



RESEARCH PAPER

Doctrine of Competency to Stand Trial in the Criminal Law in the United Arab Emirates: An Analysis

¹Ali Ajmal* and ²Faiza Rasool

1. Visiting Faculty, University Law College, University of the Punjab, Lahore, Punjab, Pakistan
2. Consultant Psychologist, Ali Ajmal Clinic, Lahore, Punjab, Pakistan

*Corresponding Author: forensicanalysis007@gmail.com

ABSTRACT

The purpose of this research is to study the doctrine of the competency to stand trial in criminal law in the United Arab Emirates. A person who is mentally incompetent to stand trial cannot be proceeded against. The doctrinal legal analysis method was employed to study the law on competency to proceed in the United Arab Emirates. Section 5 of the Federal Law No. 38 (2022) on criminal procedure is the statutory provision which deals with the competency to stand trial in the United Arab Emirates. A defendant who is incompetent to stand trial cannot be proceeded against in the criminal charges in the United Arab Emirates; rather, he will be admitted to the mental health facility based on the mental health evaluation, and the trial shall be postponed till the revival of the mental health of the accused. Specialized forensic mental health training for mental health professionals in the UAE is recommended.

KEYWORDS Competency, Crime, Law, Mental, UAE

Introduction

The doctrine of competency to stand trial is one of the principles of criminal law which is followed in every jurisdiction in the world. A person who has legal insanity to such an extent that he is not capable of understanding the criminal proceeding against him cannot be legally proceeded against. Proceeding against a person who is mentally incompetent to proceed is a violation of the principle of fair trial (Weiner & Otto, 2013). The trial of a person who is unable to understand the charges against him, unable to instruct and/or assist his attorney, unable to appreciate evidence in favor of or against him, and unable to make a confession due to his mental condition is a mistrial (Ajmal & Rasool, 2023b).

The minimum guarantees given in Article 14(3) of the International Covenant on Civil and Political Rights (1966) cannot be met during the criminal trial of a person who is incompetent to stand trial. The trial of an incompetent person to proceed is void ab initio. Criminal law in the United Arab Emirates recognizes the principle of competency to stand trial and stays the criminal proceeding against a person who is unable to defend himself due to legal insanity (Article 186 (1) of the Federal Law No. 38, 2022).

Literature Review

The doctrine of competency to proceed can be found in all the civilized jurisdictions of the world. This doctrine is also implemented in international criminal law. In criminal law, the principle of competency to proceed has a long history of use in cases where defendants were found suffering from mental health conditions (Ajmal & Rasool, 2024b). In modern history, the doctrine of competency to stand trial can be found in the early decisions of English courts in the 17th century (Blackstone & Jones, 1916). This doctrine was also found implemented in early court decisions in the US (*United States v. Lawrence*, 1835). However, a comprehensive criteria and jurisprudence on the competency to proceed was developed in the United States in *Dusky v. United States* (1960).

Determination of the incompetency of a person to proceed is a legal issue more than a medical issue although it is determined based on medical opinion. Incompetency to proceed is about the ability of the understanding and participation of a defendant in the legal proceeding more than the fact whether the defendant is having a mental disorder or not. Depending upon the circumstances and mental condition of a defendant he or she can be given medicine to make him or her competent to proceed (*Sell v. United States*, 2003).

The competency of an accused to proceed must be taken holistically. The competency to proceed is a broader concept and cannot be based on one competence or incompetence of an accused in isolation. An accused can be mentally competent to proceed and can lack the mental competence to represent himself (*Indiana v. Edwards*, 2008). The mental capacity of an accused must be viewed reasonably to assess his or her fitness to stand trial. The accused must understand the nature of the charges leveled against him or her and must be able to exercise his or her procedural rights. Moreover, the concept of fitness to stand trial in its broader sense can be taken as an element of the right of a fair trial (*Prosecutor v. Goran Hadzic*, 2015).

Although there is a widely prevailing misconception among mental health and legal professionals as they tend to confuse the competency to proceed with the insanity defense, these two are different. Insanity defense depends on the mental condition of a defendant at the time of the crime, while in determining the incompetency to proceed, the mental condition of a defendant is relevant at the time of criminal proceedings against him (Ajmal & Rasool, 2024a). Moreover, the criteria of evaluation are different for both incompetency to proceed and insanity defense. An inability of a defendant to appreciate right and wrong, legal and illegal, and to control his action(s) at the time of the crime committed is relevant in the insanity defense. In the case of competency to proceed, a defendant's inability to instruct and assist his attorney, inability to confess, inability to appreciate evidence, and inability to understand legal proceedings are relevant (Ajmal et al., 2023).

