

Insanity Defence in Contemporary Criminal Law: A Critical Analysis of Its Application and Misapplication



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Abstract: *The insanity defence represents one of the most debated doctrines in criminal law, reflecting the principle that criminal liability should not be imposed on individuals who, because of a severe mental disorder, lack the capacity to understand the nature or wrongfulness of their conduct. Despite its long-standing recognition, the defence continues to attract criticism for its perceived susceptibility to misuse and its potential impact on public confidence in the administration of justice. This article critically examines the application and alleged misapplication of the insanity defence through a doctrinal and comparative legal analysis of selected common law jurisdictions, with particular emphasis on Pakistan. It evaluates the legal standards governing the defence, the role of judicial interpretation, and the procedural safeguards designed to distinguish genuine claims of insanity from unfounded assertions. The article argues that concerns regarding widespread abuse of the insanity defence are often overstated and that the more significant challenges arise from inconsistent judicial approaches, limited access to forensic psychiatric expertise, and outdated legislative frameworks. By comparing Pakistan's legal position with developments in England and Wales, the United States, Canada, and Australia, the study identifies areas requiring reform to improve consistency, fairness, and legal certainty. It concludes that a balanced judicial approach, supported by clearer statutory guidance, a bio-legal framework, robust evidentiary standards, strengthened forensic mental health procedures and well-informed judges, is essential to preserve both the rights of mentally ill defendants and public confidence in the criminal justice system.*

Keywords: Insanity Defence, Criminal Responsibility, Criminal Law, Mental Illness, Comparative Criminal Law, Pakistan, Criminal Justice.



Figure 1:
Graphical Abstract: Presenting Insanity Defence in Contemporary Criminal Law: A Critical Analysis of its Application and Misapplication

Introduction

The principle that criminal liability should be imposed only upon those who possess the mental capacity to understand and control their conduct has remained a defining feature of criminal jurisprudence for centuries. Criminal punishment is not solely concerned with the commission of a prohibited act; it also presupposes that the offender acted with a degree of cognitive awareness and moral responsibility sufficient to justify legal blame. This principle underpins the doctrine of criminal culpability and explains why legal systems have historically recognized limited exceptions for individuals whose mental condition substantially impairs their capacity to appreciate the nature or wrongfulness of their conduct (Duff, 2007; Morse, 2015).

Among these exceptions, the insanity defence occupies a unique position within criminal law. Unlike other defences that justify or excuse otherwise unlawful conduct, the insanity defence reflects the view that punishment loses much of its moral and legal justification when an accused lacks the mental capacity necessary for criminal responsibility. The doctrine therefore seeks to balance two competing objectives: protecting individuals who

suffer from serious mental disorders from unjust punishment while preserving public confidence in the criminal justice system by ensuring that criminal accountability is not avoided through unfounded claims of mental incapacity (Morse, 2011; Slobogin, 2000).

Despite its long-standing acceptance, the insanity defence remains one of the most controversial doctrines in contemporary criminal law. Public debate frequently portrays it as a legal loophole through which offenders escape criminal liability, particularly following high-profile cases involving violent crimes. These perceptions have influenced legislative reforms in several jurisdictions and have contributed to persistent calls for narrowing or abolishing the defence altogether. Empirical studies, however, present a markedly different picture. Research conducted in common law jurisdictions consistently demonstrates that insanity pleas are raised infrequently, succeed only in a small proportion of criminal prosecutions, and are subject to rigorous judicial scrutiny and psychiatric evaluation (Perlin, 1994; Slobogin, 2000). This divergence between public perception and judicial reality raises important questions regarding the operation of the defence and the extent to which concerns about its misuse are supported by legal evidence.

The debate assumes particular significance in Pakistan, where the legal framework governing insanity has remained largely unchanged since the enactment of the Pakistan Penal Code, 1860. Section 84 of the Code, inherited from the Indian Penal Code drafted during the colonial period, continues to embody the cognitive principles reflected in the nineteenth-century *M'Naghten Rules*. Although the provision has provided courts with a stable doctrinal framework, it has

attracted criticism for its limited engagement with contemporary understandings of mental illness and for the practical difficulties associated with obtaining reliable psychiatric evidence in criminal proceedings. Pakistani courts have consequently faced the challenge of applying a historically rooted legal standard within a criminal justice system that continues to confront institutional and procedural constraints.

