PSYCHIATRY UNDER RESTRICTIVE CONDITIONS

Forensic psychiatric service provision in Pakistan and its challenges

Tariq Hassan,[1] Asad Tamizuddin Nizami[2] and M. Selim Asmer[3]

[1]Department of Psychiatry, Division of Forensic Psychiatry, Queen's University, Kingston, Ontario, Canada, email hassant@queensu.ca

[2]Institute of Psychiatry, WHO Collaborating Centre for Mental Health, Rawalpindi Medical College, Rawalpindi, Pakistan

[3]Department of Psychiatry, Queen's University, Kingston, Ontario, Canada, email selim.asmer@queensu.ca

In the Islamic Republic of Pakistan the law relating to people who are mentally ill, until 2001, was set out by the Lunacy Act of 1912, which was inherited from the British colonial occupiers. In 2001 the Mental Health Ordinance 2001 took its place but only for this federal law to be superseded in April 2010 with the 18th constitutional amendment. As part of that amendment, provinces have become responsible for (psychiatric) healthcare, including mental health legislation. Forensic psychiatry is practised in Pakistan but is very much in its infancy; it needs to develop and learn from more experienced countries in Europe and North America. Cultural factors and misconceptions arising from religion can at times contribute to, or create, barriers to the implementation of forensic psychiatric services in Pakistan. This paper reviews the current state of forensic psychiatric services in Pakistan and is intended to open the debate on the challenges ahead.

Pakistan nestles in South Asia, with India to its east, Iran/Afghanistan to its west, China to its north and the Arabian Sea to its south. It spans a geographical area of approximately 800 000 km^2. Pakistan is a federation of four provinces (Sindh, Punjab, Balochistan and Khyber Pakhtunkhwa), a capital territory (Islamabad) and a group of federally administered tribal areas in the north-west along with the disputed area of Azad Jammu and Kashmir (World Health Organization, 2009).

Relative to its large population, the number of graduating medical professionals each year in Pakistan is quite low and the proportion of those going on to do at least 1 year of training in mental healthcare is very low indeed. The latest statistics show that there are only approximately 300 psychiatrists, 125 psychiatric nurses, 480 mental healthcare psychologists and 600 mental healthcare social workers for the overall population of over 180 million (Gadit, 2007; World Health Organization, 2009).

Pakistan's judicial system – a journey through time

Over the course of a millennium, Pakistan's judicial system journeyed through three prominent stages: the Hindu Kingdom, Muslim rule and British colonial rule. The fourth and current era started in 1947 with the partition of British India and the establishment of Pakistan as an independent state (Hussain, 2011).

The Hindu period spanned from 1500 BC to 1500 AD with the king responsible for judicial functions; he was the final judicial authority and the court of ultimate appeal. In villages, justice was dispensed by tribunals or *panchayats* (the village elders), a situation which can still be found today (Law Commission of India, 1958).

The Muslim period began approximately in the 11th century and historically is divided into two parts: the first is when Delhi and other areas of India were under early Muslim rulers; second part, the Mughal Dynasty, began in 1526 and lasted until the middle of the 19th century. The religion of Islam was the cornerstone in settling civil and criminal disputes. The Mughals organised justice, with each administrative unit in the country having a court and with the highest court of the land being the Emperor's Court, which exercised original and appellate jurisdiction (Hussain, 2011).

During the period of British rule, to decide the cases of its English employees, the East India Company was authorised by a charter of 1623

https://doi.org/10.1192/S205647400000177X Published online by Cambridge University Press

to establish its own courts. Subsequent charters, however, expanded these powers and thus the charter of 1661 authorised the governor and council of the Company to decide not only the cases of its employees, but also those of other persons residing in the settlement. In deciding such cases, the governor and the council applied English laws (Hussain, 2011).

Following independence in 1947, the Government of India Act 1935 was retained as a provisional Constitution. In 1956, through constitutional amendments, the Chief Court of North West Frontier Province, later renamed Khyber Pakhtunkhwa, and the Judicial Commissioner Court of Baluchistan were declared fully fledged High Courts.

The Federal Shariat Court was created in 1980 to examine and determine whether certain provisions in the law are 'repugnant to the injunctions of Islam'. If they are determined to be so, then the government is required to take the necessary steps to amend the law and bring it into conformity with the injunctions of Islam (Hussain, 2011).

