



Mental Illness and Criminal Justice System of Pakistan: Analysis of the Landmark Judgment in Safia Bano Case

Jibran Jamshed¹, Junaid Jan², Amal Atta Muhammad³, Khurram Baig⁴

¹ Associate Professor, Department of Law, The Islamia University of Bahawalpur, Pakistan.

Email: Jibran.jamshed@iub.edu.pk

² Lecturer, Department of Law, The Islamia University of Bahawalpur, Pakistan. Email: Junaid.jan@iub.edu.pk

³ Zhongnan University of Economics and Law, China. Email: amalattamuhammad@gmail.com

⁴ Ph.D. Scholar, Bahauddin Zakariya University Multan, Pakistan. Email: Mkb5729@gmail.com

ARTICLE INFO

Article History:

Received: December 25, 2022

Revised: February 12, 2023

Accepted: February 14, 2023

Available Online: February 15, 2023

Keywords:

Mental Illness

Legal Framework

Safia Bano Case

Death Penalty

Doctrinal Legal Research

Funding:

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

ABSTRACT

The aim of the study is to outline the legislation provided for mentally ill offenders and prisoners. Individuals suffering from mental illness are the most vulnerable segment of society, but in Pakistan, the conditions of mentally ill prisoners are very pathetic. During the arrest, prosecution, sentence, and detention, the criminal justice system of Pakistan fall short of providing adequate protection to persons with psychosocial disabilities and mental illness. The study aims to analyze the latest judgment in the Safia Bano Case, in which the Supreme court commuted the death sentence of three mentally ill prisoners on death row. The study will discuss the impact of this judgment on mentally ill prisoners undergoing trial and imprisonment. The researcher will use doctrinal research methods to analyze the relevant laws regarding the protection of the rights of the mentally ill in the criminal justice system. The International obligations of Pakistan related to mentally ill persons are also highlighted. The landmark judgments in this regard will also be analyzed along with a descriptive analysis of the conditions of such persons in Pakistan. In Pakistan, mental health is not given due importance in the normal course. The situation is detrimental in the case of mentally ill persons undergoing trial or conviction. As the mentally ill neither represent him during the trial nor the ends of justice can meet if he is undergoing imprisonment. The jurisprudence developed by the Supreme court is welcoming as it will impact the treatment of mentally ill persons significantly. It aligns with the protection of the most stigmatized and marginalized segments of society. The study will ultimately imbibe arbitrariness within the application of law and protects their rights in the long run.

© 2023 The Authors, Published by iRASD. This is an Open Access article distributed under the terms of the Creative Commons Attribution Non-Commercial License

Corresponding Author's Email: Mkb5729@gmail.com

1. Introduction

Pakistan is the sixth most populous country in the world and 50 million people are suffering from mental health disorders. This massive population is the most marginalized and vulnerable segment of society (Reporter, 2016). It is experiencing one of the worst crises in terms of legislation and policy framework regarding mental health issues. Around the world, there are various categories of mental health disorders but we are dealing mainly with two types of mental health issues in this study. It is divided into mental illness and insanity (Zulfiqar, 2018).

The distinction of the terms is important in the Criminal Justice system of Pakistan. Under Pakistani Law, the scope is limited and does not address all aspects of mental illness. Thus, the defendant or accused can only take the plea of insanity if it fulfils the requirement for the defence of insanity. In order to ensure that the rights of the defendant are protected,

the study examines the definitions and limitations of these categories and their effect on the criminal justice system in Pakistan (Zafar & Haq, 2018).

1.1. Mental Illness

The Mental Health Ordinance (2001), categorizes mental illness into three groups.

i. Mental Impairment

This describes a mental state that has been retarded/arrested or incompletely developed and involves significant impairment of social functioning and intelligence along with irresponsible and aggressive behaviour of the concerned person.

ii. Severe Personality Disorder

This refers to a persistent disability or disorder of the mind that causes the affected person to act dangerously irresponsibly and abnormally aggressively. This mental disorder may or may not include a severe impairment of intelligence.

iii. Severe mental impairment

It denotes a mental condition of incomplete or retarded development of the mind, including a significant impairment of cognitive and social functioning. It is also associated with irresponsible and aggressive behaviour on the part of the person in question (The Mental Health Ordinance, 2001).

1.2. Insanity

Insanity, as defined by Black's Law Dictionary, is "*Any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility*". In English law, the *McNaughton Case* laid down two conditions that must be met for a person to be considered insane.

1. A disease of the mind; and
2. Caused by a defect of reason at the time of the commission of the offence.

In Pakistan Penal Code 1860, insanity is defined in section 84. The section states that:

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

In addition to the above-mentioned section, the Code of Criminal Procedure 1898 also contains a whole Chapter 34, on the subject of Insanity.