Comparative experience demonstrates that jurisdictions have responded differently to these challenges. While England and Wales continue to rely substantially on the *M'Naghten* formulation, countries such as Canada have adopted a broader statutory framework based on the concept of "not criminally responsible on account of mental disorder," and several Australian jurisdictions have introduced legislative reforms designed to clarify the relationship between mental illness and criminal responsibility. In the United States, approaches vary considerably among individual states, reflecting continuing disagreement regarding the appropriate scope of the defence following legislative reforms introduced after *Hinckley*. These developments illustrate that, although the underlying principle of exempting genuinely mentally disordered defendants remains widely accepted, significant differences exist concerning the evidentiary requirements, procedural safeguards, and legal consequences of successful insanity pleas.

This article argues that the principal challenge confronting the insanity defence is not its alleged widespread abuse but the inconsistent manner in which courts distinguish legitimate claims of mental incapacity from unsupported assertions. The effectiveness of the defence ultimately

depends upon clear legal standards, reliable psychiatric evidence, coherent judicial reasoning, and procedural safeguards capable of protecting both defendants' rights and society's legitimate interest in criminal accountability. Where these safeguards function effectively, the risk of misuse is substantially reduced without undermining the humanitarian purpose that the defence was designed to serve.

Adopting a doctrinal and comparative methodology, this article critically examines the application and alleged misapplication of the insanity defence in contemporary criminal law. It analyses the historical foundations of the doctrine, evaluates its operation across selected common law jurisdictions, and considers Pakistan's legal framework in light of comparative developments. By identifying doctrinal inconsistencies, evidentiary challenges, and institutional limitations, the article proposes reforms aimed at strengthening the fairness, consistency, and legitimacy of the insanity defence while preserving the fundamental principles of criminal responsibility upon which modern criminal law is founded.

2. Historical and Jurisprudential Foundations of the Insanity Defence

The insanity defence is rooted in one of the oldest normative principles of criminal law, which is that *punishment is justified only where an individual is morally and legally blameworthy*. Criminal liability has traditionally required proof of both a prohibited act (*actus reus*) and a culpable mental state (*mens rea*). Where an accused lacks the capacity to understand the nature of the act or to appreciate that it is legally or morally wrong because of a serious mental disorder, the rationale for imposing criminal punishment is fundamentally undermined (Duff, 2007; Hart, 1968). The insanity defence, therefore, is not an act of leniency

but a recognition that the criminal law must distinguish between culpable wrongdoing and conduct resulting from profound mental incapacity.

Historically, the treatment of mentally ill offenders reflected prevailing social and religious attitudes rather than coherent legal principles. In medieval England, mental illness was frequently associated with divine punishment or moral failing, and individuals suffering from severe psychological disorders were often viewed as incapable of rational thought without a clear legal framework governing criminal responsibility (Walker, 1985). Early English courts occasionally excused defendants who were described as *non compos mentis*, yet these decisions lacked consistency and were largely dependent upon judicial discretion.

By the seventeenth and eighteenth centuries, English common law began to articulate more structured standards for determining criminal responsibility. One of the earliest judicial formulations appeared in **R v Arnold** (1724), where the court suggested that exemption from criminal liability should be confined to individuals whose cognitive impairment was so profound that they resembled "a wild beast." Although this formulation has rightly been criticized for its crude understanding of mental illness, it represented an early attempt to connect criminal responsibility with an individual's capacity for rational judgment rather than with moral or religious notions of guilt (Walker, 1985).

A more sophisticated approach emerged in **Hadfield's Case** (1800), in which James Hadfield was acquitted after attempting to assassinate King George III while suffering from delusional beliefs. The defence, led by Thomas Erskine, successfully argued that mental illness could substantially impair an individual's capacity for rational decision-

making even where the accused appeared capable of ordinary reasoning in other aspects of life. The case marked a significant departure from earlier doctrines by recognising that insanity could manifest through specific delusions rather than complete intellectual incapacity (Moran, 1985). Parliament's response, however, also reflected growing public concern about dangerous offenders, leading to legislation that authorised the indefinite detention of individuals acquitted on grounds of insanity. This dual emphasis on compassion and public protection has continued to shape insanity jurisprudence ever since.

