

**RESEARCH PAPER****Analysis of the Law of Insanity Defense in the United Arab Emirates****<sup>1</sup>Ali Ajmal\* and <sup>2</sup>Faiza Rasool**

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**ABSTRACT**

The objective of this research is to analyze the law on insanity defense in the United Arab Emirates. The criminal law of the United Arab Emirates recognizes the principle of the defense of insanity against the criminal liability of an accused. The doctrinal legal analysis approach was adopted to study the defense of insanity in the United Arab Emirates. The defense of insanity in the United Arab Emirates is dealt with under Article 138 of Federal Law No. 31 (2021), which primarily revolves around the principle of the complete inability to control one's actions at the time of perpetration of an offense due to mental disorders. However, the role of medical opinion is pivotal in determining the plea of insanity. This law can be further developed by amending it and inculcating insights from the latest developments in mental health sciences.

**Keywords:** Crime, Defense, Insanity, Mental, The United Arab Emirates**Introduction**

Insanity defense is a defense against the criminal responsibility of an offender suffering from a mental disorder. A person suffering from a mental disorder cannot be declared guilty of the crimes committed by him (Mackay & Brookbands, 2022). The law in the United Arab Emirates recognizes the doctrine of the defense of insanity. Article 138 of Federal Law Number 31 of 2021 is the relevant provision which deals with the insanity defense. A person who is legally insane cannot be held liable for the crimes committed by him that meet certain criteria. According to Article 138 of Federal Law Number 31 (2021), a person cannot be held criminally liable if, at the time of perpetrating an offense, he was not able to control his actions either due to insanity, mental deficiency, or psychological disease. However, there must be a complete inability to control one's action to avail oneself of the defense of insanity (Article 138, Federal Law No. 31, 2021). Partial loss of mental ability is dealt with under the principle of diminished capacity (Frederick, 2012).

**Literature Review**

The insanity defense is one of the defenses against the criminal liability of a person (Ajmal et al., 2023b). It is a defense against the criminal liability of a person having a mental condition, which can be either due to a mental disorder or a temporary or relatively permanent state of loss of consciousness. It is a settled principle of law that a person who is legally insane cannot be held responsible for the crime committed by him and punishing such a person for his crime will be of no use. Thus, the law prohibits punishing a person who is suffering from legal insanity (Ajmal & Rasool, 2024). The relationship between insanity, insanity defense and the element of crime is complicated (Ajmal et al., 2023b).

Where the development of medical science, particularly mental health science, and the consequent increased awareness and cognizance of mental disorders and mental conditions in legal matters brought the insanity defense into more use, critics and the public saw this defense as a pseudo-defense based on their limited understanding of mental disorders, as if the mental illness could be easily feigned (Ajmal et al., 2023a). The

misconception about the defense of insanity is even found among the relevant stakeholders, i.e. jurists, judges, lawyers, psychologists, psychiatrists, etc., as many of them are unable to understand the defense of insanity with its intricacies (Ajmal, 2023). Moreover, terms such as crazy, mentally ill, insane, mad, etc. are no longer used in mental health literature because they are stigmatized and narrow.

Insanity is defined in terms of mental disorders in modern mental health science (Ahonen, 2019). Article 1 of Federal Law No. 10 (2023) on Mental Health defines a mental disorder as a disturbance in mental abilities sufficient to cause a defect in everyday functioning. International Classification of Diseases Edition 11 (2019) defines mental disorder as a condition with a significant disturbance which causes disability, dysfunction, and distress in a person's life while suffering from this condition. DSM-5-TR (2022) also defines mental disorders in similar terms.