1.3. History and Development

Prior to the enactment of The Mental Health Ordinance (2001), mental illness was dealt with by Act (1912), which was implemented during British Rule in the Sub-continent. However, there were several defects in the statute, the most noticeable was the use of archaic concepts like "lunatic", "asylum" and "Criminal Lunatic" Act (1912). Thus the ordinance substituted phrases like "health facility" and "mentally disordered person" for those that are more medically acceptable and pertinent.

The Mental Health Ordinance (2001) added a number of definitions, the most significant of which is perhaps the thorough definition of informed consent in the context of the treatment of mentally ill persons. According to the Ordinance, patients must be informed of the risks associated with their proposed course of treatment, any alternative treatment if available, the probability of its success, and the anticipated costs of their treatment in order for their consent to be considered valid and informed. This is an important development because informed consent was not provided in the previous Lunacy Act of 1912 (Zulfiqar, 2018).

In the Act (1912), the main focus was on the punishment criteria of lunatic persons rather than their rehabilitation. The Ordinance of 2001 took significant steps to shift the focus of policymakers from punishment to rehabilitation. For instance, section 13-16 of the Lunacy act provides for the detention of a lunatic for a maximum of 30 days with the permission of the concerned magistrate before the assessment of his mental health. While The Mental Health

Ordinance (2001) stipulates under section 19(2) that the detainee must be given necessary care and treatment, and the medical evaluation should be conducted by a psychiatrist within 72 hours of arrest.

In the 18th Amendment to the Constitution of Pakistan, the subject of Health was transferred to the Provincial Legislative list authorizing the provincial governments to legislate upon the matter. Consequently, the Mental Health Authority was dissolved and authority was transferred to the concerned provincial assemblies. Sindh was the first province to make substantial advancement in this regard. The Sindh Mental Health Act was enacted in 2013 and according to section 54(2) of the act, the IGP (Inspector General of Prisons) should visit a mentally retarded prisoner being held in the custody to determine his mental health. If the person is found unsound, the required steps mentioned in the Act should be followed for the well-being of that prisoner. Section 53(3) of the act requires a mandatory assessment by the Medical Board consisting of two or more members when a person is being held for, "*offences affecting the public health, safety, convenience, decency or morals*" (Zafar & Haq, 2018).

However, this legislative framework is marred with significant loopholes and lacunas that restrict the absolute welfare of mentally ill persons in the Criminal Justice System of Pakistan. The existing legislation does not protect all mentally ill defendants of convicts because people detained under blasphemy laws do not have such safeguards. Human rights Organizations have expressed concerns over the persecution of mentally ill persons by using blasphemy laws against them (Husain, 2014).

The Government of Punjab also enacted the Punjab Mental Health Act in 2014 without putting in the required efforts of consulting field experts and mental health professionals. The only difference between this Provincial Act and the Mental Health Ordinance of 2001 is the word "Government" in place of "Federal Government". While in Khyber Pakhtunkhwa and Baluchistan, legal ambiguity still exists (Zafar & Haq, 2018; Zulfiqar, 2018).

2. Literature Review

Mental illness has always been regarded as a neglected area for research and social scientists. Irrespective of the immense impact of mental illness on the social well-being of the person as well as the development of society, it took decades to develop laws and jurisprudence on the subject. In recent times, it has been an area of interest to researchers, but there is a huge literature gap on the subject in Pakistan. Some of the significant studies outline the following literature on the issues and rights of mentally ill accused and prisoners.

J. P. Pakistan (2021) issued an annual report signifying the latest development on psychiatric and mental disorders prevalent among prisoners on death row. This is a significant report and contains relevant facts and figures, the latest laws, and international obligations in light of important conventions. This study also analyzed the landmark judgment of Safia Bano but also included the case studies of mentally ill prisoners and the problems faced by them during the administration of Justice. The apathy of all the stakeholders of the criminal justice was discussed leading to the gross miscarriage of justice. The case of Khizar Hayat, Ghulam Abbas, Imdad Ali, and Kanizan Bibi was also discussed in this report. A distinguishing factor of this report is that it elaborates all the procedures of criminal law dealing with mentally ill accused and prisoners including their arrest, detention, investigation, trial, punishment, execution, and filing of mercy petitions.

Zulfiqar (2018) discussed the application of Criminal Laws on mentally ill persons. As Pakistan is very lenient in the implementation of special laws, particularly for mentally challenged persons. Such cannot defend their rights and understand the nature of proceedings thus the ends of justice cannot be met. The study discussed the definitions of mental illness and insanity in the light of Mental Health Ordinance 2001. The development of the Lunacy Act and Mental Health laws and the impact of that development on the rights of mentally challenged persons. It also highlights the issues in the existing laws and proposes a way forward to improve the policy framework in Pakistan. Adil et al. (2022) in his descriptive analysis discussed the facts of the Safia Bano Case and its implications on the whole Criminal Justice System of Pakistan. The researcher lauded the efforts of the Supreme Court of Pakistan as a step in the right direction.