The modern law of insanity owes its origins to **M'Naghten's Case** (1843), one of the most influential decisions in the history of criminal law. Daniel M'Naghten, suffering from persecutory delusions, killed Edward Drummond under the mistaken belief that he was the British Prime Minister, Sir Robert Peel. Following M'Naghten's acquittal on the grounds of insanity, widespread public criticism prompted the House of Lords to seek clarification from the judges, resulting in what became known as the **M'Naghten Rules**. These rules established that an accused is exempt from criminal liability if, at the time of the offence, a "defect of reason" arising from a "disease of the mind" rendered the individual incapable of understanding the nature and quality of the act or of knowing that it was wrong (M'Naghten's Case, 1843).

The M'Naghten Rules profoundly influenced the development of criminal law throughout the common law world. Their emphasis on cognitive incapacity provided courts with a relatively clear legal test and introduced greater consistency into judicial decision-making. Nevertheless, the rules have also attracted sustained criticism for reducing mental illness to a predominantly

intellectual inquiry while paying limited attention to disorders affecting volition, emotional regulation, or behavioural control (Morse, 2011). Modern psychiatric knowledge demonstrates that many serious mental disorders impair judgment and decision-making without necessarily depriving an individual of all awareness of right and wrong. Consequently, critics argue that the M'Naghten formulation reflects nineteenth-century medical understanding more than contemporary clinical reality.

Despite these criticisms, the underlying justification for the insanity defence has remained remarkably stable. Retributive theories of punishment maintain that criminal sanctions are justified only where an offender is morally responsible for the wrongful act. If severe mental illness deprives an individual of the capacity for rational choice, punishment ceases to fulfil its moral purpose because the offender cannot fairly be blamed in the same way as a mentally competent person (Duff, 2007). Similarly, utilitarian theories question the effectiveness of punishment where an offender lacks the capacity to respond rationally to legal sanctions, suggesting that treatment and risk management may better serve both the individual and society (Hart, 1968).

These philosophical foundations continue to influence contemporary criminal justice systems, even though jurisdictions have adopted different legal formulations of the defence. Some countries have retained the traditional cognitive approach established by *M'Naghten*, whereas others have broadened the legal test to accommodate evolving understandings of mental disorder and criminal responsibility. This divergence reflects an enduring tension within criminal law: the need to protect individuals whose mental illness genuinely negates culpability

while preserving the integrity of the criminal justice system against unfounded claims of insanity.

Pakistan inherited its insanity defence from the Indian Penal Code of 1860, which was itself drafted under the strong influence of English common law. Section 84 of the Pakistan Penal Code continues to embody the essential principles of the M'Naghten Rules by exempting from criminal liability those who, because of "unsoundness of mind," are incapable of understanding the nature of their act or that it is either wrong or contrary to law. While this provision has provided doctrinal continuity for more than a century, it has undergone relatively little legislative development despite substantial changes in psychiatric knowledge, forensic practice, and comparative criminal jurisprudence. As a result, Pakistani courts continue to interpret a nineteenth-century legal standard within the context of twenty-first-century criminal litigation, creating important questions regarding the adequacy and consistency of its application.

The historical evolution of the insanity defence demonstrates that the doctrine has never been static. Rather, it has continually reflected changing understandings of mental illness, moral responsibility, and the purposes of criminal punishment. Appreciating this historical development is essential to evaluating whether contemporary legal standards remain capable of distinguishing genuine mental incapacity from unfounded claims while preserving the legitimacy of criminal justice. The following section, therefore, examines how different jurisdictions currently regulate the insanity defence and the extent to which their legal frameworks have responded to these enduring challenges.

3. The Legal Framework of the Insanity Defence: A Comparative Analysis

Although the moral justification for the insanity defence is widely accepted, legal systems differ significantly in defining mental incapacity and determining when it relieves an accused of criminal responsibility. These differences reflect varying conceptions of culpability, the weight accorded to psychiatric evidence, and broader policy choices regarding public protection and individual rights. A comparative examination demonstrates that no single model has achieved universal acceptance; instead, jurisdictions continue to balance fairness, accountability, and public confidence in different ways.

3.1 Pakistan

The statutory foundation of the insanity defence in Pakistan is contained in **Section 84 of the Pakistan Penal Code, 1860 (PPC)**, which provides that *an act does not constitute an offence if it is committed by a person who, by reason of unsoundness of mind, is incapable of knowing either the nature of the act or that the act is wrong or contrary to law*. The provision is substantially derived from the Indian Penal Code of 1860 and reflects the cognitive test established by the *M'Naghten Rules*.