In Pakistan, the judiciary is divided into 'superior' and 'subordinate' judiciaries. The superior judiciary consists of the Supreme Court of Pakistan, five High Courts and the Federal Shariah Court. The Supreme Court is at the apex of the judicial systems in Pakistan. The subordinate judiciary comprises the civil courts and criminal courts. The judicial system has evolved but it has retained some elements of past dynasties (Hussain, 2011). The current judicial system in Pakistan is therefore a mixture of colonial British remnants and fundamental Islamic ideals. Irrespective of government intentions to Islamise legislation, Islamic law is very much part and parcel of the judicial fabric of the country.

Forensic psychiatry legislation in Pakistan

All offences in Pakistan are contained in the Pakistan Penal Code (PPC). The Code has its origin in the Indian Penal Code formulated in 1860 by Lord Macaulay on behalf of the government of British India. After Partition in 1947 Pakistan inherited the same Code but amendments by successive governments over the years have resulted in the PPC being an amalgam of British and Islamic law. The Code of Criminal Procedure 1898 (CCP), Act V, sets out the rules that govern criminal procedure in every court in Pakistan (Hussain, 2011).

Fitness (competence) to stand trial: capacity to defend

Fundamental to any criminal justice system is the accused's competence to stand trial (e.g. in the USA) or fitness to plead and stand trial (e.g. in Canada and the UK) (Nussbaum *et al*, 2008). In Pakistani law this is termed 'capacity to defend'. Section 464 of the CCP sets out the 'Procedure in case of accused being a lunatic':

> (1) When a Magistrate holding an inquiry or trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Provincial Government directs, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.
>
> (1-A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of Section 466.
>
> (2) If such Magistrate is of the opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

Section 464 of the CCP prescribes how a person who is incapable of making a defence as a result of a mental disorder should be assessed. If an offender with a mental illness is found to be 'capable of making his defence' he or she will be taken to the magistrate or court. The evidence of fitness is provided either by the Inspector General of Prisons (in case of a person detained in prison) or two visitors (if the person is detained in an 'asylum'). A friend or relative of an accused person who is mentally ill may apply to the provincial government to transfer the accused to their care. The accused person who is mentally ill must be detained under section 466 or section 471 of the CCP and the friend or relative must confirm to the provincial government that they will be taken care of and that they will abide by conditions put forward by the provincial government and/or the court (section 475 of the CCP). In Islam, the defendant has the same access to the judge as a plaintiff. If this cannot be achieved for the person who is mentally ill then a trial cannot be conducted (Chaleby, 1996).

The test for incapacity to make a defence is not laid out in the CCP as it is in most Western and European countries. In Canada, for example, section 2 of the Criminal Code of Canada 1985 provides clear instruction on the test for finding a person 'unfit' to stand trial, and states:

> 'unfit to stand trial' means unable on account of mental disorder to conduct a defense at any stage of the proceedings before a verdict is rendered or instruct counsel to do so, and, in particular, unable on account of mental disorder to
>
> a. understand the nature or object of the proceedings,
>
> b. understand the possible consequences of the proceedings, or
>
> c. communicate with council.

Criminal responsibility

Article 84 of the PPC refers to the 'act of a person of unsound mind' and, reflecting the influence of the English M'Naghten rules, states:

> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

On addressing the issue of criminal responsibility while intoxicated, article 85 of the PPC distinguishes intoxication of an individual without

https://doi.org/10.1192/S205647400000177X Published online by Cambridge University Press

their knowledge or against their will from other instances of wilful intoxication with alcohol or drugs. It refers to an 'act of a person incapable of judgment by reason of intoxication caused against his will', and states:

> Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

If an offender who is mentally ill is acquitted on 'grounds of lunacy' then 'the finding shall state specifically whether he committed the act or not' (section 470 of the CCP). If it is admitted or found that the accused committed the alleged act, then the magistrate or court can 'order such a person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit'. However, this provision does not apply to someone detained under the Lunacy Act 1912 (section 471 of the CCP).

Courts recognise the role of the expert witness. The expert opinion is provided to the court with the psychiatrist present. Less severe cases can be managed through this mechanism. Although the role of the expert witness is recognised in Islamic law, only a Muslim can testify in court about a Muslim defendant. This therefore means that only a Muslim psychiatrist can provide an opinion about a Muslim accused (Chaleby, 2001). At present there are no specific provisions in the PPC reflecting these Islamic laws.

