International Journal of Law and Psychiatry 41 (2015) 95–104

Contents lists available at ScienceDirect

International Journal of Law and Psychiatry

Forensic psychiatry in Pakistan

Tariq Hassan [a,*], Asad Tamizuddin Nizami [b], Sarah Hirji [c]

[a] Department of Psychiatry, Division of Forensic Psychiatry, Queen's University, Kingston, Ontario, Canada
[b] Institute of Psychiatry, WHO Collaborating Centre for Mental Health, Rawalpindi Medical College, Rawalpindi, Pakistan
[c] Queen's University, Kingston, Ontario, Canada

ARTICLE INFO

Available online 27 May 2015

Keywords:
Forensic psychiatry
Pakistan
Criminal responsibility
Criminal offender
Mental health ordinance 2001
Compulsory psychiatric admission

ABSTRACT

This article reviews existing forensic psychiatric services in Pakistan highlighting the role played by the judicial and the medical fraternity in managing the legal and forensic issues of the population of patients with mental illnesses. Until 2001, all legal and forensic issues were dealt with the mental health legislation of 1912, the Lunacy Act of 1912. This was inherited from the British rulers in the Sub-Continent at the time. The Mental Health Ordinance of 2001 could not sustain following the 18th constitutional amendment in 2010, whereby psychiatric healthcare was devolved to the provinces from the previous federal authority. The article also highlights the difficulties and the barriers in implementation of the forensic psychiatric services in Pakistan at various levels within the healthcare system. This article also delves into the current framework of training in forensic psychiatry for postgraduates as well as the assessments and management schedules for the mentally ill offenders at tertiary care institutions in Pakistan.

1. Introduction

The definitions of forensic psychiatry vary, however the Accreditation Council of the Graduate Medical Education (2013) in the United States provides a comprehensive definition:

Forensic psychiatry is the psychiatry subspecialty that focuses on interrelationships between psychiatry and the law (civil, criminal, and administrative law), that include:

1 the psychiatric evaluation of individuals involved with the legal system, or consultations on behalf of the third parties such as employers or insurance companies;
2 the specialized psychiatric treatment required by those who have been incarcerated in jails, prisons, or special forensic psychiatric hospitals;
3 active involvement in the area of legal regulation of general psychiatric practice; and
4. related education and research efforts.

From this definition the sub-specialization of forensic psychiatry seems to be based on the institutions and administrative pathways that are different to general psychiatry, rather than any difference in the clientele. The role of the forensic psychiatrist also differs ethically. In the US the forensic psychiatrist has the duty to tell the truth and assume either an 'assessor' role or a 'treating' role. In Canada, their roles largely include both the 'assessor' as well as 'treating' roles but there is a trend of moving to a US model.

2. Evolution of judicial system in Pakistan

Pakistan is located in South Asia with a geographical area of approximately 800,000 km^2 and a population of 180,808,000. The population is projected to reach 210.13 million by 2020 and to double by 2045. It is the sixth most populous nation in the world. Pakistan is a federation of four provinces (Sindh, Punjab, Baluchistan 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). Pakistan's average population density is 229 individuals per km^2. This averages from 1000 per km^2 in the major cities of Karachi and Lahore to 1 per km^2 in the remote northern and western mountainous areas.

The judicial framework in Pakistan has evolved over approximately one millennium. It has passed through three prominent eras the Hindu rule, the Muslim rule, the British colonial rule. The fourth and current era began in 1947 with the partition of British India and the establishment of Pakistan as an independent state (Hussain, 2011).

The Hindu era spanned from 1500 BC until approximately 1500 AD. The King discharged judicial functions and was the final judicial authority and court of ultimate appeal. Ministers and counselors assisted him in this task. Besides the King's Court, there existed the Court of the

* Corresponding author at: Providence Care, 752 King Street West, Kingston, Ontario K7L 4X3, Canada. Tel.: +1 613 548 5567x1136; fax: +1 613 540 6113.
E-mail address: hassant@queensu.ca (T. Hassan).

http://dx.doi.org/10.1016/j.ijlp.2015.05.001
0160-2527/

Chief Justice. Judges were appointed based on qualifications and scholarship; however they were predominately restricted to the Upper Caste, i.e., Brahmins. At the village level, justice was dispensed by tribunals of the village elders (Law Commission of India, 1958). Decisions were appealed in higher courts, with the final appeal in the King's Court (Hussain, 2011).

