

## Analysis of Doctrine of Insanity Defense in English Criminal Law

Ali Ajmal\*<sup>1</sup>, Faiza Rasool<sup>2</sup>

<sup>1</sup>\*Visiting Faculty, University Law College, University of the Punjab, Lahore, Punjab, Pakistan.

<sup>2</sup>Research Scholar, Institute of Applied Psychology, University of the Punjab, Lahore, Punjab, Pakistan.

**Corresponding author:** [forensicanalysis007@gmail.com](mailto:forensicanalysis007@gmail.com)

**Keywords:** English Law,  
Evidence, Insanity Defense,  
Mental Health

**DOI No:**

<https://doi.org/10.56976/rjsi.v6i1.181>

*A person suffering from legal insanity cannot be held responsible for his criminal act. English criminal law recognizes the doctrine of the insanity defense against the criminal responsibility of an accused. The objective of this paper is to study the English law on insanity defense using the doctrinal legal analysis approach. The findings show that English law deals with legal insanity differently than medical insanity. However, the opinion of the medical professionals is mandatory to determine legal insanity of a person. Furthermore, the standard of evidence to determine the legal insanity is the balance of probabilities. English law treats the insanity defense as distinct from the defense of automatism and diminished capacity and the incompetency to stand trial is also dealt with differently than the defense of insanity in English law. English law on the defense of insanity must be interpreted comprehensively by adopting multidisciplinary approaches.*

## 1. Introduction

Insanity defense is an excuse defense under which a person cannot be held responsible for his criminal act because of his mental disorder(s). The doctrine of the excuse defenses against the criminal liability of a person can be seen in English criminal law (Ajmal et al., 2023). These excuses can be either infancy, entrapment, involuntary intoxication, duress, or insanity (Stevens, 2020). Legal insanity and medical insanity are two distinct concepts and must not be confused as one. English criminal law recognizes the doctrine of the insanity defense (Ajmal et al., 2023a) and defines insanity as a disorder of the mind (Mental Health Act, 2007; Ranade et al., 2022).

A person cannot take the defense of insanity just because he has a mental condition rather each insanity plea is decided on its own merits, and by meeting a certain standard of legal insanity a person can successfully avail the defense of insanity. Medical opinion is mandatory to decide the plea of insanity (Witt et al., 2023). The English law incorporated the M'Naughton criteria of insanity defense in its criminal law. The insanity defense against the criminal act of a person has a long tradition and history of evolution in English law which started developing significantly after the introduction of the M'Naughton rule (Ormerod & Laird, 2021).

Insanity defense is one of the defenses against the criminal responsibility of a person. English criminal law is one of the oldest and most comprehensive laws that have far-reaching impacts on jurisdictions across the world. The topic of the insanity defense needs a multidisciplinary approach to deal with as the subject matter of this topic and the relevant intricacies cannot be interpreted otherwise. The fields of law and psychology are two different fields, and the training of lawyers and psychologists makes them prone to interpret things differently. Thus, there exists a gap in understanding which can only be filled by adopting insights from the subjects of law and psychology. This paper examines the insanity defense in English criminal law from an interdisciplinary perspective. This paper will help understand the subject of the insanity defense in English law for judges, lawyers, psychologists, psychiatrists, and other stakeholders.

## 2. Literature Review

### 2.1 History of Insanity Defense in English Law

Insanity defense has a long history and tradition in English law. Although the insanity defense can be observed implemented in the 13<sup>th</sup> century in England, this defense was significantly developed in English law with the introduction of the M'Naughton rule. The criteria of insanity defense laid under the name of M'Naughton rule asserted that to determine the plea of insanity, an accused must prove that, at the time of the occurrence of the crime, the offender had a mental condition which made him unable to realize and appreciate the quality and nature of his act (Mackay, 2022). Some basic premises on the subject were also settled in M'Naughton case i.e., an accused is considered to be normal until otherwise proved and the accused will only be cleared if he was found unable to realize that what he did was wrong or/and if he was found incapable to appreciate the right and wrong by the reason of his mental condition (M'Naghten, 1843).

Later, the McNaughton standard of legal insanity was criticized for focusing too heavily on the intellectual capacity of an accused to understand right and wrong and neglecting the role of emotional elements such as the lack of control and irresistible drives or impulses. This standard was criticized primarily for considering cognitive aspects while ignoring the instinctual and affective aspects in determining the criteria of legal insanity. Although the McNaughton Rules were criticized in different jurisdictions across the world for being too narrow, the standard of legal insanity set in the McNaughton Rules is still being followed in most jurisdictions across the world (Ajmal et al., 2023b).

