

'HANGING IN IMBALANCE': FORENSIC MENTAL HEALTH AT CROSSROADS IN PAKISTAN

MOWADAT H RANA¹, ROOP Z RANA²

¹Chief Editor, JPPS

²The Healing Triad, Pakistan.

Four mentally ill individuals convicted of murder and sentenced to death, await their fate as the Supreme Court of Pakistan hears their appeals. After being declared patients of psychosis, their appeals at suspension of their execution were rejected at all judicial levels, and the sentence to hang them till death has been upheld so far in each case. Appeals challenging the legal validity of hanging a person suffering from mental illness are filed and the Supreme Court of Pakistan has formed a bench of five learned judges to decide on the matter. The outcome will have historical and far reaching futuristic legal and mental health policy implications. As of today, the issue hangs in balance, and can go either way.

This editorial is a professional appeal by the mental health fraternity of Pakistan from the forum of Pakistan Psychiatric Society. The authors provide scientific evidence to the learned Court that hanging of individuals suffering from serious mental illness would be against international covenants, human rights, and good science. Hanging these patients would also be against the spirit of law and ethics and cultural mores of our Country, as well as against professional standards, guidelines, and scientific recommendations on the subject from around the world. It is sad to record that one out of the four individuals have died of natural causes while the proceedings of his case were underway.

Mental illnesses are, unfortunately, seen in legal circles with suspicion and doubt. The legal profession views them as abstract conditions that are more "in the air", spiritual and psychological conditions that people experience transiently as a result of tensions and stresses of life, rather than diseases of mind and brain with a scientific basis. The Pakistani legal system continues to rely on draconian and archaic laws of the 19th Century AD while deciding on criminal proceedings against those suffering from mental illness. Even in 2020 mental illnesses are shrouded in mystery, confused further by poetic, dramatic and religious explanations. These unscientific views are well entrenched in the law on account of its roots in human traditions, values and mores, instead of science. The consequent myths and misconceptions are not confined to mental illness but extend to include psychiatric treatments, and psychiatrists.

The most dangerous and yet most common misconception amongst practitioners of law is the notion of malingering or feigning of mental illness and the ease with which it can be done to circumvent law. Most practitioners of law believe that mental illnesses can be faked as there are "no specific assessment methods, consistent and elicitable signs, diagnostic laboratory and radiological tests, and no known scientific or structural, and demonstrable means to establish the diagnosis of mental illness". The honourable judges tend to undertake 'evaluation of presence of mental illness' in their respective courts and decide for themselves, if a person is mentally ill or not. They believe that criminals may

wrongly use mental illness as a defense and thus hoodwink the judicial system. The reality, however, is far from these notions. The possibility of seeking a forensic opinion on the presence, degree, type, nature, or absence of mental illness from a team of mental health professionals is not a legal requirement in the existing law on the subject. The dispensation of justice to a mentally ill who has been convicted of a crime or suffering from mental illness while incarcerated thus 'hangs in imbalance'.

Relationship between specific mental illnesses and crime

Some mental illnesses have demonstrable, diagnosable, and extensively researched overlaps with criminal offences:

The commonest form of mental illness that has overlap with criminal offences are those covered under the umbrella of Psychosis. The term refers to an individual having abnormal beliefs (delusions) as well as sensations without any outside stimuli (hallucinations). All forms of psychoses are also characterised by an absence of insight into the nature of their illness, acts of commission and omission made and need for treatment. Individuals suffering from psychosis also lack the capacity to make reasonable, common sense judgments in situations of potential harm to their own self or to those of others. A person with psychosis may, therefore, destroy property, steal, injure, kill or perform an act, appearing to be a crime, in the eyes of law. This, however, would be an act without any intent, plan, consequence, or advantage to the patient (termed *mens rea* in law) suffering under the burden of psychosis.

The illnesses more likely to be associated with crime predominantly include Schizophrenia and related disorders, Mood disorders with or without psychosis, Pathological jealousy, Organic mental disorders, Epilepsy, Impulse control disorders, Personality disorders, Intellectual Disability, Posttraumatic Stress Disorders, and Substance and Alcohol Abuse. The most common disorders that may lead to crime and run-ins with the law, however, continue to be schizophrenia, and related psychotic disorders.

Psychotic disorders may take the form of pathological jealousy as a particularly dangerous form of psychosis that was identified in 12% of 'insane' male and 3% of 'insane' women murderers in a study¹. Schizophreniform features may appear in puerperium, or under the effect of chronic alcohol and drug abuse or as acute syndromes with psychostimulant and psychedelic drug abuse.

While violent crimes are committed by a only minority of individuals with serious mental illness, Fazel *et al.* (2014a) showed that 10.7% of men and 2.7% of women with schizophrenia were convicted of a violent offence within five years of their diagnosis^{2,3}. In fact, a majority of individuals suffering from psychosis are no more dangerous to the public than the general population⁴. This has held



true over time and homicidal behaviour by the mentally ill is far less prevalent now than it was in the 1970s^{5,6}.