Islam plays a pivotal role in determining the value system of Pakistani society and the proper treatment of individuals who are mentally ill is deemed greatly desirable under society's strong religious and ethical values. However, as with all societies, Pakistan is not immune from biases against individuals who are mentally ill, such as believing that they are dangerous and unpredictable, that they will never get better, and that they are to blame for becoming mentally ill as a result of a weak personality (Qidwai & Azam, 2002; Naeem *et al*, 2005).

Forensic psychiatry provision in Pakistan

The first general psychiatry unit was developed in 1965 at the Jinnah Postgraduate Centre in Karachi and the second in 1967 at the Government Mayo Hospital in Lahore. This gradually led to psychiatric units being established in most teaching hospitals around the country (Gadit, 2007).

Some mental hospitals have beds for forensic psychiatric patients (World Health Organization, 2009). These 'beds' tend to be rooms with bars shared by multiple patients under the administrative direction of the prison authority, which is also responsible for security, so there is a prison guard at the site at all times. Such provisions vary widely, with prisons in the major cities having dedicated facilities for offenders who are mentally ill. Three-quarters of the patients in forensic in-patient units spend less than 1 year there and the other quarter stay 1–4 years; very few patients spend more than 5 years in these units.

Official statistics are lacking on the prevalence of persons who are mentally ill in Pakistan's prisons. Anecdotes from mental health professionals working there suggest that psychiatric morbidity in prisons has been steadily increasing and the problem of overcrowding in Pakistani prisons is reaching breaking point. According to government statistics (Pakistan Law Commission, 1997) in 1996 there were 74 483 persons in prison nationwide against a total capacity of 34 014. This problem of overcrowding was most severe in Punjab, where the prison population of 47 835 was contained in prisons with a capacity of only 17 271.

Sometimes, forensic psychiatry assessments are requested directly by the courts or via an application made to the court by the defence counsel. The courts may also make a referral to the medical superintendent of an institution, which is then forwarded to the psychiatry department for formal assessment. The decision as to which hospital a referral should be made to is based on the availability of forensic beds as well as expertise in assessing forensic psychiatric patients. The forensic beds are distinct from the general psychiatry ward, as all administrative and security matters are under the jurisdiction of the prison authority. These beds are either present within the grounds of a general hospital or within the prison itself. There are no statistics on the number of forensic beds in general hospital and prison settings.

The assessment process varies across the country. In outline, a postgraduate psychiatry resident takes a thorough history of the patient as well as a corroborative history from the family (or a close friend). The patient, along with other forensic patients, is queued for discussion with a 'medical board' of senior psychiatrists, which will include the heads of psychiatry departments, as well as psychologists and social workers. At the end of the discussion, diagnosis, 'criminal responsibility' at the time of the index offence and 'defence capacity' are collectively agreed upon. All members of the group sign reports of cases, with their collective agreement; these are then forwarded to the medical superintendent of the institution, who then replies back to the court with the findings of the committee.

In most central prisons, a separate block in the prison is designated for patients with comorbid psychiatric or behavioural problems. Depending on resources, all the patients in this block are visited every 2 weeks for their assessment and management by a postgraduate trainee under the supervision of a consultant psychiatrist from a tertiary-care facility. Alternatively, the postgraduate trainee in consultation with senior staff may have the patient transferred to the tertiary-care facility, where the patient is assessed by a team of three senior consultants. Following their review, the case is then presented to the medical board for their opinion and recommendation to the court. These are then forwarded to the courts

https://doi.org/10.1192/S205647400000177X Published online by Cambridge University Press

by the medical superintendent of the hospital at which the psychiatrists are based. There are no psychiatrists employed by the prison authority. A detailed assessment is subsequently forwarded to the district and session judge as well as the prison authority.

The challenges of forensic psychiatry in Pakistan

According to Pakistani and Islamic law it is an offence to defile Islam's holiest book, the Qur'an, or to mock or defame the Prophet Muhammad (peace be upon him). These are termed the 'blasphemy laws'. The PCC, in article 295-B, forbids 'defiling' the Qur'an; additionally, article 295-C forbids using 'derogatory remarks' against the Prophet Muhammad (peace be upon him). These offences usually receive the most press coverage, both nationally and internationally, when the accused is suspected of having a mental illness or an intellectual disability (Ali, 2012; Guerin, 2012). In some cases, select members of the public demand their own form of justice against the accused, which, unfortunately, can have fatal consequences (Jillani, 2012). There can be immense public pressure on psychiatrists when they assess criminal responsibility for blasphemy offences. However, cases which involve an individual with a mental illness or intellectual disability burning or desecrating the Qur'an can lead to mob reactions in the community, especially in poorer areas of Pakistan with high rates of illiteracy. Press reports have documented mobs seizing such accused individuals from police custody and killing them. This is one reason why in these cases expert opinion in the form of a consensus of professionals is favoured over the expressed opinion of an individual, who will be at risk of being targeted with violence and even death.