3. International Obligations of Pakistan

Pakistan has been a signatory to a number of international covenants that necessitates immunity and legal protection for mentally ill prisoners and vulnerable criminal defendants such as the Convention on the Rights of Persons with Disabilities (CRPD), the United Nations Convention against torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and others.

Unfortunately, Pakistan fails to comprehend and implement the commitments required under these treaties. In order to help all the parties and stakeholders better understand and fulfil their responsibilities towards mentally challenged prisoners, this section outlines Pakistan's international obligations in this regard and the rights provided to people suffering from mental illnesses under other significant international laws (Incarceration, 2021).

3.1. Rights of Mentally ill Persons

Pakistan ratified International Covenant on Civil and Political Rights (hereinafter ICCPR) in 2010 and it comprises civil and political rights that protect citizens from arbitrary Governmental actions against the freedom of association and expression, privacy, and liberty. It also prohibits the states to award the death penalty *"on a person suffering from any mental or intellectual disabilities or to execute any such person."* Article 7 of the ICCPR outlaws inhumane, cruel, and degrading treatment, and empowers party states to provide humane and compassionate conditions of treatment and confinement for mentally ill persons. All party states of ICCPR are required to address the procedures and conditions for providing psychiatric and medical care to mentally challenged and ill persons from the time of detention in order to comply with Article 7. While Article 10 of the ICCPR states that, *"all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"*. Article 26 guarantees the right to equality and non-discrimination to all citizens irrespective of colour, sex, language, religion, national or social origin, birth, property, political opinion, or another status. The United Nations Human Rights Committee is responsible to oversee how the ICCPR is interpreted and implemented and determined that nations must take necessary steps to eliminate the circumstances that perpetuate discrimination. Moreover, according to the ICCPR, *"the reform and social readaptation of prisoners"* is an *"essential aim"* of imprisonment (ICCPR Article 10).

According to United Nations Human Rights Committee, *"in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings"* (Committee, 2007) and all defendants have the right to effective legal representation under international law (ICCPR Article 14(3)(d)). Furthermore, the ICCPR mandates that all defendants must have adequate time, opportunity, and facilities to prepare their defence and communicate with their legal counsel (ICCPR Article 14(3)(b)). The importance of an adequate defence cannot be ignored, as a wrongful conviction can deprive an innocent's life. A state must provide, *"adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases."* (Clifford Mclawrence v. Jamaica).

The Special Rapporteur on torture and other cruel, inhumane, or degrading treatment or punishment (*UN Rights Experts Call on US to Commute Death Sentence of Mentally Ill Prisoner*, 2014) has stated that the imposition or execution of the death penalty to the mentally challenged persons is inhumane, and cruel and is inconsistent with Article 1 and 16 of United Nations Convention against Torture (hereinafter UNCAT). The state parties are required under this convention to prevent such acts of torture on their territory. Similarly, the *Special Rapporteur on extrajudicial, summary or arbitrary executions* has noted that *"it is a violation of death penalty safeguards to impose capital punishment on individuals suffering from psychosocial disabilities."* (Heyns, 2014).

In 2008, Pakistan ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 12 of the covenant establishes, *"the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."* Governments are required to take specific actions to promote and protect the health of their citizens under this article (Economic & Council, 2000). Such a right to health can be both negative and positive depending on how you want to interpret it. On the one hand, a right to positive government

services or actions that would enhance and promote health, and on the other hand the negative right to protection against dangerous or unhealthy conditions. Moreover, principle 14 of the **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care** serves as a guide to the obligations of the states under ICESCR, notably with regard to safeguards against coercive or unlawful treatment.

The United Nations General Assembly (UNGA) enacted the CRPD to safeguard the rights of people with physical and mental disabilities. The CRPD establishes, a "*framework for ensuring that mental health laws fully recognize the rights of those with mental illness.*" Every member state, including Pakistan, is bound under this convention.

The UN Declaration on the Rights of Mentally Retarded Persons (UN, 1971), the Standard Rules for Equalisation of Opportunities for Persons with Disabilities (UN, 1993), the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (WHO, 1991), the Declaration of Madrid (Madrid, 1996), WHO's Mental Health Care: Ten Basic Principles, are some examples of internationally agreed standards of best practices regarding mental health. With the aid of these standards, countries can understand their commitments and obligations under international conventions. They set up a number of safeguards that provide the basic and essential rights to mentally ill persons including protection against discrimination, protection against arbitrary detention, and protection against inhumane, degrading treatment or torture (UN, 2015).