Pakistani courts have consistently distinguished **medical insanity** from **legal insanity**. A clinical diagnosis of mental illness does not, by itself, exempt an accused from criminal liability. Rather, the defence succeeds only where the evidence establishes that, at the time of the offence, the accused was incapable of understanding the nature or wrongfulness of the act. This distinction reflects the principle that criminal responsibility depends upon legal incapacity rather than the mere existence of a psychiatric disorder.

In practice, however, the application of Section 84 presents several challenges. In Farid et al. (2018) the practice of the courts and opinions of renowned judges have been broadly discussed. The courts often rely on limited psychiatric evidence, and comprehensive forensic mental health assessments remain unavailable in many criminal proceedings. Consequently, judicial determinations frequently depend upon witness testimony concerning the accused's behaviour before, during, and after the commission of the alleged offence. While such evidence may provide valuable context, it cannot always substitute for specialised psychiatric evaluation. The resulting inconsistencies have contributed to uncertainty regarding the threshold for establishing legal insanity.

3.2 England and Wales

English law continues to recognise the common law principles established in *M'Naghten's Case* (1843). The defence requires proof of a "defect of reason" caused by a "disease of the mind" that rendered the accused incapable of understanding either the nature and quality of the act or that the act was legally wrong.

Although the *M'Naghten* formulation has remained remarkably durable, it has been criticised for relying upon terminology that no longer reflects contemporary psychiatric understanding. Expressions such as "disease of the mind" and "defect of reason" are legal concepts rather than medical diagnoses, creating a distinction that occasionally generates confusion between legal doctrine and clinical practice (Mackay, 2015).

Despite these criticisms, English courts have generally adopted a cautious approach toward the defence. The legal threshold remains demanding, and successful insanity pleas are relatively uncommon. The

doctrine, therefore, continues to function as a narrowly confined exception rather than a broad exemption from criminal liability.

3.3 United States

The United States presents perhaps the greatest diversity of approaches to criminal insanity. While many jurisdictions historically adopted the *M'Naghten* standard, others incorporated broader formulations such as the **Model Penal Code** test developed by the American Law Institute. The Model Penal Code recognised both cognitive and volitional impairments, permitting the defence where a defendant lacked substantial capacity either to appreciate the criminality of conduct or to conform conduct to the requirements of law.

Public attitudes towards the insanity defence changed significantly following the acquittal of John Hinckley Jr. in 1982 for the attempted assassination of President Ronald Reagan. The verdict prompted extensive legislative reform across the United States. Several states narrowed the scope of the defence, shifted the burden of proof to defendants, or abolished the defence in its traditional form. These reforms illustrate the powerful influence that public perception can exert upon criminal law, even where empirical research indicates that successful insanity pleas remain exceptionally rare (Slobogin, 2000).

3.4 Canada

Canada has replaced the traditional insanity defence with the verdict of **Not Criminally Responsible on Account of Mental Disorder (NCRMD)** under the Criminal Code. This framework reflects a more contemporary understanding of mental disorder while maintaining the principle that criminal liability requires meaningful cognitive capacity.

One of the distinctive features of the Canadian model is its emphasis on individualized post-verdict review. Rather than imposing automatic detention, specialised Review Boards assess whether the individual continues to present a significant threat to public safety. This approach seeks to balance treatment, rehabilitation, and community protection through periodic reassessment instead of predetermined legal consequences.

The Canadian framework has frequently been cited as an example of a system that integrates legal accountability with therapeutic objectives while maintaining rigorous judicial oversight.

3.5 Australia

Australian jurisdictions generally recognise the insanity defence, although statutory formulations vary among states and territories. While several jurisdictions retain concepts derived from *M'Naghten*, legislative reforms have introduced greater procedural clarity and expanded judicial guidance regarding mental impairment.

Australian courts have increasingly emphasised the importance of expert psychiatric evidence in determining criminal responsibility. This development reflects a broader recognition that legal decision-making concerning mental incapacity should be informed by specialised clinical expertise while remaining subject to judicial evaluation.

3.6 Comparative Observations

A comparison of these jurisdictions reveals several recurring themes. First, every jurisdiction accepts the fundamental principle that genuine mental incapacity may negate criminal responsibility. Secondly, no one treats a psychiatric diagnosis as sufficient, in itself, to establish

the defence. Legal insanity remains a distinct legal concept requiring proof that the accused's mental condition substantially impaired the capacity required for criminal responsibility.

The principal differences lie not in the existence of the defence but in its procedural operation. Canada has developed a more flexible post-verdict system focused on risk assessment and treatment. The United States demonstrates considerable legislative diversity shaped by political and public pressures. England continues to rely upon a historically influential but frequently criticised common law formulation. Australia illustrates incremental statutory reform while preserving traditional principles.

