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Insanity Defense in Blasphemy Offences in Pakistan



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Abstract: *The crimes related to religion are known as blasphemy offences in Pakistan. These laws are criticized by many international bodies for being misused in Pakistan. The offences of blasphemy and mental illnesses of the accused are interlinked. There are many known mental disorders and conditions which can put an individual at the greater risk of committing blasphemy. Insanity defense is a defense against the criminal liability of a person suffering from mental disorder. There are several judgements of superior courts in Pakistan which shed light on the insanity defense in blasphemy offences. However, there is much left to bridge the gap between the insanity defense and blasphemy offences considering the developments in mental health science and jurisprudence to meet the ends of justice. It is crucial to build capacity of psychiatrists, psychologists, judges, prosecutors, lawyers, police officers, prison personnels and other relevant stakeholders.*

Key Words: Blasphemy, Capacity, Insanity, Mental

Introduction

The offences related to religion in Pakistan Penal Code are known as blasphemy crimes, which include different offences such as outraging religious sentiment, defiling the Holy Quran, using derogatory remarks about Prophet Muhammad, and misusing religious epithet. Sentences for these crimes vary from fines to long terms of imprisonment to death sentence (Section 295 to 298 C, Pakistan Penal Code [1860](#)). Insanity defense is an affirmative defense against the criminal liability of a person suffering from a mental disorder. The defense of insanity proposes that a person who is suffering from a mental disorder cannot be held accountable for the crimes committed by him/her as punishing such a person will serve no purpose (Black's Law

Dictionary, 2019). The offences of blasphemy and mental illnesses of the accused are interlinked (Ajmal, [2023](#)).

History of Blasphemy Laws in Pakistan

Blasphemy laws in Pakistan are based on laws promulgated during British colonial rule on subcontinent. During this era, some provisions of offenses against religion i.e., sections 295, 296, 297, and 298 of Indian Penal Code were introduced to maintain law and order in multi-cultural and multi-ethnic subcontinent. Later in 1927, section 295-A was introduced in Indian Penal Code to criminalize any deliberate act intended to hurt religious sentiments of any class by derogating its religion. This reform was introduced in response to widespread agitation

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because of a blasphemous offence committed by a local (Nair, [2013](#)).

After independence, the state of Pakistan implemented its penal code inherited from its colonial ruler. It was during the era of General Zia-ul-Haq when the five provisions relating to blasphemy and other offences against religion were introduced in Pakistan Penal Code between 1980-1986. The blasphemy laws added during this era were specific to offences against Islam and Muslim beliefs. In this regard, the laws related to Ahmadiyya community, defiling of Quran and blasphemy against Prophet Muhammad were introduced (Siddique & Hayat, [2008](#)).

Law of Insanity Defense in Pakistan

Pakistan incorporated Mc Naughten rules in its penal code as a standard of insanity defense against a crime. Section 84 of Pakistan Penal Code 1860 deals with the insanity defense in Pakistan. Under this section a person cannot be punished for the crimes committed if he/she is suffering from a mental disorder subject to the fulfillment of certain criteria specified in criminal law in Pakistan. Sections 464, 465 and 466 of Criminal Procedure Code deal with the procedural law in case of insanity plea (Mehmood, S. & Mehmood, N., [1898](#)).

Relationship between Mental Disorders and Blasphemy

Individuals suffering from mental disorders are overrepresented in the group of defendants accused of blasphemy (Hussain, 2014). Moreover, a person suffering from mental disorder charged with blasphemy is more vulnerable to the abuse of the charge (Freckelton, [2020](#)). The almost entire spectrum of mental disorders can cause different mental and behavioral contraventions that can fall foul of the blasphemy laws in place in Pakistan (Ajmal, [2023](#)). Blasphemous thoughts can be observed in people suffering from a variety of mental disorders as symptoms of these mental disorders. People suffering from obsessive compulsive disorder have a preponderance of blasphemous thoughts (Reddy, Rao, & Khanna, [2010](#)).