Sentenced offenders with a mental illness may be transferred to a medical facility for treatment for part of, or the remainder of, their sentence under Part VI (Removal of Prisoners), section 30, of the Prisoners Act 1990. It is the responsibility of the provincial government to direct this. In Western countries, such as Canada, when an offender who is mentally ill is found by a court to be 'not criminally responsible by reason of mental disorder' the patient then enters the jurisdiction of the respective provincial 'review boards'. The review board, generally consisting of five persons (a psychiatrist, a psychologist, one lay person, and one or two senior lawyers), will then determine whether to detain or discharge the patient. In Pakistan there does not seem to be a statutory procedure or body that oversees the ongoing assessment of risk and the balance of freedoms of such individuals.

Discussion

It is an opportune time for Pakistan to expand its existing forensic psychiatry provisions. The government should realise that correctly addressing the needs of offenders who are mentally ill will reduce the overcrowded prison population. But for this to be achieved, Pakistan's prison staff and its psychiatric profession must work together to develop a streamlined service for the assessment and rehabilitation of offenders who are mentally ill. This includes the establishment of psychiatric services inside prisons; provision can also be made for inmates who develop psychiatric illnesses while in custody.

Pakistan's psychiatric fraternity is beginning to recognise the need for specialised forensic psychiatry provision in Pakistan, which hitherto has developed on an 'as required' basis. In April 2016 Pakistan was host to its first international conference on forensic psychiatry, 'Healing the Held', in Lahore. There is a need for policy makers in Pakistan to ensure implementation of the Mental Health Ordinance 2001. The challenging social, cultural and religious landscape results in the field of forensic psychiatry being fraught with risk of harm not only to the patient but also to the assessing psychiatrist.

A concerted effort by the psychiatric and religious fraternity on anti-stigma measures, in print and other media sources, must be skilfully and boldly unfolded to educate the public on mental health and the consequences of mental ill-health. It is to be hoped that this will give some violently aroused sections of society time to pause and will prevent them from taking the law into their own hands.

Pakistan's police force requires more training in triaging detainees and offenders who may have a mental illness and the police need to know how to divert offenders who are mentally disordered to psychiatric hospitals. The existing liaison between the legal and psychiatric professions must be enhanced. More research, particularly epidemiological studies, will assist in better understanding the scale of the problem at hand, both within and outside prison.

There is a minimum requirement by the College of Physicians and Surgeons of Pakistan for psychiatry trainees to assess ten forensic patients as part of their postgraduate training programme, but this cannot always be achieved. This is therefore a challenging time for the College of Physicians and Surgeons of Pakistan as it takes the lead in streamlining the assessment process and implementing recommendations across the country.

There have already been welcome changes in the language, for example 'lunatic' being replaced with 'mentally ill' in the latest mental health legislation. Such changes will assist in changing public perceptions of people who are mentally ill. Better training in forensic psychiatry and expansion of forensic psychiatry services in Pakistan need to be championed by the College of Physicians and Surgeons of Pakistan, which has a commanding position in this field.

References

Ali, R. (2012) Desecration of Holy Quran: accused shop owner blames 'blasphemous voices'. *Express Tribune*, 24 June. Available

https://doi.org/10.1192/S205647400000177X Published online by Cambridge University Press

at http://tribune.com.pk/story/398427/desecration-of-holy-quran-accused-shop-owner-blames-blasphemous-voices (accessed 19 May 2016).

Chaleby, K. S. (1996) Issues in forensic psychiatry in Islamic jurisprudence. *Bulletin of the American Academy of Psychiatry and the Law*, **24**, 117–124.

Chaleby, K. S. (2001) *Forensic Psychiatry in Islamic Jurisprudence*. International Institute of Islamic Thought.

Gadit, A. (2007) Psychiatry in Pakistan: 1947–2006: a new balance sheet. *Journal of the Pakistan Medical Association*, **57**, 453–463.

Guerin, O. (2012) Life of Pakistan blasphemy case girl 'in danger', BBC News online, 31 August, at http://www.bbc.com/news/world-asia-19437391 (accessed 19 May 2016).