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules") contain detailed guidance on how healthcare facilities in prisons should be administered and the precise obligations and responsibilities of healthcare workers. They provide a vital framework for the party states to implement the internationally acknowledged standards for the management of prisons and respecting the rights of prisoners. The Mandela Rules stipulate that healthcare professionals, performing their duties in prisons and detention centres must be independent of the prison administration to achieve their objectives (UN, 2015). The Physicians and Doctors of such facilities must be independent of jail or police authorities, allowing them to build relationships of trust and confidence with the prisoners. Similar to this, the UNGA adopted the UN Principles of Medical Ethics in 1982, which provides standards and guidelines for healthcare professionals working within prisons. They place a significant emphasis on providing non-discriminatory and equal treatment and prohibit any cruel treatment and acts of torture on the prisoners (Incarceration, 2021).

3.2. Obligations Under Islamic Law

In Pakistan, Islam is the State religion and the Government follows Islamic principles in its policies and laws. According to such Islamic principles, a person suffering from mental illness could not have the required criminal intent and Mens Rea to commit any illegal act as they lacked intellectual disability and competence. Imam Abu Hanifa argues that an insane person should not be punished even if he developed insanity after the commission of an offence, or after the conviction.

Firstly, the 'insane' people are those who lack the understanding and reasoning to differentiate between right and wrong, or most importantly, the consequences of their actions. This is based upon the hadith that says "*the pen does not record (bad actions) against the sleeper until he awakes, against the boy until he reaches puberty or against the mad man until he recovers his wits.*" However, Islamic Scholars, policymakers, and legislators face difficulty while accurately defining insanity. Insanity is manifested in one of three ways, such as Absolute, intermittent and Partial. In the instance of intermittent insanity, it is necessary to prove that the mental illness was present at the time of the commission of the offence in order for the accused to be declared innocent, otherwise, the offender should be held accountable for his actions if the mental illness was inactive or was in remission.

Secondly, three characteristics are used to define competence such as the ability to reason (*agil*), the capacity for deliberate intent (*amad*), and the ability to be fully responsible (*mukallaf*). Thus, a person is deemed a "*manjun*" or is legally incompetent if he lacks to meet the above characteristics.

Thirdly, Islamic Law equates severe intellectual disability with insanity. The term Severe intellectual disability includes the condition that impairs reasoning and judgment *'to the extent that it causes the inability to appreciate the nature of one's actions'*. Lastly, all schools of thought of Islam agree that a person who commits a crime in his unconsciousness is not liable for his actions.

Islamic Law also forbids the imposition of capital punishment on the mentally challenged or persons suffering from any severe mental illness. Islamic scholars agree that 'insane individuals' cannot be executed as it would breach the principles of Shariah. A renowned Scholar of the eighteenth century, Allamah Sayyid Muhammad Amin ibn Abidin said, *"if a criminal, sentenced to death for murder, is diagnosed with insanity before the punishment is actually imposed, then his post-crime insanity will save him from the death penalty."*

4. Analysis of the Landmark Supreme Court Judgment: *Safia Bano v The Home Department*

This judgment is a landmark in many aspects as it played a significant role in the development of jurisprudence on the subject of mental illness. It was a turning point in safeguarding the rights of mentally challenged prisoners. The Supreme Court endeavoured to establish that people suffering from mental illness are provided with due process of law at every stage of the criminal justice system in Pakistan by upholding protections and issuing new guidance. The principle is that a mentally challenged or ill prisoner should not be awarded the death penalty because he cannot understand the rationale behind his sentence. Although this judgment is a step in the right direction and demonstrates that the Superior Judiciary of Pakistan is willing to consider the rights of mentally ill prisoners on death row. The important developments of the judgment are as follows:

4.1. Constitution of Medical Boards to determine fitness for trial

The Supreme Court emphasized that a magistrate or judge must not rely on their subjective assessment of the mental state of the accused for sections 464, and 465. The Court may take into account its own opinions regarding the defendant's "conduct and demeanour", but the prime importance should be given to the objectivity and the relevant material present before the court. Even though one of the parties fails to make the claim, the court is not prevented from establishing whether the defendant is suitable for trial or not.