These thoughts are beyond the control of people suffering from obsessive compulsive disorder and come to their minds intrusively even if they strive hard to get rid of these thoughts.

People suffering from obsessive compulsive disorder may have either obsessions or compulsions, or both (Sadock, B. J., Sadock, V. A., Ruiz, & Kaplan, [2017](#)). Blasphemous thoughts act as main source of distress in around 5% of people suffering from obsessive compulsive disorder (Avgoustidis, [2013](#)). There has been seen a high prevalence of comorbidity of depressive and anxiety disorders in people having blasphemous obsessions (Abramowitz & Jacoby, [2014](#)).

Moreover, there are many other known mental disorders like psychotic disorders such as schizophrenia and mania; mood disorders, some personality disorders etc. the symptoms of which can make a person act in blasphemous ways. In this regard, hallucinations, which are the distortions of perceptions, and delusions, which are the distortions of thoughts, in their different dimensions are most relevant. Intellectual disabilities and autism are other groups of mental disorders which put an individual at greater risk of not being able to follow sacred social and religious norms (Hussain, 2014).

Insanity Defense in Blasphemy Offences

People with mental disorders have been charged for blasphemy in Pakistan (Akins, [2019](#)). The exact figure of blasphemy accused suffering from mental disorders is not known because of the lack of properly functional institutional framework to detect the accused of blasphemy with compromised mental health. According to the report of the International Commission of Jurists many people who are falling into the category of insane are continuing to be prosecuted as their mental state is not being given its due consideration. Even there are women accused of blasphemy suffering from mental disorders in different jails in the Punjab awaiting their trails since long (International Commission of Jurists, [2015](#)).

However, in several decisions given by the superior courts, the courts gave due consideration to the mental condition of blasphemy accused in Pakistan. In the case of Rimsha Masih, the Islamabad high court ruled that legal insanity can be taken as defense in blasphemy accusations like in other offences in PPC if a person is suffering from a mental disorder. The court decided a person suffering from a mental disorder cannot be said to be held responsible for his crimes. The

court further stated if a person does not possess requisite mens rea he cannot be held accountable for his blasphemous acts (State v. Rimsha Masih, [2013](#)).

In its judgment the Peshawar high court, while granting the bail to an accused under section 295 B of PPC suffering from mental disorder, concluded the blasphemy accused Saifullah Khan as not mentally competent to stand trial (State v. Saifullah Khan, [2006](#)). In another case the Peshawar High Court overturned the life imprisonment decision of the trial court in case of a blasphemy accused by declaring the accused mentally not fit for criminal trial and found that the trial court did not adopt the procedure of trial given in section 465 of Cr. P.C (Hazrat Ali Shah v. State and other, [2014](#)).

Arshad Javed was accused of blasphemy but was released by the court on the account of his insanity (State v. Muhammad Arshad Javed, [1995](#)). In another case the Lahore High Court acquitted a Christian man charged under section 295 B on the ground of legal insanity (Shahbaz Masih alias Kaba v. State, [2007](#)).

Criteria of Insanity Defense in Pakistan

Pakistan like most of the jurisdictions across the world adopted the criteria of insanity defense laid down in McNaughton rules and incorporated it in section 84 of PPC. The superior courts in Pakistan settled certain mandatory criteria fulfilling which an accused person can avail the insanity defense, accordingly an accused must not be able to control his behavior and/or to know what is right and wrong. This is the general criterion of insanity defense which is adopted by the superior courts in Pakistan while dealing with the insanity defense in criminal matters (Hassan, [1860](#)). Just suffering from a mental disorder cannot make the accused absolved from criminal liability; rather it is the discretion of the court to decide which mental disorder, in what condition and to what extent is sufficient to be considered as sufficient ground for insanity defense against the crime committed (Noor Uddin v. State, [2014](#)).