The law on the defense of insanity in the UAE has evolved to its current form. It was comprehensively dealt with under Article 60 of Federal Law No. 3 (1987). Article 60 asserts that criminal responsibility cannot be fixed on a person if such a person is not in his senses at the time of perpetration of the crime, and that too is subject to the fulfilment of certain conditions. The loss of consciousness and/or perception was the criteria for the defense of insanity. The loss of perception or consciousness must be either due to mental handicap, madness, or the influence of intoxicating substances taken unconsciously (Article 60, Federal Law No. 3, 1987). Insanity defense in the UAE in its current form is dealt with under Article 138 of Federal Law No. 31 (2021). Moreover, under Article 2 of Federal Law Number 3 (1987), an accused in a criminal charge is presumed innocent until proven guilty, and this principle is followed in cases of plea of insanity too.

The UAE is a multicultural and multiethnic country with a diverse immigrant population belonging to different cultural backgrounds. The UAE primarily adopted a civil legal system with some Islamic laws, keeping in perspective indigenous realities. The law in the UAE recently went through drastic changes. The law on insanity defense in the UAE is a developed law, yet it is not developed so far at par with other first-world countries like the US, UK, Europe, etc. The jurisprudence on the defense of insanity in the UAE needs further developments to cater to the intricacies of and implement the law on the defense of insanity in true letter and spirit. This paper analyzes the law of the defense of insanity in the UAE and highlights the lacunae in the law, which is pivotal for the further development of the law of the insanity defense in the UAE. The comprehension and implementation of the law on insanity defense in the UAE needs an interdisciplinary approach. The results of this research will be equally useful for legislatures, judges, jurists, lawyers, psychologists, psychiatrists, security agencies, and prison personnel.

## **Material and Methods**

The doctrinal legal analysis was used to analyze the law of insanity defense in the United Arab Emirates.

## **Results and Discussion**

### **Scope of Article 138 of Federal Law No. 31 of 2021**

There is a certain criterion to invoke Article 138 of Federal Law No. 31 (2021), as not every crime committed by a person with compromised mental health will come under the scope of this article. Article 138 asserts that a person shall be absolved of his criminal responsibility only if he commits a crime in a mental state which makes him unable to control his conduct completely due to his abnormal mental state (Article 138, Federal Law No. 31, 2021). Just having a mental condition or disorder does not necessarily make a person legally insane. The court can place a mentally ill accused in a therapeutic facility based on

medical opinion. In the event a person becomes legally insane even after the passing of a judgment or during a sentence, he will be placed in a therapeutic facility instead of prison.

### **An Insane Person will not be criminally responsible**

The law in the UAE does not consider a person suffering from a mental disorder liable for the crime(s) committed by him, subject to the fulfillment of certain legal criteria (Article 138, Federal Law No. 31, 2021). A person who is declared legally insane cannot be held responsible for the offenses committed by him. Although the relationship between legal insanity, crime, and mens rea is complicated and cannot be explained in general terms, even a legally insane person cannot be held responsible for strict liability crimes (Morse & Hoffman, 2007). Furthermore, punishing a person meeting the criteria of legal insanity neither meets any of the objectives nor satisfies the basic underlying principles of penal law (Upadhyay, 2017).

### **Mental condition at the time of perpetrating the crime**

It is evident from Article 138 of Federal Law No. 31 (2021) that the mental condition of an accused at the time of the perpetration of an offense is relevant in the insanity defense. An accused taking the plea of insanity must prove that he was having legal insanity at the time of the perpetration of an offense. The mental condition of the accused before or after the perpetration of the offense is irrelevant in the context of the insanity defense. Insanity defense across the jurisdictions of the world is based on the mental condition of an accused at the time of perpetration of an offense, and the mental condition of an accused at the time of trial is dealt with differently under the principle of competency to stand trial or competency to proceed (Ajmal et al., 2023c).