Pakistan, by contrast, has retained a legal framework that has undergone comparatively limited legislative development since the nineteenth century. Although Section 84 continues to provide an important safeguard for defendants suffering from severe mental disorders, its effectiveness depends largely upon judicial interpretation and the availability of reliable psychiatric evidence. In the absence of specialised forensic mental health infrastructure and comprehensive procedural guidance, courts may encounter greater difficulty in distinguishing genuine legal insanity from unsupported claims. Consequently, the comparative experience of other common law jurisdictions offers valuable lessons for strengthening procedural safeguards without compromising the fundamental principles of criminal responsibility.

4. Application and Misapplication of the Insanity Defence: Myth, Reality, and Judicial Practice

Few doctrines in criminal law have generated as much public controversy as the insanity defence. Unlike most criminal law defences, debates surrounding insanity are shaped not only by legal doctrine but also by public opinion, media narratives, and societal perceptions of justice. High-profile criminal cases often create the impression that defendants invoke insanity as a convenient means of escaping punishment. This perception has persisted for decades despite legal scholarship demonstrating that successful insanity pleas are exceptionally uncommon and subject to strict judicial scrutiny (Perlin, 1994; Slobogin, 2000). The divergence between public perception and legal reality, therefore, lies at the centre of contemporary debates regarding the legitimacy of the defence.

4.1 The Perception of Abuse

Public criticism of the insanity defence generally rests on two assumptions. *First*, it is often believed that defendants can easily fabricate mental illness to avoid criminal liability. *Secondly*, successful insanity pleas are perceived as allowing dangerous offenders to regain their freedom without meaningful legal consequences. These assumptions have been reinforced by extensive media coverage of exceptional criminal cases, which frequently receive greater public attention than the thousands of ordinary prosecutions in which the defence is neither raised nor succeeds.

Academic research presents a markedly different picture. Studies conducted in several common law jurisdictions consistently indicate that the insanity defence is invoked in only a very small proportion of criminal cases and succeeds even less frequently (Callahan et al., 1991; Perlin, 1994). In most jurisdictions, defendants who are found not guilty by reason of insanity are not released

immediately but are instead committed to secure psychiatric facilities or remain subject to ongoing judicial supervision. Accordingly, the widespread perception that the defence functions as a simple escape from criminal punishment is not supported by empirical evidence.

This distinction between perception and reality is significant because public misconceptions frequently influence criminal justice policy. Legislative reforms adopted in response to public concern may unintentionally restrict access to a defence that exists to protect individuals whose mental disorders genuinely negate criminal responsibility. Criminal law, however, should be guided by evidence and principle rather than exceptional cases that dominate public discourse.

4.2 Distinguishing Legitimate Claims from Misapplication

Although claims of widespread abuse appear overstated, this does not mean that the insanity defence is immune from misuse. Like any legal defence, it may be invoked opportunistically by defendants seeking to avoid criminal liability. The possibility of fabricated or exaggerated psychiatric symptoms presents a genuine challenge for courts, particularly where expert evidence is inconsistent or where comprehensive forensic psychiatric assessments are unavailable.

The principal safeguard against such misuse is the distinction between **medical insanity** and **legal insanity**. Criminal courts are concerned not with whether an accused has been diagnosed with a mental illness, but whether the illness deprived the accused of the legal capacity required for criminal responsibility at the time of the offence. Many psychiatric disorders, including depression, anxiety disorders, or certain

personality disorders, may affect behaviour without eliminating an individual's capacity to appreciate the nature or wrongfulness of conduct. Consequently, a clinical diagnosis alone cannot establish the defence.

Courts therefore examine a combination of psychiatric testimony, witness evidence, medical history, and the accused's conduct before, during, and after the commission of the offence. Behaviour such as planning the offence, attempting to conceal evidence, fleeing the scene, or providing coherent explanations to investigators may indicate an awareness of wrongdoing and weigh against a successful insanity plea. Conversely, a documented history of severe mental illness accompanied by behaviour consistent with acute psychosis may strengthen the credibility of the defence.

4.3 Challenges in Judicial Decision-Making

Determining criminal responsibility in cases involving mental illness remains one of the most difficult tasks performed by criminal courts. Judges must evaluate complex psychiatric evidence without allowing legal responsibility to become wholly dependent upon medical opinion. While psychiatrists provide expert assessments regarding diagnosis and mental functioning, the ultimate question of criminal responsibility remains a legal determination.