Disclaimer

The terms such as ‘insanity’ and ‘unsoundness of mind’ are legal terms and still exist in the statutes in Pakistan to refer mental disorders in courts. Although the supreme court of Pakistan directed

the relevant authorities to replace these terms with mental disorder (Safia Bano v. Home Dept., Govt. of Punjab and others, [2021](#)). But these terms yet exist and used in the court of law in Pakistan. Thus, it was unavoidable for the researchers for not using these terms while writing on insanity defense in blasphemy offences in Pakistan.

Legal Insanity vs. Medical Insanity

The courts in Pakistan like other jurisdictions take legal insanity as different from medical insanity. Legal insanity and medical insanity are two different but relevant concepts. The person who is suffering from mental disorder may or may not fulfill the criteria of legal insanity. In the case of insanity defense, the courts are interested in legal insanity, though it is the mental disorder in medical terms which determine the condition of an accused as insane for certain purposes in legal terms (Jeewan Shah v. Muhammad Shah, [2006](#)).

Proof, Standard and Burden of Proof in the Plea of Insanity

Suffering from a mental disorder cannot be taken as a blanket defense of insanity. In courts in Pakistan every person is considered sane unless proven otherwise by such a person as the burden of proof is on the accused as per Article 121 of QSO, 1984. Furthermore, the standard of evidence for the successful establishment of the plea of insanity is the preponderance of probabilities rather than beyond the reasonable doubt standard (Safia Bano v. Home Dept., Govt. of Punjab and others, [2021](#)).

Procedure of Insanity Plea in Court

Sections 464, 465 and 466 of Criminal Procedure Code ([1898](#)) are the relevant provisions in case of insanity plea. Sections 464 and 465 of CrPC deal with the trial by magistrate, and trial by the session court and the high court respectively. Upon the satisfaction of the court whenever the plea of insanity is raised, it is obligatory for the court to order a mental health evaluation of the accused by the medical board comprised of psychiatrists and psychologists. Moreover, the court can take the cognizance of the insanity of the accused itself even if the parties fail to raise insanity plea (Safia Bano v. Home Dept., Govt. of Punjab and others, [2021](#)).

Mental Health Evaluation in Insanity Plea

In Pakistan the testimony and evaluation of psychiatrists and clinical psychologists is considered valid to determine the mental health of an accused in case of insanity defense. In case an insanity plea is taken by an accused, the law demands from the court to get the mental health condition of the accused evaluated by the medical board comprising of psychiatrists and clinical psychologists (Ajmal, Nasim, & Rasool, 2022).

As far as the findings of such medical board, comprising qualified psychiatrists and clinical psychologists, is concerned it is required by law in Pakistan that the courts would not accept a mere diagnostic report of the mental health condition of an accused. The seminal judgement of the supreme court of Pakistan declared it mandatory that the mental health evaluation of an accused must be comprehensive and covering all the relevant aspects of the mental health conditions in the form of a detailed report. Furthermore, the evaluation and the testimony of mental health professionals would only be considered as admissible evidence in Pakistan after the head of the medical board responsible for mental health evaluation, comprising psychiatrists and clinical psychologists, will be examined and cross examined in the court of law (Safia Bano v. Home Dept., Govt. of Punjab and others, 2021). The evaluation of mental health professionals in case of insanity plea is treated as corroborated evidence rather than conclusive evidence in Pakistan and it is up to the court to decide whether an accused person is possessing requisite mens rea for the crime committed. Mental health professionals are barred from commenting on the ultimate question of legal insanity (Ratan Lal v. State of Madhya Pradesh, 1970).

Recommendations

Broader Interpretation of Section 84 of PPC in Blasphemy Cases

Section 84 of Pakistan Penal Code and the case law developed on this penal section in Pakistan specify that a person will be absolve of the liability of the crime committed by him if by the reason of his mental disorder he is unable to differentiate between right and wrong and/or he is unable to control his act by the reason of mental disorder he is suffering from. One consideration which is

obvious in the decisions of the courts is the extent and the intensity of the mental disorder an accused is suffering from to meet the criteria specified in section 84 of PPC (Ajmal, Niazi, & Rasool, 2022). However, in blasphemy offences specified in PPC, the interpretation of insanity criteria must be broader considering the modern developments in mental health science and the nature of blasphemy offences. The broader interpretation of section 84 of PPC in blasphemy cases must consider other clinical and nonclinical conditions such as nature of human mind, emotional distress, lack of behavioral constraints etc. which otherwise are not considered in case of insanity pleas are taken in other offences (Ajmal & Niazi, 2022).