### **In a state of insanity, mental deficiency, or psychological disease**

An accused must be in a state of insanity, mental deficiency, or psychological disease at the time of the perpetration of a crime to avail himself of the defense of insanity. Moreover, the state of insanity, mental deficiency, or psychological disease must be of such a nature that it makes the accused completely devoid of his control over him (Article 138, Federal Law No. 31, 2021). The law requires such a mental state of the accused that he does not know what he was doing or what he was doing at the time of perpetrating an offense was wrong or contrary to the law. An accused cannot be absolved of his criminal liability because of the limited loss of his control over him. The principle of diminished responsibility is also applicable in the UAE, like other jurisdictions across the world (Ajmal & Rasool, 2024).

### **Completely incapable of controlling one's actions**

The law in the UAE acknowledges the defense of insanity against the criminal liability of a person in case of complete loss of control over his actions due to insanity, mental deficiency, or psychological disease. Primarily, the law on the defense of insanity focuses on the state of complete inability to control one's actions. The plea of insanity cannot be taken merely because the accused has some mental condition and/or disorder; rather, the complete loss of control over one's actions is the main criterion in this regard (Article 138, Federal Law No. 31, 2021).

### **Placing an accused with legal insanity in a therapeutic facility**

It is a general principle of criminal law that an offender having a mental condition or disorder, subject to meeting certain criteria, will be admitted to a mental health facility for treatment instead of a prison, as punishing an offender with compromised mental health would be counterproductive (Ajmal et al., 2023a). Likewise, in the UAE, a person suffering

from legal insanity cannot be sent to prison for the crime committed by him; instead, such a person shall be placed in a therapeutic facility for treatment. His admission and release from the therapeutic facility will be guided according to the criteria set by the relevant law in the UAE (Article 138 of Federal Law No. 31, 2021).

### **Induced insanity due to drugs, narcotics, intoxicating substances, or any scientifically proven cause**

There are many scientifically proven conditions that can cause loss of perception and/or will, and forensic evidence is of pivotal importance in this regard (Ajmal & Rasool, 2022). The law in the UAE recognizes the defense of insanity not just in the case of any permanent mental disorder but also if the insanity is induced in an offender due to the use of drugs, narcotics, or other intoxicating substances. However, insanity, mental deficiency or unconsciousness because of drugs, etc. can be taken as a defense if such intoxicating substances are given to a person forcefully or taken by him unintentionally. Moreover, in the given scenarios, an insanity defense can be taken if there is a substantial loss of perception or will at the time of the perpetration of a crime. Partial loss of perception or will at the time of perpetration of a crime because of drugs, etc. will be dealt with under the principle of diminished capacity (Article 62, Federal Law No. 31, 2021). It is evident from Article 63 of Federal Law No. 31(2021) that the want of perception or will because of intoxication material taken by a person willfully cannot be taken as an excuse; even in certain circumstances, willful taking of such materials will be an aggravating factor (Article 63, Federal Law No. 31, 2021).

### **Competency to stand trial or to proceed against**

An accused who is unable to defend himself during a criminal trial against him due to his mental condition cannot be proceeded against. The doctrine of incompetency to stand trial or competency to proceed against is based on the premises that it will violate the principle of fair trial if a person who is unable to instruct his counsel, unable to confess, unable to appreciate evidence presented against him, etc. will go through a criminal trial against him (Ajmal et al., 2023c). The law in the UAE acknowledges the doctrine of incompetency to stand trial. Article 186 (1) of Federal Law No. 38 (2022) asserts that the trial of a person who is unable to defend himself due to his mental condition shall be suspended until such a person becomes mentally fit (Article 186 (1) of Federal Law No. 38, 2022).