Initially, if the court has made a prima facie opinion that the accused is unable to understand the nature of the proceedings or can make their defence, then the court is required to conduct an inquiry to determine the mental capacity of the defendant to face trial. According to the directives of the Supreme Court, the trial courts are instructed to establish a Medical Board to perform "detailed and structured" mental health assessments to inquire into the capacity and mental illness of the defendant to stand trial. If any mentally ill prisoner is referred by jail authorities, then the medical board shall consist of one psychologist and two experienced and qualified psychiatrists from Government hospitals to assess, examine and rehabilitate the referred prisoner. The inclusion of multiple health professionals in the Medical Board demonstrates the application of the evidence-based and scientific approach to evaluating the mental state of the defendant. This positive development of a mandatory medical board is in direct contrast with the formerly established process of the subjective opinion of the magistrate or judge on the mental condition of the defendant. This judgment is an important step forward for the underprivileged and the most vulnerable segment of society and deals with the protection of the rights of persons with disabilities.

The Supreme Court of Pakistan, while issuing the directives of the constitution of Medical Boards did not take into account the dearth of forensic psychiatrists or psychologists available. there are around 400 psychiatrists in the country, serving an estimated 15 million people suffering from mental illness (Javed, Khan, Nasar, & Rasheed, 2020). Further, there are very few public or state-run facilities, hospitals, and psychiatric units in Pakistan, as WHO reported in 2017 that there are only 2.1 beds available for a population of 100,000 (Ali & Gul, 2018). This substantial lack of capacity can be attributed to extremely little funding for mental healthcare. Sadly, only 0.9% of the Gross Domestic Product (hereinafter GDP) of Pakistan is spent on health, while mental health receives a meagre 0.04% of the GDP. Due to these circumstances, there are few psychiatrists with the required experience and expertise, and

there are few possibilities for new psychiatrists to acquire the required skills of forensic psychiatry.

In Pakistan, the demand for skilled mental health practitioners outweighs their potential to fill such positions. In this judgment, the Supreme Court has not prescribed a timeframe to form a Medical Board to ascertain the mental health of the defendant which can lead to unwanted delay in the trial. However, the directive of the Superior Court to constitute Medical Boards will contribute to providing integral medical evidence for trials and appeals. This will protect the rights of the accused to a fair trial and most importantly, the mentally challenged accused.

4.2. Medical Board to determine fitness for execution

In this landmark judgment, the Supreme Court also extended the protection against execution for prisoners who develop psychological or mental illness whilst on death row. A medical board, different from the one constituted to determine the defendant's fitness to face trial, is constituted at this stage. The Supreme Court directed Federal and Provincial Governments to constitute medical boards to determine whether a person suffering from mental illness is fit to be executed or not. This medical board shall consist of two psychologists and three psychiatrists from Government hospitals (Ali & Gul, 2018). The purpose of this medical board is to assess if the prisoner has the mental capacity to understand the rationale of their sentence. However, the Court did not provide any instructions regarding the time limit during which the assessment can be undertaken. Thus, it is suggested that such medical examination should be conducted as soon as the signs of mental disorders start to surface before execution. The effectiveness of such a process depends upon resources, adequate knowledge, and training to recognize the possibility of mental disorders (Incarceration, 2021).

4.3. Inaccessibility of Medical Records

According to the Supreme Court's Judgment, the estimation of the defendant's mental health leading to unfitness for sections 464 and 465 of the Code of Criminal Procedure is based on an objective evaluation of material, and statistics presented before the court or on the information already present on the case and police files. The defendant or their legal counsel must have access to the pertinent medical information to make an objective assessment and to ensure that the accused's mental health is duly considered. Before this judgment, the relevant medical records were only accessed for the mercy petition rather than all stages of the criminal proceedings. In doing so, the Apex court failed to consider the fact that legal counsels, defendant, and their families do not have access to the necessary medical records required by the Courts as a piece of evidence. Such restriction on the access of medical information to the defendant is a blatant violation of the fundamental right enshrined under Article 4 of the Constitution.

According to Articles 85, and 87 of QSO (Qanun-e-Shahadat Order 1984), the documents made by public servants while performing their official duties are termed Public Documents and such documents must be provided to the person having a right to access them on demand. Thus, the medical records of any accused or prisoner are public documents that should be provided on demand (Incarceration, 2021; Zulfiqar, 2018).

In Pakistan, the right to access public documents is granted in both common law and statute (Right to access to Information Act 2017). In *Khizer Hayat v. Home Department and others* (W.P No. 130100 of 2013), the Lahore High Court established the legal right of a defence lawyer to access relevant medical records. Resultantly, any attempt to withhold the information about the defendant's mental condition goes against the judgment of Superior courts and renders it impossible for the legal counsels to represent their client effectively. Withholding such key records also violates the constitutional rights of a fair trial (The Constitution of Pakistan 1973, Article 10) and due process (T. C. o. Pakistan, 1973) and results in a gross miscarriage of justice (Zafar & Haq, 2018).

