



RESEARCH PAPER

Legal Analysis of Competency to Stand Trial in Pakistan

¹ Ali Ajmal* ² Faiza Rasool

1. LL.M. University Law College, University of the Punjab, Lahore, Punjab, Pakistan
2. Research Scholar, Institute of Applied Psychology, University of the Punjab, Lahore, Punjab, Pakistan

*Corresponding Author: forensicanalysis007@gmail.com

ABSTRACT

The competence to stand trial is a legal concept that determines that a person having a mental disorder cannot be proceeded against in a criminal trial. Adjudicating such a person who is incapable of understanding the legal proceedings and assisting his attorney would violate his right to a fair trial. The incompetency to proceed results in the postponement of a trial subject to the fulfillment of certain criteria. The competency evaluation of an accused taking the plea of incompetency to stand trial is a sine qua non. This paper analyzes the law on the competency to stand trial in Pakistan using the doctrinal legal analysis approach. The findings of this paper suggest that the relevant law must be amended considering modern development in the field of mental health and law. Furthermore, there is a need to build the professional capacity of judges, lawyers, psychiatrists, psychologists, jail personnel, and interdisciplinary researchers.

KEYWORDS Competence, Criminal, Evaluation, Mental, Trial

Introduction

The competence to stand trial is a jurisprudential concept that determines that a person cannot be adjudicated in a criminal case if such a person is suffering from a mental illness. It is a settled principle of law that a defendant must be competent to proceed to ensure his right to a fair trial (Weiner & Otto, 2013). The legitimacy of criminal proceedings against a defendant who is incapable of understanding the legal process and/or communicating with his attorney is questionable (Melton et al., 2018). The determination of the competency of the accused results in the postponement of trial if such a person is found incompetent to proceed. This concept has long been a part of the judicial systems across the jurisdictions of the world. The legal dealing with the competency to stand trial went through different interpretations and development phases before coming to its current form (Weiner & Otto, 2013). Pakistan incorporated the law related to the competence to stand trial in sections 464 and 465 of its Code of Criminal Procedure (1898; Mehmood & Mehmood, 1898).

Literature Review

The principle that a person must be capable of proceeding in criminal matters can be traced back to the 17th century in English law (Winick, 1983; Blackstone & Jones, 1916). The legal historical accounts confirm the postponement of trials if a person is found incompetent to proceed in early English court decisions (Brown, 2019). The implementation of this principle can also be seen in early US court decisions (*United States v. Lawrence*, 1835). The American courts at first relied on English law, later developed its own jurisprudence on the subject which was followed by many other jurisdictions for the development of their own laws. In 1899, a US federal court of appeals recognized the competence principle as fundamental to the legal proceedings (*Youtsey v. United States*, 1899). Later, the US Supreme Court recognized this principle in many of its decisions (*Drope v. Missouri*, 1975; *Godinez v. Moran*, 1993). However, the doctrine of competence was

thoroughly discussed and comprehensively settled in Dusky's Case (*Dusky v. United States*, 1960).

In Dusky's Case, the Supreme Court of the United States defined the criterion of competence to proceed which is followed as a standard not only across the United States, but also by most of the jurisdictions in the world (Morris et al., 2004). The Supreme Court of the United States ruled a person's ability to consult with a lawyer and understand the proceedings against him is the criteria for competence to proceed (*Dusky v. United States*, 1960). Pakistan incorporated the law on the competency to proceed in sections 464 and 465 of its Code of Criminal Procedure (1898). These sections were interpreted through several of the decisions of the superior courts in Pakistan to come to its modern form (Mehmood & Mehmood, 1898).

Material and Methods

The research methodology employed in this study is doctrinal legal analysis. Furthermore, the black letter approach was used. Doctrinal legal analysis was used to analyze the law on the competency to stand trial in Pakistan.

Findings and Analysis

Competency to Stand Trial and Law in Pakistan

There are certain provisions in the statutes in Pakistan that bar criminal proceedings against an accused who is incompetent to proceed and lay mandatory law to deal with such an accused. These statutory provisions are incorporated in chapter thirty-four of the Code of Criminal Procedure (1898). This chapter is named Lunatics and is comprised of sections 464 to 475. Section 464 deals with the determination of competency to proceed in the court of the magistrate. This section discusses the incompetency to proceed in terms of lunacy and unsoundness of mind. Section 465, which determines the incompetency to stand trial in the session court and/or the high court also deals with the doctrine of incompetency to stand trial in terms of unsoundness of mind. Section 466 discusses the course of law mandatory for the courts to follow for further proceedings in case an accused is found incompetent to stand trial. Section 467 deals with the resumption of legal proceedings in case of an incompetent to stand trial accused. Section 468 empowers the court to resume the legal proceeding or to postpone it further depending upon the condition of the accused. Section 469 directs the courts to proceed with the trial in case a person is competent to proceed even if there is sufficient evidence that at the time of the commission of the offense, the accused has a mental disorder/condition. Thus, the plea of insanity that the accused has a mental condition/disorder at the time of the commission of the offense would not bar the court from proceeding with the trial if the accused is found to be competent to proceed. Section 470 makes it mandatory for the courts to settle the question of fact that whether an accused committed the alleged crime or not, every time an accused is acquitted based on legal insanity. In case an accused is found to have committed an alleged offense and is acquitted based on legal insanity, the provision of detention of such an accused in safe custody is dealt with in section 471. Section 472 was repealed by the Lunacy Act (1912). Section 473 deals with the procedure of initiation of legal proceedings in case an incompetent accused becomes competent to stand trial. Section 474 is about the procedure of releasing an accused who is declared fit to be released, while section 475 deals with the delivery of such a person to the care of a relative or friend (Code of Criminal Procedure, 1898).