The Muslim period in the Indian sub-continent began roughly in the 11th century A.D. This period can be divided into two eras. The first by early Muslim rulers who ruled Delhi and other parts of India, and second the Mughal Dynasty, which began in 1526 AD until the middle of the 19th century. During the period of the Muslim rulers, the religion of Islam was the cornerstone in settling civil and criminal disputes. Common traditions and customs continued to operate in parallel in settling secular matters. The Office of the King's Court continued in this period and exercised original and appellate jurisdiction. The Mughals created an organized system to administer justice throughout the country. Each administrative unit in the country had a court. The village level of the Hindu system of *Panchayats* (Council of Elders) continued to settle petty disputes of civil and criminal nature using conciliation and mediation. At the town level courts were presided by the *Qazi-e-Parganah* and similarly, Courts of *Qazis* were established at the district (*Sarkar*) and provincial (*Subah*) levels. The highest court at the provincial level was of the *Adalat Nazim-e-Subah*. The highest court of the land was the Emperor's Court exercising original and appellate jurisdiction (Hussain, 2011).

During the British rule, the East India Company was authorized by the Charter of 1623 to decide the cases of its English employees. The Company, therefore, established its own courts. The President and Council of the Company decided all cases of civil or criminal nature. Subsequent charters further expanded these powers and thus the Charter of 1661 authorized the Governor and Council to decide not only the cases of the Company employees, but also of persons residing in the settlement. In deciding such cases, the Governor and the Council applied the English laws. As the character of the Company changed from one of a trading concern into a territorial power, newer and additional courts were established for deciding cases and settling disputes of its employees and subjects (Hussain, 2011).

Following Pakistan's independence in 1947, the Government of India Act of 1935 was retained as a provisional Constitution. In 1956, through constitutional amendments, the Chief court of North West Frontier Province (NWFP), later renamed Khyber-Pakhtunkhwa, and the Judicial Commissioner Court of Baluchistan were declared full-fledged High Courts. The Federal Shariat Court was created in 1980 to ascertain whether or not a certain provision of law is 'repugnant to the injunctions of Islam'. The Federal Shariat Court has the power to examine and determine whether or not a certain provision of law 'is repugnant to the injunctions of Islam'. If it is determined to be repugnant to the injunctions of Islam, then the government is required to take 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 (one for each of the four provinces and one for the Islamabad Capital Territory) and the Federal Shariat Court. The Supreme Court is at the apex of the judicial systems in Pakistan. It possesses exclusive original jurisdiction in settling intergovernmental (federal/provincial) disputes and also acts as the final arbiter of appeals from all other courts in Pakistan. The subordinate judiciary comprises the civil courts and criminal courts. The present judicial system has therefore evolved and acquired some elements of past dynasties, though not entirely transplanted from the British rule, as is commonly alleged (Hussain, 2011).

The current judicial system in Pakistan is an amalgamate of the remnants of British law and fundamental Islamic principles. Irrespective of government involvement to Islamize legislation, Islamic law is very much part and parcel of the judicial fabric of Pakistan.

3. Legislation and mental disorder in Pakistan

All offenses in Pakistan are enshrined in the Pakistan Penal Code (PPC; 1860). The Code drew its origins in 1860 by Lord Macaulay on behalf of the Government of British India as the Indian Penal Code. Subsequent to partition in 1947 Pakistan inherited the same Code. However over the years, amendments by successive governments led the PPC to be an amalgamation of British and Islamic Law. The Act V of the Code of Criminal Procedure (CCP) refers to the rules that govern criminal procedure in every court in Pakistan (Code of Criminal Procedure, 1898). The purpose of the Code of Criminal Procedure is to provide a mechanism for the punishment of offenders, against the substantive criminal law embodied in Pakistan Penal Code (1860).

3.1. Capacity to defend

One of the fundamental gatekeeping roles of the criminal justice system is assessing the accused's Competency to Stand Trial (US), or Fitness to Stand Trial (Canada and UK) (Nussbaum, Hancock, Turner, Arrowood, & Melodick, 2008). In Pakistani law this is defined as the 'capacity to defend'.

Section 464. *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 defense, 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 defense, he shall record a finding to that effect and, shall postpone further proceedings in the case.*

Section 464 (Code of Criminal Procedure, 1898, p. 163) describes how a person who is incapable of making a defense as a result of a mental disorder should be assessed. If a mentally ill offender is found to be '*capable of making his defense*' he 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 a mentally ill accused offender may apply to the provincial government for this person to be under their care. The mentally ill accused must be detained under Section 466 or 471 of the CCP and the friend or relative must confirm to the provincial government that the mentally ill accused will be taken care of and abide by conditions put forward by the provincial government and/or the Court (Code of Criminal Procedure, 1898, s.475, p. 166). At first glance this may seem advantageous in permitting the accused a familiar environment during the process of assessment. Unfortunately there are no checks and balances that assures the State that the patient is being well cared for.

Unlike most Western and European countries, the test for incapacity to defend in Pakistan is not laid out in the Code of Criminal Procedure (1898). For example in Canada, Section 2 of the Criminal Code of Canada (1985, p. 14) gives clear instruction on the test for finding a person 'unfit to stand trial', which 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