This division of responsibility has generated continuing debate. Psychiatric experts may disagree regarding diagnosis, the severity of symptoms, or the relationship between a mental disorder and the alleged offence. Courts must therefore assess not only the reliability of expert testimony but also its consistency with the surrounding factual evidence. The risk of inconsistent judicial outcomes increases where expert opinions

conflict or where specialised forensic psychiatric services are limited.

These challenges are particularly pronounced in developing legal systems, including Pakistan, where access to trained forensic psychiatrists remains limited. In many cases, courts rely heavily upon general medical evidence or lay testimony from family members and other witnesses. Although such evidence may assist in reconstructing the accused's behaviour, it cannot always provide the detailed clinical assessment necessary for determining criminal responsibility. The resulting uncertainty may undermine both the rights of defendants suffering from genuine mental illness and public confidence in judicial decision-making.

4.4 The Pakistani Experience

The application of Section 84 of the Pakistan Penal Code illustrates many of these practical challenges. Pakistani courts have consistently required convincing evidence that the accused was legally incapable of understanding the nature or wrongfulness of the act at the time the offence was committed. The burden is therefore substantial, and the defence is not available merely because the accused has previously received psychiatric treatment or exhibits unusual behaviour.

Nevertheless, practical obstacles continue to affect the operation of the defence. Delays in psychiatric evaluation, limited availability of forensic mental health specialists, and inconsistent documentation of medical history may restrict the quality of evidence available to trial courts. These institutional limitations increase the difficulty of distinguishing genuine legal insanity from unsupported assertions while also creating the risk that legitimate claims may not receive adequate judicial consideration.

The challenge confronting Pakistan is therefore not simply preventing abuse of the insanity defence but ensuring that courts possess sufficient procedural and evidentiary resources to apply the defence accurately and consistently. A legal standard, however carefully drafted, cannot achieve justice if the institutional mechanisms necessary for its implementation remain underdeveloped.

4.5 Beyond the Debate on Abuse

The continuing debate concerning the insanity defence should not be framed solely as a choice between protecting society and protecting mentally ill defendants. These objectives are not mutually exclusive. A properly functioning insanity defence serves both interests by ensuring that criminal punishment is imposed only upon those who possess the capacity for criminal responsibility while providing appropriate legal mechanisms for the treatment and supervision of individuals whose mental disorders negate culpability.

The more pressing concern is therefore not whether the defence exists but whether legal institutions possess the procedural safeguards necessary to distinguish genuine mental incapacity from fabricated claims. Transparent judicial reasoning, rigorous psychiatric evaluation, consistent evidentiary standards, and effective post-verdict supervision collectively reduce opportunities for misuse while reinforcing public confidence in the administration of justice. The legitimacy of the insanity defence ultimately depends not upon its abolition or expansion but upon its careful and principled application.

5. Reforming the Insanity Defence: Lessons for Pakistan from Comparative Jurisdictions

The continued recognition of the insanity defence across common law jurisdictions demonstrates that the doctrine remains an essential component of criminal justice rather than an outdated legal relic. The comparative analysis undertaken in this article reveals that, although jurisdictions differ in their statutory formulations and procedural mechanisms, they share a common objective: ensuring that criminal punishment is imposed only upon individuals who possess the mental capacity required for criminal responsibility. The challenge, therefore, is not whether the insanity defence should be retained but how its application can be made more consistent, transparent, and reliable.

For Pakistan, this challenge is particularly significant. Section 84 of the Pakistan Penal Code has remained substantially unchanged for more than a century and continues to reflect legal concepts developed in nineteenth-century England. While its underlying principle remains sound, the procedural framework supporting its implementation has not evolved at the same pace as developments in forensic psychiatry, evidentiary standards, and comparative criminal jurisprudence. Consequently, reform should focus not on abandoning the defence but on strengthening the institutional mechanisms through which it operates.

5.1 Clarifying the Legal Standard

One of the principal difficulties surrounding the insanity defence arises from uncertainty regarding the distinction between **medical insanity** and **legal insanity**. Courts have consistently recognised that not every psychiatric diagnosis negates criminal responsibility. Nevertheless, judicial reasoning occasionally reflects inconsistent approaches to determining the degree of

mental impairment required under Section 84 of the Pakistan Penal Code.

