



Reflections

Forensic Psychiatry & Law: A Torrid Love Affair**Usman Amin Hotiana***Psychiatrist, RLMC, Lahore***Introduction**

This is a story of a convicted prisoner who developed psychosis and was diagnosed with schizophrenia in 2008 in prison. He had murdered his colleague police officer. His last 6 years were spent in a solitary confinement. He had gross hallucinations and delusions. There was no insight. He used to think he will go home after his hanging. No one knows whether murder was a part of delusion. However, his father's history is suggestive of schizophrenia. This story is intricately linked with the evolution of mental health laws in Pakistan and my torrid affair with psychiatry and law.

Death penalty had been stopped for several years before it was restarted after the Army School terrorist incident. There is a worldwide debate regarding hanging. Usually a punishment serves two purposes. First to make the criminal realize his wrongdoing and make him suffer. Second as a deterrent so the act is not repeated and society is safe. In a case of a severely mentally disorder patient like schizophrenia, the person loses his own self to the extent sometimes not to understand the reason for punishment. Also he is no longer a threat to the society. It is to be appreciated that risk of being hit by a mentally disorder patient is as low as to be struck with lightning. Many feel one should be punished whether there is an illness or not as a repayment of the act like murder.

It was 2013, as an early career psychiatrist I ran into Sara Belal, director of Justice Project Pakistan (JPP). I came to know about their on-going struggle to stop death penalty to severely mentally ill prisoners. I felt immediately engaged as it was my speciality domain. I was informed of Mr Khizer Hayat who was booked for hanging the next morning. I contacted my seniors and colleagues and prepared an appeal to stop the hanging. There was an overwhelming support by psychiatric community.

Imagine the plight of a prisoner whose mercy appeal sealed in a pink coloured envelope inscribed 'Death case Immediate' is rejected by the President. The Jail Superintendent visits him before the execution. He identifies the prisoner as named in the warrant, reads



out its translation and sequence of rejection of appeal and mercy petitions in presence of coordination officer. Superintendent proceeds to the scaffold, prisoner remains in the cell. Hands of the prisoner will be pinioned behind his back and his fetters removed. The protocol if carried out can highlight if the person is mentally well or not. I was fully determined to play my role, to bring to courts knowledge the nature and extent of psychiatric disorder. Patients with schizophrenia are notoriously difficult to be assessed in courts and largely are overlooked. Their silence is interpreted as guilt. The treating and forensic psychiatrists are usually different. Otherwise a double dilemma exists for the doctor. Usually a doctor fulfils a beneficent role, however, a forensic psychiatrist is one appointed by court to help the law and this is told to the patient on assessment.

Overnight I was able to get dozens of signatures of prominent psychiatrists on the appeal to stop the hanging. By God's grace, the next day hanging stopped. I went through complete 200 pages record of Mr Khizer Hayat, and based upon 20 assessments of different psychiatrists. It included even the President Pakistan Psychiatric

Society Prof Nasar Sayeed Khan. I summarized the findings and made a report in absentia and submitted to the court. I was heading psychiatry department at Akhtar Saeed Medical College at that time. In 2014, when I joined King Edward Medical University, a letter from court came to my superior to come and explain the court about its findings. I was told as a government officer I cannot submit, but this thing had been done before my joining. Also, being a naive new employee, I was not aware of the possible implications coupled with enthusiasm with optimism. Nothing terrible happened. Rather this calculated conviction helped my experience and career. The judge finally invited me to share in person the findings of the report. It was my first of many meetings with the judges. I realized they were open to rational arguments as long as presented in their legal terminology with scientific evidence.

I could never formally assess Mr Khizer Hayat myself. However our efforts proved fruitful as he was examined by different boards of psychiatrists. Each time they certified he was suffering from Schizophrenia. Mr Khizer Hayat kept getting booked for hanging several times, each time our routine was to get the signatures, make an appeal, write newspaper columns, do talk shows on mental disorder and the hanging would stop the last moment. Once I had to do a press conference at Lahore press club. I was the only psychiatrist with Khizer Hayat mother and a house officer accompanied me. One of the journalists whose sister had schizophrenia was very moved but thought it was too late. The next day he called in surprise that indeed hanging was held off yet again.

Around 2018, on one Friday when I took a day off. I was called by my senior and told that Justice Saqib Nisar had appointed me to evaluate another mentally ill prisoner at the Kot Lakhpat Jail. The jail is at a 10 mins distance, I went immediately. I met the medical officer and requested to let me evaluate in the lock up. I was surprised to see a new recently build 3-4 rooms facility exclusively for mentally ill prisoners. The prisoner I was checking believed that alien machines worked under the prison cell all the time. There were three prisoners in the cell. I recognized Mr Khizer Hayat sitting on the right side calmly. This was the first time I met him. In coming days he got ill and was taken to Jinnah Hospital and later died.

