

# FORENSIC MENTAL HEALTH – TIME TO IMPLEMENT SAFIA BANO JUDGEMENT?

**DR TARIQ M. HASSAN**

Associate Professor, Forensic Psychiatry, Queen's University, Kingston, Ontario, Canada.



CORRESPONDENCE: **DR TARIQ M. HASSAN**

Email: [hassant@providencecare.ca](mailto:hassant@providencecare.ca)

## ABSTRACT

Over three years have passed since the landmark Safia Bano Supreme Court judgement. This ruling laid the foundations for capacity building in the area of forensic mental health; however, there is more work needed to improve the basic understanding of forensic mental health in professionals who interact with the mentally ill offender on behalf of the courts. In 2023, the Noor Muqaddam case showed that lessons from Safia Bano Judgement seemed not to have been completely implemented. However, there has been some progress in this area and the need for legislative changes to assist in implementing the historical verdict.

## KEYWORDS

Capacity Building; Criminals; Forensic Mental Health; Judgement; Mentally Ill Persons; Social Responsibility.

The Messenger of Allah (ﷺ) said: "The Pen is lifted from three (i.e., their deeds are not recorded):

1. a child until he reaches puberty;
2. an insane man until he comes to his senses;
3. one who is asleep until he wakes up."

[Recorded in Abu Dawud #4403, and Ibn Majah #2041]<sup>1</sup>

This hadith beautifully encapsulates the essence of forensic psychiatry. It highlights the importance of accurately assessing and determining the intention of a person before judging their actions. Similarly, when a crime is committed, a person should only be punished if it can be proved that there was a mala fide intention. In the above hadith, it is known that a child's understanding of right and wrong and the implications of their actions are in very early stages of development. If a child is exposed to 'Adverse Childhood Events' (ACEs), they are at risk of both psychiatric and medical comorbidities, which can affect their understanding of societal norms. An example is the grooming of child soldiers in the Congo in Africa. The second point of the hadith describes a situation commonly seen in forensic psychiatry. For example, a person with untreated schizophrenia suffers from delusions of persecution and acts on those delusions to protect themselves by killing or harming the person they believe is persecuting them.

Though the person with schizophrenia committed the act, their intention can be considered being faulty, and therefore should not be punishable in the traditional sense. The third point for me as a forensic psychiatrist that I find most fascinating in this hadith is that it highlights the role of sleepwalking and crime. This is a concept that has only in the last fifty years made its way into important legal decisions.

The legal provisions in Pakistan are contained in the Pakistan Penal Code (PPC). The guidelines for judges to implement a fair trial are contained in the Code of Criminal Procedure (CrPC). To

prove a person guilty of committing a crime, both intent (mens rea) followed by the act (actus reus) must be proven to be bad. A person can neither be found guilty of a crime by purely having bad intentions or of doing something where intent is questionable, as stated in the above Hadith.

The CrPC Section 34 provides a chapter on how the courts should manage the judicial process for the mentally ill accused person. Unfortunately, these provisions are rarely implemented by the courts, leading to mentally ill individuals being sentenced to prison or death when in fact they should be treated in a hospital.

Imdad Ali, a man who was at about 42 years of age, was accused of shooting to death Hafiz Muhammad Abdullah on January 21, 2001. The trial court Burewala Additional Sessions Judge framed charges against him on January 9, 2002, and Imdad Ali pleaded not guilty. Initially neither he nor his family appointed any defending lawyer; hence, a second advocate had to be appointed at the state's expense when the first one expressed his reluctance to continue representing the appellant.

On 9th February 2002, the defence counsel made an application under Section 465 of CrPC to know whether Imdad Ali was mentally competent to stand trial. The court dismissed this application on March 12, 2002, after hearing arguments that there were no grounds for believing that he was mentally ill. The Lahore High Court, Multan Bench, was approached on appeal, but the revision was dismissed.

Thereafter, a request was filed to call Dr. Ihtisham ul Haq, who had earlier examined Imdad Ali. The application was dismissed by the court on May 7th, 2002. This dismissal too did not go beyond the stage of a cursory hearing, as it was challenged and abandoned thereafter. Imdad Ali's evidence was considered after the prosecution closed its case under Section 342 CrPC. His wife, Safia Bano, gave evidence that Imdad Ali had shown signs of mental instability and had been advised treatment at a psychiatric hospital before the offence.

On July 29, 2002, the trial was concluded, and Imdad Ali was convicted and sentenced to death. His appeal was dismissed by the Lahore High Court on November 7, 2008, and the death sentence was upheld. A jail petition filed with the Supreme Court was also dismissed on October 19, 2015. Imdad Ali did not file a review petition against this decision but sought mercy from the President of Pakistan, which was denied on November 17, 2015.