Legislative clarification would therefore enhance legal certainty without altering the fundamental purpose of the defence. Parliament may consider providing statutory guidance regarding the factors courts should evaluate when determining legal insanity, including the relevance of psychiatric history, contemporaneous medical evidence, behavioural observations, and expert testimony. Such clarification would promote greater consistency in judicial decision-making while preserving judicial discretion to assess each case on its own facts.

5.2 Towards a Principled and Modern Framework

The future of the insanity defence should not be viewed through the lens of abolition or unrestricted expansion. Instead, reform should be guided by the fundamental principles of fairness, proportionality, and legal certainty. A modern framework must continue to recognize that criminal punishment presupposes meaningful culpability while ensuring that courts possess the institutional resources necessary to distinguish genuine mental incapacity from fabricated claims.

For Pakistan, meaningful reform does not necessarily require replacing Section 84 of the Pakistan Penal Code. Rather, significant improvements can be achieved through procedural refinement, strengthened forensic infrastructure, enhanced judicial training, and clearer evidentiary standards. These reforms would preserve the enduring principles underlying the insanity defence while adapting its practical operation to the realities of contemporary criminal justice.

Ultimately, the legitimacy of the insanity defence depends less upon the wording of

statutory provisions than upon the fairness and consistency with which they are applied. Comparative experience demonstrates that public confidence is best maintained not by restricting legitimate defences but by ensuring that legal institutions possess the expertise, procedural safeguards, and transparency necessary to administer justice effectively. A reformed approach founded upon these principles would better protect the rights of mentally ill defendants, uphold the integrity of criminal responsibility, and strengthen confidence in Pakistan's criminal justice system.

5.3 Introduction of a Bio-Legal Framework for Assessing Criminal Insanity

One of the most significant weaknesses of contemporary insanity jurisprudence is the absence of a structured methodology for evaluating claims of mental incapacity. In many jurisdictions, including Pakistan, courts frequently rely on isolated psychiatric reports, fragmented medical records, or lay testimony regarding the accused's behaviour. Although each of these forms of evidence has probative value, none is independently sufficient to determine criminal responsibility. The absence of a comprehensive assessment framework may result in inconsistent judicial outcomes and increase the possibility of both unjust acquittals and wrongful convictions.

A more coherent approach would be the adoption of a **Bio-Legal Assessment Framework**, in which legal, psychiatric, psychological, and forensic evidence is evaluated collectively rather than in isolation. The objective of such a framework would not be to transfer the determination of criminal responsibility from judges to medical experts. Rather, it would provide courts with a structured evidentiary model

that promotes consistency, transparency, and reasoned judicial decision-making.

Within this framework, the legal inquiry would remain paramount. The ultimate question would continue to be whether the accused satisfied the legal requirements of the insanity defence at the time of the offence. Medical and behavioural evidence would serve as supporting evidence to assist the court in answering that legal question, rather than replacing judicial discretion.

A bio-legal assessment should incorporate multiple dimensions of evidence, including:

- documented psychiatric and medical history preceding the alleged offence;
- psychological evaluation of cognitive functioning, perception, judgment, and reality testing;
- behavioural evidence before, during, and after the commission of the offence;
- collateral information obtained from family members, caregivers, employers, or other individuals familiar with the accused's mental condition;
- previous hospitalisation, treatment records, medication history, and documented episodes of severe mental illness; and
- independent forensic psychiatric examination conducted according to recognised professional standards.

Evaluating these sources collectively enables courts to distinguish genuine mental incapacity from temporary emotional disturbance, malingering, or unsupported assertions of mental illness. It also reduces excessive reliance on any single form of

evidence and encourages a holistic assessment of the accused's mental state at the relevant time.

5.3 Developing Objective Indicators for Judicial Assessment

Although every case must ultimately be decided on its own facts, the development of objective legal indicators could improve consistency in judicial reasoning. Comparative jurisdictions increasingly rely upon structured forensic assessments that assist courts without diminishing judicial independence. Pakistan could adopt a similar approach through statutory guidelines or judicial practice directions.

A non-exhaustive framework for judicial evaluation may include considerations involving *cognitive capacity, behavioural consistency, clinical evidence, temporal relationship between acute psychotic episodes and criminal conduct, and functional assessment*.

These indicators would not constitute a mathematical test or replace judicial evaluation. Rather, they would function as structured considerations capable of improving consistency and reducing arbitrary decision-making.

5.4 Regulating Expert Testimony

Expert psychiatric evidence frequently determines the outcome of insanity cases. However, conflicting expert opinions may create uncertainty, particularly where no uniform standards govern psychiatric evaluation or reporting.