Hussain, F. (2011) The judicial system of Pakistan, Registrar, Supreme Court of Pakistan, Islamabad. Available at http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf (accessed 25 June 2012).

Jillani, S. (2012) Pakistan mob burns man to death for 'blasphemy'. BBC News online, 4 July, at http://www.bbc.co.uk/news/world-asia-18713545 (accessed 19 May 2016).

Law Commission of India (1958) *Report 14: Reform of Judicial Administration, Vol. 1*. Available at http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf (accessed 21 August 2012).

Naeem, F., Ayub, M., Izhar, N., *et al* (2005) Stigma and knowledge of depression: a survey comparing medical and non-medical students and staff in Lahore, Pakistan. *Pakistan Journal of Medical Sciences*, **21**, 155–158.

Nussbaum, D., Hancock, M., Turner, I., *et al* (2008) Fitness/competency to stand trial: a conceptual overview, review of existing instruments, and cross-validation of the Nussbaum fitness questionnaire. *Brief Treatment and Crisis Intervention*, **8**, 43–72.

Pakistan Law Commission (1997) *Report on Jail Reform*. Government of Pakistan, Pakistan Law Commission.

Qidwai, W. & Azam, S. I. (2002) Psychiatric morbidity and perceptions on psychiatric illness among patients presenting to family physicians, in April 2001 at a teaching hospital in Karachi, Pakistan. *Asia Pacific Family Medicine*, **1**, 79–82.

World Health Organization (2009) *A Report of the Assessment of the Mental Health System in Pakistan Using the World Health Organization – Assessment Instrument for Mental Health Systems (WHO-AIMS)*. Available at http://www.who.int/mental_health/pakistan_who_aims_report.pdf (accessed 14 June 2012).

Online resources

The Pakistan Penal Code, Act XLV of 1860, is available at http://www.fia.gov.pk/default_files/ppc.pdf (accessed 18 June 2012).

The Prisoners Act 1990 is available at http://www.humanrightsinitiative.org/programs/aj/prisons/standards/acts/The%20Prisoners%20Act%201900.pdf (accessed 19 June 2012).

SPECIAL PAPER

China's National Comprehensive Management Pilot Project for Mental Health

Wufang Zhang[1] and Ning Ma[2]

[1]Peking University Sixth Hospital (Institute of Mental Health), China; and National Clinical Research Center for Mental Disorders and Key Laboratory of Mental Health, Ministry of Health (Peking University), China

[2]Peking University Sixth Hospital (Institute of Mental Health), China; and National Clinical Research Center for Mental Disorders and Key Laboratory of Mental Health, Ministry of Health (Peking University), China, email maning@bjmu.edu.cn

Acknowledgements: We thank Graham Thornicroft (King's College London) for his contribution to this paper. The views expressed in this paper are those of the authors and do not necessarily represent the decisions, policies, or views of their respective institutions.

The National Continuing Management and Intervention Programme for Psychoses, also known as the 686 Programme, was launched in China in 2004, marking a shift to a hospital-and-community collaborative model of care for patients with psychoses. An updated programme, the National Comprehensive Management Pilot Project for Mental Health, was launched in 2015 with the cooperation of six government ministries and bodies, including the China Disabled Persons Federation. Mechanisms for multi-sector cooperation in mental health services are being put in place in China.

Historical background: the 686 Programme

In 2004, the Ministry of Health and Ministry of Finance of the People's Republic of China launched the National Continuing Management and Intervention Programme for Psychoses, also known as the 686 Programme, with an initial annual funding of ¥6.86 million (Liu *et al*, 2011), which signified the official inclusion of mental health services in the public health system. The 686 Programme aims to address the current problems of discontinuous care and lack of cooperation between hospital and community services in terms of the management, treatment and rehabilitation of patients with psychoses. In 2005, 60 demonstration pilot sites (one urban site and one rural site in each of 30 provinces, municipalities and autonomous regions) around the country were selected to initiate the 686 Programme. Psychiatric hospitals provided outreach services for patients with psychoses who lived in the community. Before 2004, China's community-based mental health system had been largely eliminated with the introduction of the market economy. Mental health service provision became primarily hospital based (Liu *et al*, 2011).

At that stage, the running of the 686 Programme was the responsibility at all levels of health administrative departments and psychiatric hospitals or centres of disease control and prevention. Generally, though, psychiatric hospitals provided follow-up services and guidance on treatment and rehabilitation for patients in the community.

https://doi.org/10.1192/S205647400000177X Published online by Cambridge University Press