## 2.2 English Law on Insanity Defense

English law does not hold a person with a mental condition guilty of the crimes committed by him subject to the meeting of certain legal criteria. The law specifies that an insane person cannot be held responsible for his criminal act or omission subject to the furnishing of admissible evidence that he was not sane at the time of his criminal commission and/or omission. English law considers mental disorder as a disability of the mind (Section 2 of the Mental Health Act, 2007). However, medical insanity is not dealt with as same as legal insanity in English law (Ajmal et al., 2023c). In English law, to avail of insanity defense a person must be suffering from a severe mental disorder which might have hampered his/her capacity to think and/or behave rationally (*R v. Lincolnshire (Kesteven) Justices*, 1983). In the leading case of *R v. Sullivan*, (1984) the House of Lords discussed the insanity defense and interpreted the mental condition of the accused under an epileptic fit as a disease of mind while accepting his plea of insanity. However, the scope of the insanity defense is limited to the mental condition of an accused at the time of the occurrence of a crime. English law on the insanity defense, further, specifies that a person at the time of the occurrence of the crime must be unable to what he was doing was wrong or against the law (Johnson, 2007).

## 2.3 Mens Rea and the Defense of Insanity in English Law

The relationship between the mens rea of crime and legal insanity is complicated. An accused suffering from legal insanity cannot be said to possess the requisite mens rea of a crime because of his mental condition (Ajmal et al., 2023b). English law considers two fundamental elements of a crime i.e., mens rea and actus reus. These two elements must be there to hold an accused liable for an offense. However, these two basic elements criterion is not relevant in case of crimes of strict liability (Pollock & Maitland, 1898). Against all crimes including the crimes of strict liability where the proof of mens rea is not relevant the defense of insanity can be taken as an absolute defense against the responsibility of an accused meeting the criteria of legal insanity (Ajmal et al., 2023c).

## 3. Material and Method

Doctrinal legal analysis was employed to conduct this research. Using the doctrinal legal analysis the English law on the defense of insanity was analyzed.

## 4. Findings and Analysis

### 4.1 Defense of Insanity and Defense of Automatism in English Law

The defense of insanity is different from the defense of automatism. Insanity defense is concerned with the mental disorder(s) an accused is suffering from and the consequent legal insanity. Automatism is concerned with the actus reus of a crime. The English law recognizes the defense of automatism against the criminal act done by an accused, but it does not consider the defense of automatism at par with the defense of insanity (Ajmal et al., 2023c). The criterion of the defense of automatism is heavily focused on bodily aspects which can take the form of some abnormal mental state due to some temporary or permanent bodily state (Charlson, 1955). While the defense of insanity is focused on the mental condition of an accused (Ajmal et al., 2023c). The defense of automatism was significantly interpreted in Kemp (1957), in which the defense of automatism was raised by an accused who committed a crime under the influence of such a bodily condition which made it impossible for him to control his behavior. The accused committed the crime when he was having a fit which is typical of the condition he was suffering from.

Further, in Windle (1952), regarding the defense of automatism, it was held that the accused must be in a state to not know and to control his behavior to successfully avail the defense of automatism. However, a medical opinion regarding the mental condition(s) of the accused is relevant in both the defense of automatism and the defense of insanity. In Stepleton's case (1952), it was held that unlike the insanity defense a person may or may not have known the right and wrong, but he must be completely unable to control his/her behavior to get the benefit of the defense of automatism. However, a strong and irresistible desire to kill someone out of rage, anger, etc. cannot said to be fit in the defense of automatism (Kopsch, 1925).

### 4.2 Insanity Defense and Diminished Responsibility Defense in English Law

English law deals with the defense of insanity differently than the defense of diminished responsibility. Diminished responsibility lessens the criminal liability of an accused, and it is a partial defense, unlike the insanity defense which is an absolute defense in English law (Cooper, 2010).

An accused shall be charged with a lesser offense if what he/she did was because of his/her medical condition or something which substantially impairs the capacity of that person to do different things i.e., not being able to understand the things, or not being able to make a rational judgment or not being able to exercise sufficient control on his/her behavior (Section 2, Homicide Act, 1957). The doctrine of diminished responsibility frequently applies to cases of homicide as under the defense of diminished responsibility a charge of homicide will be changed into the charge of murder or manslaughter (*H.M. Advocate v. Dingwall*, 1867), but in case of insanity defense a person suffering from mental disorder(s) and subject to the meeting of the standard of legal insanity cannot be held responsible for his offences (Ajmal & Rasool, 2023a).