Sections 464 and 465 of CrPC are primarily relevant in determining the competency of an accused to proceed against. Section 464 of CrPC deals with the method of the magistrate court. This section makes it mandatory for the magistrate to ordain a competency evaluation of the accused if it appears that the accused being tried has some

mental condition or disorder. Section 465 makes it obligatory for the high court and the session court to postpone the trial of an accused if it appears to the court that the accused is not competent to proceed because of his mental condition. However, the postponement of the trial of such an accused incompetent to proceed is associated with the court's satisfaction to this effect. The collective reading of both sections explains how the law in Pakistan deals with an incompetent to proceed accused. Whenever the plea of incompetency to proceed is taken, subject to the court's satisfaction, the law in Pakistan makes it obligatory for the courts to postpone the trial of an incompetent-to-proceed accused (*Safia Bano v. Home Department, Govt. of Punjab and others*, 2021).

Can the Court Make a Subjective Opinion About the Incompetency of An Accused Without a Mental Health Evaluation?

The significance of mental health evaluation in determining the competency of an accused to stand trial is a sine qua non. This very pertinent legal point was addressed by the Supreme Court of Pakistan while relying on precedents. The Supreme Court took cognizance of different views before settling this legal issue (*Safia Bano v. Home Department, Govt. of Punjab and others*, 2021).

It is subject to the tentative satisfaction of the court to order competency evaluation of an accused in case an incompetency to proceed plea is taken. If the court found that the accused did not have a mental condition or disorder, the court would proceed with the trial in a normal way. The court will only order a competency evaluation of an accused if the court finds that there is a probability of the accused having a mental condition (*Ata Muhammad v. The State*, 1960). However, in another view of the court, it is a must for the courts to ordain a mental health evaluation of an accused every time to entertain the plea of incompetency to proceed. This judgement does not associate the order of competency evaluation of an accused with the tentative satisfaction of the court (*Sher Afzal v. The State*, 1960).

While interpreting section 465 of the Code of Criminal Procedure (1898) the court referred to the two stages of the procedure of determining the incompetency to proceed. The satisfaction of the court is the first stage and the second is the detailed mental health evaluation of the offender. In the case of affirmation in the first stage, the second phase begins. The court further decided that it is not mandatory for the courts to order competency evaluation every time the plea of incompetence to proceed is taken (*Safia Bano v. Home Department, Govt. of Punjab and others*, 2021; *Nabi Ahmad Khan v. Emperor*, 1932; *Abdul Hamid v. The State*, 1960).

As the determination of the incompetency to proceed is associated with the satisfaction of the court, the law in Pakistan directs the courts to make a thorough and comprehensive view of the mental condition of an accused each time the plea of incompetency to proceed is taken. In this regard, the courts are directed to make a holistic view by consulting the relevant material from the record of the case. The law also directs the courts to take notice of the mental health of the accused even if the plea of incompetency to proceed is not taken by his attorney. In case the mental health of an offender is found doubtful by the court, the court must order the mental competency evaluation of such an accused (*Safia Bano v. Home Department, Govt. of Punjab and others*, 2021; *Slaimuddin v. The State*, 1985).

It is settled by the decisions of the superior courts in Pakistan that to inquire about the mental health of an accused the courts must not rely on the speculations rather the preliminary assessment of the mental competency of an accused must be based on careful examination by the courts. After applying its mind in a judicial fashion, the courts can decide whether the accused raising the plea of incompetence to proceed needs to be evaluated by the medical board (*Abdul Wahid alias Wahdi v. The State*, 1994; *Sirajuddin v. Afzal Khan and another*, 1997; *Fauqal Bashar v. The State*, 1997). Moreover, the law in Pakistan allowed

both the accused and the prosecution to present expert witnesses and evidence in defense of their claims (Ajmal et al., 2022).

Competency to Stand Trial and Insanity Defense

Insanity defense and the competency to proceed are two different concepts. The insanity defense is dealt with in section 84 of Pakistan Penal Code (1860) while the competency to proceed is primarily dealt with in sections 464 and 465 of the Code of Criminal Procedure (1898). Moreover, the evaluative criteria of both are fundamentally different. In the case of the defense of insanity, the mental condition of a defendant is evaluated retrospectively at the time of a crime committed, while in the case of determination of competency of an accused to proceed, the mental condition is evaluated at the time the accused is facing criminal proceedings against him (Melton et al., 2018).