Training of Judges, Lawyers, Police, Prison Personnels and Other Relevant Stakeholders

The trial court judges, prosecutors, lawyers, police, prison personnels and all other relevant stakeholders must be properly trained to build their professional capacities (Ajmal & Rasool, 2022). The supreme court of Pakistan in its judgement has already directed the concerned authorities to arrange trainings on mental illness for all relevant stakeholders (Safia Bano v. Home Dept., Govt. of Punjab and others, 2021). The Lahore High Court stated in its judgment, the judge must perform his duty in an impartial and unprejudiced manner and no exterior element should deter a judge from doing justice. This judgement further highlighted the investigation of police and gave instructions regarding the police investigations and directed the Inspector General of Police, Punjab to ensure the police officers follow the instructions given in the judgement (Nasrullah Khan v. SHO Writ Petition No. 60241, 2021). There is a dire need to implement these judgements of the courts in letter and spirit. Moreover, it is highly recommended that the trial judges must be trained to the extent that they can perform their duties with the highest professional excellence. The courses in personality grooming and character building must be a part of the training.

Training of Mental Health Professionals

The lack of proper psychiatric training and facilities are some of the hindrances in the way of raising insanity defense in blasphemy offences in

Pakistan (Hussain, 2014; Gadit, [2007](#)). The mental health professionals must be properly trained to evaluate the mental health conditions of blasphemy accused to assist the court in these matters as there is no forensic psychiatry training program in Pakistan (Rana, [2015](#)). The blasphemy accused mental health evaluation must be relatively thorough, diverse, and broader to assist the court to answer the legal questions and scenarios arise in cases of insanity pleas in blasphemy cases. The mental health professionals in Pakistan need to develop a structured and comprehensive mental health evaluation mechanism specifically to assess the mental health of blasphemy accused to answer the fundamental legal questions about the insanity of blasphemy accused. Moreover, there is a dire need for further research into the matter of mental health evaluation of blasphemy accused by mental health professionals.

Legislative Reforms

In its latest landmark judgement on insanity defense the supreme court of Pakistan has addressed basic lacunas in relevant statutory provisions and the court directed the authorities to replace the terms like unsoundness of mind, insane and lunatic with more appropriate terms like mental disorders and define the relevant terms broadly in the light of latest developments in medical science (Safia Bano v. Home Dept., Govt. of Punjab and others, [2021](#)). There is a need for legislative reforms in this direction. The

existing relevant laws must be amended to cater the intricacies of the subject matter (Ajmal, Niazi, & Rasool, [2022](#)).

The province of Sindh in Pakistan amended its mental health law which can be taken as a ray of hope and must be followed by the national and other provincial assemblies in Pakistan. According to the section 49 of Sindh Mental Health (Amendment) Act, 2015 every blasphemy accused shall be evaluated by mental health professionals and shall be deal according based on the mental health evaluation report (Section 49 of Sindh Mental Health (Amendment) Act, [2015](#)).

Penal Action against Amils (Black Magicians)

On 12th of February 2023, an under-custody blasphemy accused was killed by the mob attacking on the police station. According to the initial information the accused was involved in witchcraft for which he used the pages of Holy Quran in blasphemous way. Such treatment with sacrilegious things is common in black magic practices and the practitioners of black magic called amils are rampant in Pakistan. These practices of black magic by amils develop a tendency of committing blasphemous acts in the people who approach these amils for different things. This also highlights the role of superstitious beliefs of some people in committing blasphemous acts which put their lives at risk. The practices of amils must be banned throughout Pakistan.

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