Pakistan would benefit from the development of nationally recognized guidelines governing forensic psychiatric assessments in criminal proceedings. Standardized reporting formats, minimum professional qualifications for expert

witnesses, and ethical standards for forensic evaluations would improve the reliability of expert testimony while reducing inconsistencies between individual cases. Such measures would also strengthen the credibility of psychiatric evidence before the courts.

5.5 Balancing Individual Rights and Public Safety

Public criticism of the insanity defence often stems from concerns that dangerous offenders may avoid punishment through claims of mental illness. Comparative experience demonstrates that these concerns can be addressed without undermining the humanitarian purpose of the defence. Many jurisdictions have adopted structured post-verdict procedures that permit continued supervision, treatment, or secure detention where necessary to protect the public while respecting the rights of mentally disordered offenders.

Pakistan's legal framework could similarly benefit from clearer statutory provisions governing the management of individuals who are acquitted on grounds of insanity. Transparent procedures concerning psychiatric treatment, periodic review, conditional release, and judicial oversight would reinforce public confidence by demonstrating that successful insanity pleas do not result in unrestricted freedom but rather in legally supervised therapeutic interventions proportionate to the individual's condition and the risk posed to society.

5.6 Institutional Measures for Pakistan

Meaningful reform also requires institutional development. A modern insanity defence cannot function effectively without reliable forensic infrastructure capable of producing objective and

scientifically credible evidence. Pakistan should therefore consider establishing specialised forensic mental health units attached to major teaching hospitals, supported by multidisciplinary teams consisting of psychiatrists, clinical psychologists, forensic physicians, and social workers.

In addition, national protocols governing forensic mental health evaluations should be developed under the supervision of appropriate judicial and medical authorities. These protocols should standardise methods of assessment, reporting formats, ethical obligations, and minimum professional qualifications for expert witnesses. Uniform standards would improve the quality of expert testimony while promoting greater consistency across criminal courts.

Finally, specialised judicial education should accompany these reforms. Judges, prosecutors, and defence counsel should receive continuing professional training in forensic mental health, evidentiary assessment, and the legal distinction between medical diagnosis and criminal responsibility. Such interdisciplinary education would strengthen the capacity of courts to evaluate complex expert evidence critically while preserving the judiciary's constitutional role as the final arbiter of criminal culpability.

The proposed Bio-Legal Assessment Framework does not advocate replacing legal judgment with medical opinion. Instead, it seeks to enrich judicial decision-making through a structured, multidisciplinary evaluation that respects both legal doctrine and scientific expertise. By integrating objective clinical evidence with established legal principles, the framework offers a practical means of reducing inconsistent decisions, discouraging unfounded claims, and

ensuring that individuals suffering from genuine mental disorders are assessed fairly and transparently within the criminal justice system.

6. Conclusion

The insanity defence continues to play a vital role in criminal law by ensuring that individuals who lack the mental capacity for criminal responsibility are not held legally accountable in the same manner as mentally competent offenders. Although concerns regarding its misuse persist, this study demonstrates that successful insanity pleas are uncommon and are subject to rigorous legal and evidentiary scrutiny. The real challenge lies not in the existence of the defence but in its consistent and principled application.

A comparative analysis of Pakistan, England and Wales, the United States, Canada, and Australia reveals that, despite differences in legal frameworks, all jurisdictions recognise that genuine mental incapacity may negate criminal culpability. However, Pakistan continues to face significant procedural and institutional challenges, including limited forensic mental health infrastructure, inconsistent expert evidence, and the absence of structured assessment protocols.

To address these shortcomings, this article proposes a **Bio-Legal Assessment Framework** that integrates legal, psychiatric, psychological, behavioural, and forensic evidence into a structured decision-making process while preserving the judiciary's ultimate authority to determine criminal responsibility. The proposed framework, together with reforms such as standardized forensic protocols, specialized judicial training, and strengthened expert witness standards, offers a practical pathway

towards improving the fairness, consistency, and transparency of insanity determinations.

Ultimately, the legitimacy of the insanity defence depends not on restricting its availability but on ensuring that it is applied through robust evidentiary standards and sound judicial reasoning. By combining comparative legal analysis with a reform-oriented bio-legal approach, this study contributes to contemporary criminal law scholarship and provides a foundation for future legislative, judicial, and empirical research on the assessment of criminal responsibility.

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