What lead to the persistent persecution of mentally ill prisoners? To my mind, this was very simple. You suspect mental illness, get him evaluated and with the diagnosis and implications carry out the justice. This proved to be a fanciful idea. The crucial understanding about the nature of mental health disorders and their relationship with brain pathology in effecting thoughts, behaviour and attitudes was in embryonic state.

Khizer Hayat case is considered a classic as he paved the way for other similar cases. One of which was Mr Imdad Ali case, who was diagnosed to be suffering from Schizophrenia for 12 years in Multan and was seen by Dr Tahir Feroze. I could see the toll the case took on the treating psychiatrist as he felt helpless stopping the hanging. All over Punjab awareness camps were arranged. The psychiatric community came together and the newspapers were flooded with this news. Eventually, his appeals brought into courts knowledge, that no advocate had ever brought his mental illness to the court. This was real shocking news and exposed the number of caveats in the system. The poor mentally ill prisoners were seldom able to hire a lawyer. The state appointed lawyers would overlook symptoms. In routine, if a prisoner seemed not mentally fit, he was considered alright if he could answer few basic questions. Legal system can at best screen out a possible patient. It was brought to the courts knowledge that judges can examine but it would be still part of the first observation, that the person does not look of sound mind and next part has to be carried out by an expert. Forensic Psychiatry is one of those questions in Psychiatry which postgraduates usually dread or skip. It consists of learning about the mental health act and its implementations. Ironically at a workshop at LUMS we found the lawyers also skipped the mental health chapters in their training. So its two fields law and psychiatry, communicating in languages which they don't understand well. Imagine a Chinese and Punjabi communicating while someone's life is at risk. All my work was out of passion, I did not receive any financial gains.

Justice Project Pakistan (JPP) took pro bono cases of mentally ill prisoners. They helped bridging the gap between legal and psychiatric community. International judges, lawyers and forensic psychiatrists were invited. University of Health Sciences (UHS) held first forensic workshop. Forensic curriculum was developed by different psychiatric institutes. I was invited for a forensic workshop at Aga Khan University and a memorable guest lecture at Institute of Psychiatry (IOP) by Prof. Fared Minhas. Later, Cornell University invited me for a Group meeting on Mental Health Laws in New York.

A favourite memory is when I was invited to present the case of Khizer Hayat by a guest forensic psychiatrist, Mr George Washington in Lahore. The meeting was presided by Justice Umar Bandial. I spoke by heart out why hanging should be halted as system is deficient. India had released a mentally ill prisoner. Japan had found a convict innocent after 30 years of imprisonment. In 2016 Supreme Court declared two persons innocent but found they were already hanged a year earlier. Solitary confinement for mentally ill prisoner was an added

punishment instead of he getting proper treatment. Justice Bandial appreciated and advised me to continue my efforts.

In England the relationship between members of medical and legal professions have fluctuated over the years. A mixture of hate and love with more emphasis on the former than the latter. Pakistan was 100 years backwards. In 1889 a judge was said to refuse accepting their opinion regarding the sanity of the prisoner. Judge claimed a psychiatrist could no more dive into a man's state of mind than the judge. Still in 1893 journal Lancet records, in support of medical witness 'We are strongly of the opinion that cases where the existence of insanity is alleged ought never be decided without medical evidence'.

In 2016, a 3 bench led by Justice Anwer Zaheer Jamali, Supreme Court announced that 'Schizophrenia is not a permanent disorder and does not fall under the definition of mental disorder'. Newspaper flashed that 'Supreme Court says Schizophrenia is Treatable'. Judgement was based on 2 sources, one turned out to be coming from Anti Psychiatry group and the other was about a psychotic wife. The court recommended not to divorce as there was a chance to recover. Punjab government appealed in the Supreme Court to review in detail. A historical academic pursuit started to understand mental disorders. Legal and psychiatric community sat endlessly

searching for scientific evidences and their legal value. What is mental disorder? Who diagnosis it? What are the early symptoms? Are they recoverable? Can they be severe and permanent? Do they qualify to commute a death sentence? Advocate Shakeel Ahmed brilliantly developed an unshakeable narrative. I was honoured to work with him in preparation.

Prof Mowadat Hussain Rana serving as amicus curiae (impartial advisor to court) brought to courts attention how mental health disorders are just like any other medical disorders. The evidence can be found by vigorous psychometric tests, radiological, laboratory and medical tests. The various notions, myths, were discarded. Mental health disorder oriented scenarios really opened up the legal community developing an understanding. Latest tests to rule out malingering put rest to concerns about feigning illnesses.

The final showdown came with landmark Judgement of Safia Bano vs Home Department, Govt. Punjab. Bench of 5 Supreme Court judges put a ban on death penalty to prisoners with mental illness. It stated where mental illness takes away the rationale and reason away from a prisoner the punishment is unjust. Medical boards were ordered to ascertain mental health of prisoners.