### 4.3 English Law on Proof of Insanity

Under English law, an accused who is pleading under the defense of insanity must prove his legal insanity. The onus of proof in case of the defense of insanity lies on the accused who takes the insanity plea (Ajmal et al., 2023a). In Bratty (1963), it was held that the burden of proof in case of a plea of insanity is on the accused. The same was held in *Hamilton v. Alabama* (1961). Section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act (1991) made it compulsory for the jury in case of an insanity plea, it is pertinent to get the accused examined by two registered medical professionals. However, under section 22 of the Domestic Violence, Crime and Victims Act (2004), the power is given to the judges instead of the jury or the home secretary to determine whether a person is fit or unfit to plead by the reason of his/her insanity. Moreover, English law deals with the defense of insanity differently than the incompetency to stand trial. Although the mental condition of the accused in both cases is the primary concern, yet these two are treated differently and the English jurisprudence is different in both cases. The standard of evidence to prove legal insanity is the balance of probabilities (Ajmal & Rasool, 2023b).

### 4.4 Criminal Procedure (Insanity and Unfitness to Plead) Act 1991

This act deals with the law on insanity and the incapacity to plead in case a defendant is found suffering from a mental condition(s) and consequently from legal insanity. This act raised the powers of the English courts in cases where the defendants are insane and/or unfit to plead. Although the provisions of this act were substituted and modified by the later legislations on the subject, this act is a comprehensive piece of legislation with an impact on the dealings with the relevant subject matter in English law (Criminal Procedure (Insanity and Unfitness to Plead) Act, 1991).

This act further explained the procedure of dealing with a person taking a plea of insanity by modifying the role of the jury in case of an insanity defense given in section 2 of The Trial of Lunatics Act (1883) and subsection (1) of section 1 of Criminal Procedure (Insanity and Unfitness to Plead) Act, 1991), and by giving effect to the subsections (2) and (3) of section 54 of the Mental Health Act (1983) regarding the proof of a defendant's mental health (Subsection (2) of section 1 of Criminal Procedure (Insanity and Unfitness to Plead) Act, 1991).

### 4.5 Competency to Stand Trial and the Defense of Insanity

The matter of insanity defense against the criminal act of a person is dealt with differently than the fitness of an accused to plead under English law. Section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act (1991) deals with the fitness of an accused to proceed by substituting section 4 of the Criminal Procedure (Insanity) Act (1964). Accordingly, a person suffering from legal insanity cannot be tried for a criminal charge against him. The courts are given the power to postpone the trial of a person having a mental disability. Moreover, it is obligatory to determine the fitness question to proceed as soon as this plea is raised. To determine the question

of the fitness of an accused to proceed, the jury must determine such a fact based on the medical evidence (Section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act, 1991).

## 5. Conclusion and Recommendations

English law has a long tradition and history of the insanity defense. English law recognizes the doctrine of the insanity defense against the criminal liability of a person. An accused having legal insanity cannot be held responsible for his crimes. To avail the defense of insanity an accused must be suffering from such a mental condition sufficient to lessen his capacity to understand what he is doing or what is doing is against the law. Insanity defense and fitness to plead are two different concepts and are dealt with in English law differently. Moreover, there are certain criteria of legal insanity in English law, and not every kind of mental disability can be considered legal insanity. The mental condition of an accused other than legal insanity is dealt with under diminished responsibility and automatism in English law. Medical evidence is crucial in determining the legal insanity of an accused in English law.

The English jurisprudence on the insanity defense must be further developed and interpreted adopting multidisciplinary approaches. Multidisciplinary research is needed to understand the insanity and insanity defense and to deal with these concepts in the legal arena. Judges, Lawyers, Psychologists, Psychiatrists, and other stakeholders must be properly trained to handle the intricacies of this topic.