4.4. Establishment of Forensic Psychiatry Facilities

The establishment of forensic psychiatry facilities is essential for prisoners suffering from mental illness. It is commendable that Supreme Court is committed to establishing such facilities and it is a step in the right direction toward acknowledging the rights of mentally

challenged defendants and prisoners. Moreover, the Supreme Court's directive outlines the obligations under Provincial Mental Health Acts, which require Provincial and Federal Governments to establish forensic psychiatric units for mentally ill convicts 'The Mental Health Ordinance 2001', Sections 6, 55 (The Mental Health Ordinance, 2001). In actuality, it is very rare to transfer any such prisoner to any medical facility for the required treatment. The Government hospitals lack training and resources to deal with such prisoners and thus are reluctant to treat them.

Currently, the facility of forensic psychiatry is provided on an 'as required' basis but the demand is increasing significantly and outnumbers the supply. According to the Pakistani Government, there are 2.2 times more prisoners than the capacity of the prisons (Commission, 1997). Although there is no Government data reflecting the accurate number of mentally ill prisoners in Pakistan, a study in 2011 indicates that 62.5% of female prisoners are suffering from psychiatric disorders (Bilal & Saeed, 2011). The need for state-of-the-art forensic psychiatric facilities is prompted by the overcrowding of prisons and the prevalence of mental illness within. Currently, the majority of forensic psychiatric units are situated in mental hospitals and prisons but there are no specialized and independent high-security forensic units in Pakistan (Gendel, 2004).

Consequently, it is necessary to give priority to this subject to offset the neglected and undervalued field of forensic psychiatry. To accomplish this, the government's efforts, commitment, and greater funding are required (Javed et al., 2020).

4.5. Psychiatry in Pakistan

Although the judgment contains unprecedented development on the subject, it neglects to acknowledge the current scenario of psychiatry in the country. There is a lack of understanding and awareness about various kinds of mental illnesses in public and a lack of mental health professionals and facilities. Despite having a large population, Pakistan has an abysmally low number of medical graduates and very few of them opt to complete one-year training in mental healthcare (Hassan, Nizami, & Asmer, 2017). According to the latest data, only 125 psychiatric nurses, 400 psychiatrists, 480 psychologists, and 600 mental health workers are available to meet the needs of more than 180 million people in the country (Gadit, 2007).

4.6. Public Education

A key element to implementing this judgment is changing public perception regarding mental health problems by adopting anti-stigma initiatives. This process can be made effective through a unified effort of all the stakeholders of society, particularly religious seminaries and local psychiatric bodies. The awareness and facts can be disseminated through print and digital media to counter the stereotypes of the public (Tareen & Tareen, 2016).

5. Way Forward- Recommendations

It is essential to devise and implement pathways to improve the social perceptions of forensic psychiatry and mental illness, as it substantially perpetuates the issue and hinders the necessary development. It is imperative to realize the recommendations of the Supreme Court in the Safia Bano case, including the initiation of training programs, and the establishment of forensic facilities and medical boards to protect the rights of mentally challenged convicts on death row. According to the researcher, the following recommendations are very pertinent.

5.1. Reforms in the Process of Arrest

The procedure of arrest needs to be reformed on all fronts, including policy and institutional levels, legislative, criminal justice, and enforcement. It is also required to effectively implement the prevailing procedure prescribed in the Code of Criminal Procedure. The arrest can only be made with a warrant or in the presence of strong connecting evidence against the accused. The accused must also be prevented from custodial torture and abuse, and be presented before the magistrate within 24 hours of arrest (T. C. o. Pakistan, 1973). Most importantly, there is also a need for legislative reform to train police officers and judicial officers to determine the mental health of an accused person when first brought before a magistrate. The reforms must also be taken in light of international obligations on Pakistan under UNCAT and ICCPR. Lastly, all persons should be required to undergo a psychological assessment at the time of arrest and admittance to prison (Gadit, 2007; Incarceration, 2021).

5.2. Adherence to Legal Procedure

The purpose of the arrest should be to protect the mentally ill accused as well as the public. Police officials often abuse their arbitrary powers of arrest to detention against the accused. Alternatively, the police should be given the required skills and knowledge to deal with such persons empathetically. It is also important to follow the procedure outlined in Provincial Health Acts while making arrests. In particular, the procedure outlined in Section 19 of the Provincial Mental Health Act should be followed as it authorizes law enforcement officials to take mentally ill persons identified in public places to safe custody (Javed et al., 2020; Tareen & Tareen, 2016).

5.3. Evidence-based Approach

It is recommended that Pakistan should adopt an evidence-based approach while evaluating mental health during all stages of the Criminal Justice system. The emphasis should be on a well-supported expert opinion about the nature and implications of the mental disability of the defendant rather than varied legal definitions of mental impairment.