The four individuals whose appeals against death by hanging are being heard by the Supreme Court of Pakistan are suffering from Schizophrenia and related disorders. It may benefit the defendants' lawyers to refer to the following database:

1. Effect of Mental illness on Criminal Offences

Schizophrenia and other psychoses, mediated with substance use, were found to be associated with violence in a meta analysis of 20 studies (18,423 individuals)⁷. There is also an increased risk of violence associated with personality disorders with comorbid substance use⁶.

2. The International Covenant on Civil and Political Rights (ICCPR)

This covenant was ratified by Pakistan in 2010. General comment 336 on Article 6 of ICCPR states "Refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons who have serious psychosocial and intellectual disabilities that may impede their effective defence, (and) persons that have diminished ability to understand the reasons for the sentence..."

In its model penal code, the American Law Institute recommended the following test of criminal responsibility:

"Persons are not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, they lacked substantial capacity either to appreciate the criminality (wrongfulness) of their conduct or to conform their conduct to the requirement of the law. The term mental disease or defect does not include an abnormality manifest only by repeated criminal or otherwise antisocial conduct."

Subsection 1 of the American Law Institute rule contains five operative concepts:

- mental disease or defect
- lack of substantial capacity,
- appreciation, wrongfulness, and conformity of conduct to the requirements of law.

The rule's second subsection, stating that repeated criminal or antisocial conduct is not, of itself, to be taken as mental disease or defect, aims to keep the sociopath or psychopath within the scope of criminal responsibility.

3. Mental Health Foundation, United Kingdom:

"Mental capacity means being able to make your own decisions. Someone lacking capacity - because of an illness or disability such as a mental health problem, dementia or a learning disability - cannot do one or more of the following four things:

- § Understand information given to them about a particular decision
- § Retain that information long enough to be able to make the decision
- § Weigh up the information available to make the decision
- § Communicate their decision."

"The key issue in determining the culpability of an individual is whether the accused had the mental capacity to form the intention (mens rea), or whether mental disorder might have affected that capacity.

"Individuals with mental illness are especially vulnerable in the legal system as they may not want their condition to be recognised as well as actively hide it. They may be unable to understand their rights. They may also feel overwhelmed by police presence, upset at being detained and attempt to run away (thus, appearing guilty). They may only say what they think police want to hear even if it is not true. They may be "unfit to plead" and unable to assist their defence lawyer and may appear to show no remorse. All these factors contribute to their sentencing, therefore, being harsher."

"Ensuring the Utility, Quality and Reliability of Medical Experts' Reports"⁸

The major concern of judiciary and law makers is the possibility of criminals malingering or feigning mental illness to exploit the system and, thus, escape punishment. The way to reduce malingering is by ensuring that the expert report about a defendant's mental health is valid and reliable and has a proper evidential basis. This will help ensure that any conclusions about the presence of a mental disorder have been properly drawn and are not just a matter of the experts' subjective opinion.

In this regard, it is useful to consider the approach taken by courts in Victoria, Australia. They have developed a Court Practice Note that delineates certain matters that must be addressed in expert reports that relate to the mental functioning of the offenders. This Practice Note aims to ensure that an expert's opinion regarding the defendant's mental state is based on proper evaluation, facts and reasoning and thus can be relied upon in determining the appropriate sentence.

The Practice Note requires expert reports to include a range of matters, including

- the expert's name and place of employment;
- a statement of the expert's qualifications and experience;
- whether any particular matter falls outside the expert's specialised knowledge;
- in respect of each opinion expressed in the report, the facts on which the opinion is based and the reasons for the opinion;
- any qualification of an opinion expressed in the report without which the report would or might be incomplete or misleading;
- any limitation or uncertainty affecting the reliability of the opinions in the report;
- any concern which the expert has about the reliability of facts reported by the subject, on which the expert has relied, together with the basis of that concern;
- any examinations, tests or other investigations on which the expert has relied;
- any limitation or uncertainty affecting the reliability of such examination, test or investigation; and
- a declaration that the expert has made all the inquiries and considered all the issues which the expert believes are desirable and appropriate, and that no matter of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld.

Furthermore, the Practice Note confirms that "an expert should not simply rely on diagnostic labels" or "simply record opinions or conclusions". For a report to be considered appropriate, and trustworthy, it must engage in detailed and research-based discussion, rather than merely making unqualified assertions.

The reliability of expert reports is further reinforced by the fact that the expert "has an overriding duty to assist the Court impartially, by "giving

an objective, unbiased opinion on matters within the expert's specialised knowledge". To prevent such biases, the Practice Note makes clear that this duty "overrides any obligation to the commissioning party or to the person by whom the expert is paid". Thus, by having clear and strict guidelines surrounding expert reports, the court can more confidently rely on them.