Moreover, in the matter of the defense of insanity, the abilities of an accused assessed are different than the abilities that are evaluated in determining the competency to proceed. In an insanity plea the current mental condition of an accused at the time of trial is not relevant but in the case of competence to proceed the current mental state at the time of trial is pertinent (Ajmal et al., 2022).

Forensic Mental Health Assessment

Forensic mental health assessment is a crucial part of determining the competency of an accused to proceed. In Pakistan, the law makes it mandatory for the courts to get an accused evaluated by a medical board in case of incompetency plea is taken. This is not only limited to the determination of the competency of an accused to proceed for the purpose of postponement of the trial, rather the part of forensic mental health evaluation is also pivotal in case of resumption of trial and in further legal dealing with such an accused. The law in Pakistan also sets criteria for the composition of the board of experts for forensic mental health assessment and for the content of the forensic evaluation report to assist the courts (Ajmal et al., 2022). The forensic mental health evaluation report of a medical board is admissible in a court of law as a piece of evidence subject to the meeting of certain criteria of evidence. It is admissible in the court of law subject to the examination and the cross-examination of the expert who wrote the report (Ajmal et al., 2022).

Forensic mental health evaluation must be detailed. It must include the history of the accused being assessed. In this regard, proper care must be given to ensure the identity of the accused to avoid impersonation. The mental health evaluation board must inform the accused about the nature of the forensic mental health assessment. Moreover, forensic mental health evaluation must include details of the accused such as demographic information, personal history, history of mental illness, previous criminal activities, mental status examination, etc. However, forensic mental health evaluation may have a variety of small modifications depending upon the purpose for which the evaluation is being done, the facility where the evaluation is being done, either the forensic mental health evaluation of an accused is being done for the first time or is repeated, etc. (Klassen & Wright, 2006).

Forensic mental health evaluation is a comprehensive assessment and is distinct from mental health evaluation for general clinical purposes. Although the assessment tools that are used in forensic mental health evaluation in Pakistan are the same as those used in mental health evaluation for other clinical purposes, these are two distinct issues and the mental health professionals must deal with both as different from each other. In forensic mental health assessment, mental health professionals must not just focus on mental health assessment, rather they must address the relevant concerns of the courts to assist the courts to come to their verdicts. In this regard, malingering is an important concern that mental health professionals must address in forensic mental health evaluation (Ajmal et al., 2022).

Although the law in Pakistan deals with the criteria of incompetency to proceed and insanity defense in terms of unsoundness of mind, mental health professionals must deal with these two criteria differently in their forensic mental health evaluations and must not confuse these two as one. The law is treating these two distinct concepts in similar words because the law and the courts are interested in the legal insanity of an accused instead of medical insanity (Ajmal et al., 2022).

Conclusion and Recommendations

All the relevant stakeholders must be thoroughly trained. Mental health professionals, especially psychiatrists and psychologists must take credited courses on forensic mental health evaluation. Moreover, there is a dire need to impart basic legal training to the mental health professionals involved in forensic mental health evaluations. The lack of training of mental health professionals in the field of forensics does not only result in unreliable forensic assessments but it also lessens the credibility of forensic evaluation reports in the courts in Pakistan. Furthermore, courses on forensic mental health must be a part of the basic training of judges, lawyers, police, and prison personnel. Furthermore, there is a need to train interdisciplinary researchers who can understand the intricacies of the issues and can be able to conduct valuable research.

The legislative reforms are pivotal to take up the matter of evaluation of competency to proceed along with other relevant issues. In Pakistan terms such as unsoundness of mind, lunatic, and insane are still there in the statutes and are being used in the courts. These terms are outdated and misleading and do not represent the modern developments in the field of mental health. These terms must be replaced with appropriate terms. Moreover, the statutory provisions such as section 84 of the Pakistan Penal Code (1860) and sections 464 and 465 of the Code of Criminal Procedure (1898) must be amended and broadly interpreted considering the modern developments in the field of forensic mental health.

Bringing some administrative reforms in the field of mental health is an urgent need of time. The field of mental health, especially forensic mental health, must be prioritized. State-of-the-art forensic mental health facilities and forensic mental health training institutions must be developed across the country. Moreover, it is observed that the positions of forensically trained mental health professionals in different institutions across Pakistan are occupied by mental health professionals who are not forensically trained. In this regard, involving forensic mental health professionals instead of other mental health professionals in forensic mental health evaluations and other relevant tasks is highly recommended.

It is highly recommended that the relevant professional organizations in Pakistan develop a structured mechanism and detailed guidelines for forensic mental health evaluation for psychiatrists and psychologists. It is observed that no proper mechanism for forensic mental health evaluation of an accused is adopted in Pakistan rather it is the sole discretion of the psychiatrists and the psychologists involved in forensic mental health evaluation. It is pertinent to mention that most of the psychiatrists and psychologists involved in forensic mental health evaluation of accused in different institutions are not properly trained in performing mental health assessment of the accused. The lack of training of psychiatrists and psychologists involved in the evaluation of the mental health of the accused results in poor validity and consequently, questioned reliability of their mental health evaluation reports in the courts.

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