On the 26th of July 2016, when black warrants were issued, Safia Bano submitted an application for a medical board to determine the mental state of her husband, which was dismissed by Additional Sessions Judge, Vehari. Her subsequent appeals before the Lahore High Court and the Supreme Court did not succeed either. Consequently, Safia Bano lodged Civil Review Petition, C.R.P. No. 420 of 2016, whereas the Inspector General of Prisons Punjab and the State, through the Prosecutor General of Punjab, also filed separate petitions seeking review of the death sentence on account of Imdad Ali's mental disorder.

Imdad Ali's nephew, Salahuddin, had been instrumental in seeking justice for his uncle. The involvement of the lawyers from Justice Project Pakistan headed by Barrister Sarah Belal was a game changer for the family. Their tireless efforts ultimately bore fruit in February 2021.

The landmark judgement of Safia Bano in the Supreme Court in 2021 gave hope for a new era where forensic mental health could be understood and actualised through Apex Court directives. Its directions included obviating old-fashioned labels such as 'lunatic' and initiating capacity building in this area by instructing the Federal and Provincial Judicial academies to conduct programs on forensic mental health.<sup>2</sup>

A year later, the Noor Muqaddam case shocked Pakistan, highlighting significant concerns related to forensic mental health within the country's criminal justice system. Noor Muqaddam, a 27-year-old woman and daughter of a former diplomat, was brutally murdered in July 2021 by Zahir Jaffer, a scion of an influential family.<sup>3</sup> The case brought to light not only the horrific nature of the crime but also was a test case post Safia Bano and the critical role of forensic psychiatry in the investigation and trial process of such cases, especially where Mr. Jaffer's mental state at the time of committing the crime was brought into question.

It is critical that the overall criminal justice system have a sound understanding of forensic psychiatry and forensic mental health. This may have been important in evaluating Zahir Jaffer's mental state during the crime. Jaffer's defence attempted to plead insanity, arguing that he was not in control of his actions due to severe mental illness. This plea necessitated a thorough psychiatric assessment to determine his competency to stand trial and his mental state at the time of the crime.

Evaluation by general psychiatrists sought to ascertain whether Zahir Jaffer understood the nature and wrongfulness of his actions. Such assessments are vital to determine if

individuals are mentally competent and can be held accountable for their crime(s) or they are in need of appropriate mental health care. In Jaffer's case, the psychiatric evaluations concluded he was fit to stand trial. It is unclear if an assessment was conducted to ascertain the mental competence. This psychiatric determination was based on presented evidence that Zahir Jaffer had meticulously planned the crime, demonstrating both awareness and intent.

The Noor Muqaddam case underscored several challenges within Pakistan's forensic mental health framework. It highlighted the lack of adequately trained forensic psychiatrists and professionals in the criminal justice system with knowledge of forensic mental health and the need for specialised training programs. The case brought attention to the stigma surrounding mental health issues in Pakistan, which can impact the objectivity and thoroughness of psychiatric evaluations under the glare of media scrutiny and, at times, serious public outrage. Moreover, it exposed the inadequacies in legal policies and procedures with the need to implement the Safia Bano Supreme Court judgement on handling cases involving mental health claims.

Public and media attention of the case also emphasised the need for better mental health awareness and education. This tragic event served as a catalyst for discussions about mental health resources, the importance of timely and accurate psychiatric evaluations, and the utilisation, integration and role of forensic psychiatry in the criminal justice system.

The Noor Muqaddam case not only highlighted the brutality of the crime but also the significant gaps and needs in the field of forensic psychiatry in Pakistan. Addressing these issues is crucial for ensuring justice and appropriate mental health care, ultimately leading to a more robust and fair criminal justice system.

To ensure sustainability in the growth of this subspecialty, it will require a serious and concerted effort to develop a systemic capacity-building programme for health professionals who interact with the mentally ill offender, e.g., psychiatrists, psychologists, and social workers. Also, the judiciary, bar associations, police force, and prison interact with a mentally ill person at various stages of the arrest, trial, sentencing, and detention of mentally ill offenders/sentenced individuals. The key driver for this systemic change lies with the government, through legislation and resource allocation for awareness of the legal fraternity, training of psychiatrists and judiciary, along with their accountability.

The government, at the time of the Safia Bano judgement, had drafted legislative changes to make existing law compliant with the Safia Bano verdict. Unfortunately, the bill has yet to come into effect as law and will be a good initial move forward.

**CONFLICT OF INTEREST**

None

**FUNDING**

None

**DISCLOSURE**

None

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