5.4. Considering Mental Illness during Trial

In accordance with internationally acknowledged principles and the Apex court's judgment, the trial court judges must assess the supervening and mitigating impact of mental impairment during the trial. If the defence has not been raised by the defendant during the trial or pleadings, the judge should take into account this pertinent information if presented at any later stage. The recommendations of the supreme court in the Safia Bano case require the training of all stakeholders including judges. Further, it is also suggested that the medical records of the prisoner should be provided to his legal counsel and family on demand. The Supreme Court has directed to establish medical boards if the case of further inquiry arises, and the chairman of such medical board must be subpoenaed in the trial court for the deposition. He should also be cross-examined by the defence counsel and prosecutor. After that, if the accused wants to introduce new evidence to support his claim, he should be allowed to exhibit it with the case file.

5.5. Pre-Sentence Hearings

When it comes to sentencing, the trial court must be provided with different factors than those underlined at the time of conviction. It is essential to conduct separate sentence hearings to consider all the facts and material on board regarding the mental health of the accused. Thus, the Code of Criminal Procedure should be amended to provide for bifurcated trials.

5.6. Mercy Petitions

President's power to pardon is the last hope of the prisoner on death row, and if he is mentally ill then rejection of the mercy petition can be a gross miscarriage of justice. Pakistan has failed to fulfil its international obligations in the rational exercise of the power of pardon. However, if the following suggestions are considered, the issue can be addressed.

1. First and foremost, the current practice of declining mercy petitions overlooking the circumstances of the case should be officially renounced.
2. Secondly, the information regarding the exercise of the President's power to grant pardons should be made public.
3. Further, the procedure for prison officials to file mercy petitions on the behalf of death row prisoners must be reformed. It should be made mandatory to consult the family and legal representatives of the prisoner while filing such petitions.

It is also necessary to give awareness to the prisoners regarding their rights to pardon and clemency. It is also recommended that all decisions on mercy petitions should be made public and supported with written reasoning. The Government of Pakistan should give special consideration to the prisoners suffering from physical and mental illness and commute their sentences.

6. Conclusion

The study encapsulates the significant impact of landmark judgment on the subject of mental illness. In South East Asia, mentally ill persons are provided with no rights or protections. After the Lunacy Act of 1912, it took almost a decade to consider this issue and Mental Health Ordinance was passed in 2001. It indicates the lack of interest of Policymakers on this pertinent issue, as a swooping 50 million people are suffering from mental and psychiatric issues. Under international law, Pakistan has been a signatory of multiple conventions dealing with the social, cultural and economic rights of its citizens. These Conventions protect the rights of mentally ill persons and provide guidelines for arrest, detention, trial and execution. Moreover, Islamic Law also provides certain protections to persons who lack an understanding of their actions. It exempts mentally ill persons from Criminal responsibility.

Although the legislative framework of Pakistan does not align with these international standards, the Judgement in the Safia Bano case is an important development to safeguard the rights of mentally ill persons in Pakistan. In this judgment, major recommendations were made to revamp the criminal justice system. The Apex Court of Pakistan made it mandatory to constitute a Medical Board with a mental health specialist to evaluate the mental condition of the alleged accused after arrest and during the trial. This board is authorized to examine the fitness of a mentally ill person to withstand trial and fitness to be executed. Moreover, the pertinent issue of the inaccessibility of medical records to the legal counsel and the defendant is termed as a blatant violation of the fundamental right of the right to a fair trial by the Supreme Court of Pakistan. The existing procedure of the criminal justice system was violating the Islamic injunctions and was biased and inappropriate for mentally challenged persons as there were no special protections and assessment criteria to determine their mental health. The Supreme Court directed the Government of Pakistan to establish Forensic Psychiatric Units for the welfare, care and custody of such persons. Most importantly, it was emphasised by the Court to initiate training programs for all the stakeholders of the Criminal Justice System such as Judges, Prosecutors, Police officers, and Prison officials. They should be aware of the rights and special protections of mentally ill persons. Lastly, the public image on the subject should be enhanced through the dissemination of education.

Safia Bano's case is a breakthrough for the already marginalized community of Pakistan. This is a step in the right direction but on practical grounds, the implementation of this judgment is still lacking. The absolute implementation of the recommendations of the researcher can ensure the protection of rights and exemption from criminal responsibility.

