCr.LJ
- Wali dad khan vs state 2011 PLD

### **Statutory provisions**

- CHAPTER 34 OF Code of criminal procedure 1898(Act No V of 1898); PART VIII Chapter XXXIV
- Section 84 of Pakistan penal code 1860
- Mental health ordinance 2001
- Penal codes of India, Colorado, Colombo, Georgia, and France
- Trial of lunatics act 1883
- Criminal procedure(insanity) act 1964
- Insanity defense reform act 1984
- Article 121 of qanoon-e-shahadat