## 6. References

- Ajmal, A., & Rasool, F. (2023a). Insanity defense in blasphemy offences in Pakistan. *Global Social Sciences Review*, 8(1), 447-453. [https://doi.org/10.31703/gssr.2023\(VIII-I\).41](https://doi.org/10.31703/gssr.2023(VIII-I).41)
- Ajmal, A., & Rasool, F. (2023b). Legal analysis of competency to stand trial in Pakistan. *Journal of Development and Social Sciences*, 4(3), 795-801. [http://dx.doi.org/10.47205/jdss.2023\(4-III\)73](http://dx.doi.org/10.47205/jdss.2023(4-III)73)
- Ajmal, A., Niazi, F. U., & Rasool, F. (2023). Insanity defense in criminal law in India: A critical analysis. *Law and Policy Review*, 2(2), 58-69. <https://doi.org/10.32350/lpr.22.05>
- Ajmal, A., Rasool, F., & Niazi, F. U. (2023a). Evolution of modern insanity defense: A critical review. *Annals of Human and Social Sciences*, 4(4), 67-73. [https://doi.org/10.35484/ahss.2023\(4-IV\)06](https://doi.org/10.35484/ahss.2023(4-IV)06)
- Ajmal, A., Rasool, F., & Niazi, F. U. (2023b). Insanity defense in US law: A critical analysis. *Journal of Development and Social Sciences*, 4(4), 269-275. [https://doi.org/10.47205/jdss.2023\(4-IV\)24](https://doi.org/10.47205/jdss.2023(4-IV)24)
- Ajmal, A., Rasool, F., & Niazi, F. U. (2023c). Insanity, insanity defense, and the elements of crime: A review. *Pakistan Languages and Humanities Review*, 7(3), 537-545. [https://doi.org/10.47205/plhr.2023\(7-III\)46](https://doi.org/10.47205/plhr.2023(7-III)46)





*Bratty v. A.-G. For Northern Ireland*, A.C 386 (1963).

*Daniel McNaghten*, 10 Clark and Fin. 200, 8 Eng. Rep. 718 (H.L.) (1843).

*H.M. Advocate v. Dingwall*, 5 Irv 466 (1867).

*Hamilton v. Alabama*, 368, US 52 (1961).

Mackay, R. (2022). The Insanity Defence in English Law, in Ronnie Mackay, and Warren Brookbanks (eds), *The Insanity Defence: International and Comparative Perspectives*. Oxford: Oxford Academic. <https://doi.org/10.1093/oso/9780198854944.003.0002>.

Mental Health Act, (2007).

Ormerod, D. & Laird, K. (2021). *Smith, Hogan and Ormerod's Criminal Law* (16th ed.). Oxford University Press.

Pollock, F. & Maitland, F. (1898). *The History of English Law before the time of Edward I* (2<sup>nd</sup> ed.). London: Cambridge University press.

*R v. Charlson*, 1 All E.R. at P. 859 (1955).

*R v. Cooper*, EWCA Crim 2335 (2010).

*R v. Johnson*, EWCA Crim 1978 (2007).

*R v. Kemp*, 1 Q. B. 399; [1956] 3 All E.R. 249 (1957).

*R v. Kopsch*, 19 Cr. App. Rep.50 C.A.C. P.51 ((1925)).

*R v. Lincolnshire (Kesteven) Justices*, 1 WLR 335 (DC) (1983).

*R v. M'Naghten*, 8 ER 718 (1843).

*R v. Sullivan*, AC 156 (1984).

*R v. Windle*, 2 Q.B.826 (1952).

Ranade, K., Kapoor, A., & Fernandes, T. N. (2022). Mental health law, policy & program in India— A fragmented narrative of change, contradictions and possibilities. *SSM-Mental Health*, 2, 100174.

Section 1 (2) of Criminal Procedure (Insanity and Unfitness to Plead) Act (1991).

Section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act (1991).

Section 1(1) of Criminal Procedure (Insanity and Unfitness to Plead) Act (1991).

Section 2 of Criminal Procedure (Insanity and Unfitness to Plead) Act (1991).

Section 2 of the Homicide Act (1957).

Section 2 of The Trial of Lunatics Act (1883).

Section 2(5) Criminal Procedure (Insanity and Unfitness to Plead) Act (1991).



Section 22 of Domestic Violence, Crime and Victims Act (2004).

Section 4 of the Criminal Procedure (Insanity) Act (1964).

Section 54 (2) of the Mental Health Act (1983).

Section 54 (3) of the Mental Health Act (1983).

*Stepleton*, 86 C.L.R.358 (1952).

Stevens, R., (2020). Defenses, in Andrew S. Gold, and others (eds), *The Oxford Handbook of the New Private Law*. Oxford Academic: Oxford University Press. ISBN: 9780190919665

Witt, J., Hu, Y., & Anacker, L. (2023). Role of expert opinion in an insanity defense. *Journal of the American Academy of Psychiatry and the Law*, 51(4) 587-589.

<https://doi.org/10.29158/JAAPL.230095L1-23>