While such guidelines do not currently exist in Pakistan, it is recommended that judges and defence counsel seek reports that contain such information, to help assure those involved in the process that the information is accurate and reliable. The legal system of Pakistan can form local, regional, and provincial panels of mental health professionals to make forensic mental health assessments in all relevant matters. The Federal Government and the Supreme Court of Pakistan may seek opinions from a constitutionally formed Federal Mental Health Authority envisaged in the Mental Health Act 2001 in matters in which it so deems necessary.

Table 1, is a suggested list of screening questions formulated by authors in collaboration with a forensic mental health specialist of international standing that can be used by the courts of law to identify individuals who may be suffering from a mental illness, prior to the criminal act or during their incarceration. This is a sample of a tool that could both ensure the State serves justice as well as save the mentally ill from unjust treatment. The mental health fraternity of PPS appeals to the Supreme Court of Pakistan to instruct the

Government to undertake the formation of fresh legislation on matters where crime and mental health overlap. Such legislation will enhance the stature of Pakistan in the international community as a nation committed to human rights and rights of the mentally ill.

The Pakistani legal system is currently judging individuals with mental health issues based on a law from the 19th century. The field of mental health and psychiatry has progressed leaps and bounds in the last 100 years. Individuals with mental illness, in the year 2020, are fortunate enough to live in a time where mental illness can be tested with objective measures such as brain imaging and neuropsychological tests and treated with evidence based medicine. The legal system unfortunately does not afford them the basic human right of being treated as "unwell". This also belies the most basic principle of the standard test of criminal liability, that an individual can only be deemed a criminal if he has both committed a criminal act (actus reus) and had the intention to commit the crime "mens rea". An individual suffering from serious mental illness if lacking the capacity to form criminal intent, cannot be held liable for the criminal act alone. It is high time for the legal system to bridge the gap between the existing law on the subject, that has lost relevance and the international laws and covenants rooted in scientific evidence. While it happens, lives of mentally ill convicts hang in the balance. The Pakistan Psychiatric Society anxiously awaits the decision of the Supreme Court of Pakistan. Reportedly the honourable Court has appointed a senior member of the psychiatric fraternity and PPS as *amicus*.

Table: Forensic Mental Health Screening Questionnaire.

Query	Yes	No	Comments
1. Suicide Risk			
Has the detainee ever been hospitalised for psychiatric treatment?			
Does the detainee currently receives outpatient psychiatric treatment?			
Does the detainee take any medication? If yes, entre names in comments column			
Does the detainee use alcohol, drugs, or both?			
Has the detainee ever attempted suicide? When? How?			
Does the detainee feel suicidal now?			
2. Adversity, Abuse, & Injury			
Is there childhood history of physical, emotional, or sexual abuse?			
What is the detainee's family psychiatric history?			
Is there family history of substance / alcohol use?			
Is there a history of head injury / Road Traffic Accident?			
Is there history of fits or change in consciousness, or feeling of being possessed by a jinn or under evil spirits			
4. Mental state (To be assessed with the help or by a mental health professional)			
Is the detainee oriented in time, place and person?			
Do other people find that your mood changes frequently or you are excited, and too emotional?			
Do you get easily irritable, and find yourself shouting at people, or starting fights and arguments?			
Have you ever felt depressed and sad most of the day for at least two weeks?			



Have you lately felt like you were useless, worthless, or sinful?			
Have you been taking longer over the things you do because of how you feel?			
Have you <i>recently</i> been able to enjoy your everyday activities?			
Have you <i>recently</i> felt that life is not worth living?			
Have you <i>recently</i> found yourself wishing you were dead and away from it all?			
Have you ever been troubled by repeated thoughts, feelings, or nightmares about something you have experienced or witnessed?			
Have you ever felt constantly on guard or watchful even when you didn't need to, or felt jumpy and easily startled?			
Have you <i>recently</i> felt that your thoughts have been directly interfered with, or controlled by another, in a way that people would find hard to believe?			
Have there <i>recently</i> been times when you felt people were plotting to cause you harm?			
Do you <i>currently</i> believe that someone can control your mind by putting thoughts into your head or taking thoughts out of your head?			
Do you <i>currently</i> believe other people know your thoughts and can read your mind?			
Have you <i>recently</i> heard voices when there was no one around to account for this?			
Have your friends or family noticed you are <i>currently</i> much more active than you usually are?			
Are you <i>currently</i> taking any medication for any emotional or mental health problems?			
Have you ever been in hospital for emotional or mental health problems?			
Are you currently seeing a psychiatrist or psychologist?			
Have you seen a psychiatrist or a psychologist in past?			
Have you ever self-harmed?			
Do you currently feel the need to self-harm?			
Does the detainee have a past criminal history?			

Forensic Mental Health Screening Questionnaire by Dr Sobia Khan, Consultant Forensic Psychiatrist, Queensland Health, Australia, Roop Z Rana, Mowadat H Rana (Authors)

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