References

- Act, T. L. (1912). The Lunacy Act, 1912 (IV of 1912).
- Adil, K. J., Remonde, C. G., Gonzales, E. L., Boo, K.-J., Kwon, K. J., Kim, D. H., . . . Jeon, S. J. (2022). Behavioral deficits in adolescent mice after sub-chronic administration of NMDA during early stage of postnatal development. *Biomolecules & therapeutics*, 30(4), 320. doi:<https://doi.org/10.4062/biomolther.2021.194>
- Ali, T. M., & Gul, S. (2018). Community mental health services in Pakistan: Review study from Muslim world 2000-2015. *Psychology, Community & Health*, 7(1). doi:<https://doi.org/10.23668/psycharchives.2324>
- Bilal, F., & Saeed, K. (2011). Psychiatric morbidity among the female inmates of district jail Adyala, Rawalpindi. *Rawal Medical Journal*, 36(2), 1-10.
- Commission, P. L. (1997). Report on Jail Reform. *Government of Pakistan*.
- Committee, U. H. R. (2007). General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial.
- Economic, U., & Council, S. (2000). Committee on Economic, Social, and Cultural Rights. 2000. *Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment, 14*.
- Gadit, A. A. M. (2007). Psychiatry in Pakistan: 1947-2006: A new balance sheet. *JPMA*, 57(9), 453-463.
- Gendel, M. H. (2004). Forensic and medical legal issues in addiction psychiatry. *Psychiatric Clinics*, 27(4), 611-626. doi:<https://doi.org/10.1016/j.psc.2004.06.001>

- Hassan, T., Nizami, A. T., & Asmer, M. S. (2017). Forensic psychiatric service provision in Pakistan and its challenges. *BJPsych International*, 14(2), 40-44. doi:<https://doi.org/10.1192/S205647400000177X>
- Heyns, C. (2014). *Autonomous weapons systems and human rights law*. Paper presented at the Presentation made at the informal expert meeting organized by the state parties to the Convention on Certain Conventional Weapons.
- Husain, M. (2014). Blasphemy laws and mental illness in Pakistan. *The Psychiatric Bulletin*, 38(1), 40-44. doi:<https://doi.org/10.1192/pb.bp.112.042572>
- Incarceration, T. I. M. i. a. (2021). Retrieved from https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjx5KYqZf9AhXSh_0HHfvrCvkQFnoECAoQAQ&url=https%3A%2F%2Fjpp.org.pk%2Freport%2Ftrapped-inside-mental-illness-incarceration%2F&usq=AOvVaw2Y0slpPUOgV1B_Ds2k0_Oy
- Javed, A., Khan, M. N. S., Nasar, A., & Rasheed, A. (2020). Mental healthcare in Pakistan. *Taiwanese Journal of Psychiatry*, 34(1), 6. doi:https://doi.org/10.4103/TPSY.TPSY_8_20
- Madrid, D. o. (1996). <https://www.wpanet.org/current-madrid-declaration>
- Pakistan, J. P. (2021). *The World Justice Project's (WJP) Rule of Law Index* Retrieved from [http://pid.gov.pk/site/press_detail/20247#:~:text=The%20World%20Justice%20Project%27s%20\(WJP,130th%20out%20of%20139%20nations\)](http://pid.gov.pk/site/press_detail/20247#:~:text=The%20World%20Justice%20Project%27s%20(WJP,130th%20out%20of%20139%20nations)).
- Pakistan, T. C. o. (1973). Retrieved from https://na.gov.pk/uploads/documents/1549886415_632.pdf
- Reporter, T. N. s. S. (2016). News stories for The Newspaper's Staff Reporter. *DAWN*. Retrieved from <https://www.dawn.com/authors/397/the-newspaper-s-staff-reporter>
- Tareen, A., & Tareen, K. I. (2016). Mental health law in Pakistan. *BJPsych International*, 13(3), 67-69. doi:<https://doi.org/10.1192/S2056474000001276>
- The Mental Health Ordinance, m. (2001). *The Mental Health Ordinance 2001*. Retrieved from <http://punjablaws.gov.pk/laws/430a.html>
- UN. (1971). *Declaration on the Rights of Mentally Retarded Persons*. Retrieved from <https://digitallibrary.un.org/?ln=en>
- UN. (1993). *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*. Retrieved from <https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html#:~:text=Persons%20with%20Disabilities-Standard%20Rules%20on%20the%20Equalization%20of%20Opportunities%20for%20Persons%20with,resolution%2048%2F96%20annex>.
- UN. (2015). *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*. Retrieved from https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf
- WHO. (1991). *World Health Organization, Mental Illness and the Improvement of Mental Health Care*. Retrieved from https://www.who.int/publications/i/item/9789240003927?gclid=EAiaIQobChMIr96XiLWX_QIVS7rVCh1FswHdEAAYASAAEgIWA_D_BwE
- Zafar, N. N., & Haq, M. (2018). Mentally ill Prisoners in Pakistan's Criminal Justice System: Analysing fair trial and Due Process Standards. *University College Lahore Human Rights Review*.
- Zulfiqar, H. (2018). Mental Illness in the Pakistani Legal System. *University College Lahore Human Rights Review*.