The criminal law in the UAE recognizes both the doctrines of insanity defense and competency to proceed. Moreover, the law in the United Arab Emirates deals with an insanity defense and incompetency to stand trial as two different legal doctrines like other jurisdictions in the world (Ajmal & Rasool, 2024c). Insanity defense in criminal law in the UAE is dealt with under Article 138 of Federal Law No. 31 (2021), while competency to stand trial is dealt with under Section 5 of Federal Law No. 38 (2022).

Material and Methods

The doctrinal legal analysis method was employed to study the law on competency to stand trial in the United Arab Emirates.

Results and Discussion

The criminal law in the UAE recognizes the doctrine of competency to proceed. Section 5 of Federal Law No. 38 of 2022 is the statutory provision which deals with the competency to proceed in the United Arab Emirates. A person who is mentally incompetent to proceed, unless he does not regain mental competency, cannot be proceeded against in the United Arab Emirates (Ajmal & Rasool, 2024c).

Postponement of Trial if the Accused Is Incapable of Defending Himself Due to His Mental Condition

Proceeding against a person on criminal charges who is unable to comprehend and participate in legal proceedings due to his mental incompetency is violative of the principles of justice and thus is prohibited by law in jurisdictions across the world (Ajmal & Rasool, 2023b). A person who is incompetent to stand trial cannot be proceeded against for the

crimes committed by him/her in the United Arab Emirates. Article 186(1) of Federal Law No. 38 of 2022 allows the postponement of the trial of a defendant who is incompetent to stand trial due to his mental disorders unless he regains his mental health. Such an accused shall be admitted to a psychiatric facility instead of prison (Article 186(2) of Federal Law No. (38) of 2022). In case an accused is found guilty and sentenced to prison after his or her trial after regaining his or her mental health, the period spent by him or her in a psychiatric facility, when he or she was incompetent to stand trial, shall be subtracted from the period of his or her sentence (Article 187 of Federal Law No. (38) of 2022).

Mental Health Examination of the Accused

The competency of an accused to stand trial is determined based on the mental health evaluation report prepared by the mental health professionals. Depending upon the mental health evaluation of the defendant, the court can determine the competency of an accused to stand trial (Ajmal & Rasool, 2022). Article 185(1) of Federal Law No. 38 (2022) makes the mental health evaluation of a defendant mandatory if he/she seems to have some mental health condition. The relevant court and the chief prosecutor are the competent authorities to order the mental health evaluation of such an accused. The law specifies the process and procedure of mental health evaluation of an accused by mental health professionals. Article 19 of Federal Law No. 10 (2023) covers the compulsory admission of an accused for his/her mental health evaluation. Article 20 of Federal Law No. 10 (2023) lays out the procedure of compulsory admission of the accused for his mental health evaluation, which mental health professionals must follow.

Article 21 of Federal Law No. 10 (2023) deals with the mental health evaluation report of the accused, which needs to be submitted by the administration of the mental health facility to the competent authority. However, there is no single standardized format for the mental health evaluation report in the UAE. Keeping in context the nature of the forensic mental health evaluation report, there must be a standardized authoritative format for the mental health evaluation report of an accused. The report must include the identity of the accused, details of the symptoms showed by the accused, the nature and description of the disorder, the details of the time since when the accused is having disorder(s), the family history of the accused, the tests administered on the accused to evaluate his mental health, details of interviews with the accused. Moreover, the forensic mental health evaluation of the accused must be transcribed and recorded properly. The lawyers must prepare their examination and cross-examination of the mental health professionals who prepared the report based on the details of the mental health evaluation report (Ajmal & Rasool, 2022). The detention of the accused in a psychiatric facility who poses a threat to himself or others for mental health evaluation or treatment is governed by Article 38 of Federal Law No. 10 (2023).