### **Procedure for the trial of an accused with compromised mental health**

Articles 185, 186, 187, and 188 of Federal Law No. 38 (2022) deal with the procedure of trial for an insane accused. The trial of such an accused would be on hold, and he would be placed in a therapeutic facility. Article 185 of Federal Law No. 38 (2022) gives powers to the chief prosecutor to place an accused with compromised mental health into a medical facility for his mental health examination. Article 186 of Federal Law No. 38 (2022) deals with the competency to stand trial of an insane accused. According to this article, the trial of an accused with legal insanity shall not be continued until such an accused does not become normal. Article 186 (2) gives powers to the public prosecutor and the court to place an accused, who is incompetent to stand trial, at a medical facility for treatment. The period spent by such an accused at the medical facility will be subtracted from the period of sentence given to the accused if he is found guilty after trial after regaining his mental health, according to Article 187 of Federal Law No. 38 (2022). However, if an accused is acquitted on the ground of legal insanity, he shall be placed in a medical facility unless he would regain his normal mental health or is no longer a danger for himself or others, according to Article 188 of Federal Law No. 38 (2022).

## **Conclusion**

The law in the UAE does not fix criminal responsibility on an accused who was suffering from mental disorders at the time of the perpetration of a crime, subject to the meeting of certain criteria. The law on insanity defense in the UAE is comprehensive yet underdeveloped. While this law has its strengths as compared to many other countries, it also has its limitations, which can be curtailed by further developing it considering modern developments in mental health sciences. It is recommended that the law on insanity defense in the UAE be amended, considering modern developments in mental health sciences and by adopting interdisciplinary approaches to comprehend and implement the doctrine of insanity defense and legal insanity in its letter and spirit.

## **Recommendations**

The law on the defense of insanity in the UAE must be amended for its further development. The law on insanity defense in the UAE is primarily focused on the inability to control one's actions while ignoring another important aspect of the perception of right and wrong. In most jurisdictions around the world, a person is considered legally insane if he is unable to control his actions and/or if he is unable to understand what is legally right and wrong. The law on insanity defense in the UAE can be further developed by including this important arm of legal insanity into it. Moreover, the concept of 'complete inability' to control one's action in Article 138 of Federal Law No. 31 (2021) is not aligned with the modern literature of mental health sciences and jurisprudence in the context of legal insanity, thus does not meet the objective of the insanity defense, and it must be amended and substituted with the concept of 'substantial inability' to control one's actions.

The terms used in Article 138 of Federal Law No. 31 (2021), such as insanity, mental deficiency, psychological disease, and therapeutic shelter, are not only obsolete terms but also limited in scope and must be substituted with suitable terms considering the developments in the mental health sciences. Moreover, the said article must be further amended by substituting the words 'in a state of insanity, mental deficiency, or psychological disease' with some suitable expression. These words give the impression that legal insanity is a state while ignoring its dispositional aspect, which is central to mental disorders. Similarly, the expressions such as 'insanity, mental deficiency, or unconsciousness' used in Article 62 of Federal Law No. 31 (2021) must be amended for being narrow and obsolete.

The definition of mental disorder given in Article 1 of Federal Law No. 10 (2023) on Mental Health is not comprehensive and elaborative enough and must be amended to comprehend and explain the true nature of mental disorders. The terms such as insanity, mental disorder, mental weakness, or a serious psychological disease used in Article 186(1) of Federal Law No. 38 (2022) are misnomers and do not meet the objective for which they are being used. Moreover, the words used in this article 'occurring after the perpetration of the crime' must be amended and substituted with proper expression, as these words are giving an irrelevant impression about the incompetency to stand trial as if it were limited only to the accused who got mental disorder after the perpetration of a crime. However, the scope of the principle of incompetency to stand trial is about the mental condition of the accused at the time of proceeding against him, which is irrelevant to the fact that such a mental condition started before or after the perpetration of a crime.

There must be a standard procedure and mechanism for the mental health evaluation of the accused taking the plea of insanity under the rules and regulations set by taking relevant stakeholders on board. There is a need to train psychologists, psychiatrists, judges, lawyers, police, and prison personnel in the UAE to better comprehend and implement the concept of insanity defense and for the further development of jurisprudence on the subject, considering modern advancements in the relevant disciplines. In this regard,

mandatory interdisciplinary courses must be introduced in universities and training institutions for capacity building.

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