Dismissal with Prejudice Order or Judgment of Acquittal Due to Insanity

It is a common practice in jurisdictions around the world that a person who is acquitted on the grounds of insanity will be admitted to a psychiatric facility instead of a detention center. Moreover, the time spent by an accused in the mental health facility for his treatment after a successful defense of insanity or the time spent by an accused on the ground of incompetency to stand trial in a mental health facility till regaining his competency to stand trial will be subtracted from his prison term if he is found guilty of his crimes after regaining his competency to stand trial (Ajmal & Rasool, 2023a). There are statutory provisions in the law in the United Arab Emirates which uphold these legal practices. If a defendant is acquitted on the ground of his insanity or the criminal case against him is dismissed, such an accused will be placed in a psychiatric facility till he recovers from his or her mental disorder(s) or is no longer dangerous for others (Article 188 of the Federal Law No. 38, 2022). Termination of compulsory admission of a person is covered under Article 28 of Federal Law No. 10 (2023).

Role of Expert Witnesses in Determining the Competency of an Accused to Stand Trial

Expert witnesses may be called to determine the competency to proceed of a defendant. Both parties can present expert witnesses in favor of their pleas and in the rebuttal of the pleas of the other parties. The practice of presenting expert witnesses is common in jurisdictions across the world in the pleas of insanity and incompetency to proceed. The procedure of presenting expert witnesses in different jurisdictions is based on the relevant statutory provisions and the legal system. However, an expert witness can be presented at the request of the party, or the court itself can call an expert witness, and such an expert witness can be examined and cross-examined in the court about his expert opinion or report presented in the court subject to the statutory provisions of the jurisdiction (Ajmal et al., 2022).

In the UAE, Article 181(1) of Federal Law No. 38 (2022) provides that the court may engage expert witnesses or a committee of experts to assist the court. The court may call the expert witnesses *sua sponte* or at the request of the litigants. The expert witnesses may further be called by the court to be questioned about the reports they presented in court (Article 186 (2) of Federal Law No. 38, 2022). There must be an authoritative standardized practice of calling expert witnesses in the court to determine the question where specialized knowledge is required. For expert witnesses to be called to the court their relevant specialized training and skills must be examined. An expert witness who is not properly trained in relevant subject matter can damage the cause of the expert opinion and can mislead the court (Ajmal et al., 2022).

Conclusion

The doctrine of competency to stand trial is adopted in the criminal law in the United Arab Emirates, like other jurisdictions in the world. An accused who is incompetent to stand trial cannot be proceeded against in criminal charges. The law in the United Arab Emirates stays the criminal proceeding against such an accused unless he regained his mental competency to stand trial. The determination of competency to trial is based on the mental health evaluation of the accused. To implement the law on competency to stand trial and to meet its objectives, capacity building of the relevant professionals is important. The specialized training of mental health professionals in the United Arab Emirates is recommended.

Recommendations

Amendment in the Existing Law

The language of Article 186(1) of Federal Law No. 38 (2022) as 'defendant is unable to defend himself due to insanity, mental disorder, weakness, or a serious psychological disease occurring after the perpetration of the crime' must be amended following modern scientific developments. The term insanity is a misnomer with no proper definition and is no longer in use in mental health sciences. Moreover, it is irrelevant whether the incompetency to stand trial due to the mental health condition of a defendant occurred before or after the crime. The mental condition of a defendant is relevant at the time of the trial, irrespective of the fact when the condition occurred. Minor amendments to the relevant statutory provisions are recommended.

Specialized Training of Forensic Mental Health Professionals in the United Arab Emirates

Mental health professionals involved in forensic mental health evaluation must be properly trained. There must be mandatory specialized courses in forensic mental health evaluation for mental health professionals to qualify for conducting forensic mental health

evaluation. In the United Arab Emirates, most of the mental health professionals conducting forensic mental health evaluations are not properly trained in forensic evaluations. To meet the objectives of the law on incompetency to proceed and insanity defense, the specialized training of mental health professionals is highly recommended.

Specialized Training of Legal Professionals in the United Arab Emirates

Legal professionals such as judges, prosecutors, and lawyers must be trained to handle matters involving mental health. There are many misconceptions among legal professionals about mental health in the United Arab Emirates. Moreover, many legal professionals are not properly trained to handle the matters where forensic mental health is involved. The courses on forensic mental health must be a mandatory part of the training of legal professionals. The capacity building of legal professionals in the UAE is recommended.

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