REVIEW

Medicolegal impact of the new hurt laws in Pakistan

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SUMMARY. The penal laws in Pakistan went through sweeping reforms in 1979 with intent to bring them in line with the Islamic Jurisprudence. The introduction of these laws repealed the definitions as well as punishments of various types of injuries. Besides that these laws also redefined and reclassified the crime of murder. The laws required that the injuries be identified and documented by an authorized physician. The new classification of injuries and deaths, lack of proper forensic training of the emergency room physicians, performance of medicolegal work by doctors at the earliest stages of their careers and theoretical methods of undergraduate teaching in forensic medicine are matters of concern as they adversely affect the quality of medicolegal work performed in the country. This article gives an overview of the medicolegal system of Pakistan. It also reviews the current laws, their impact on the medical and legal systems of the country and offers some recommendations to correct the existing situation of forensic training and work standards.


INTRODUCTION

Pakistan is a large and populous Southeast Asian country. The country inherited a medicolegal system which was based on the investigation by the police and this has continued as such. There were few provisions of the law which required medical examination and were mostly limited to death due to criminal injury and even these authorized the investigating officers to include medical examination only if deemed possible. In 1979, a radical change was brought in the criminal justice system of the country with the enforcement of first the Hudood Ordinance and then the Qisas and Diyat Ordinance in 1990 in order to Islamize the laws of the land. The first ordinance was meant to repeal the laws governing sexual offences. The second repealed the laws governing bodily harm. The new laws repealed the definition as well as the punishment of each type of injury therefore now the legal classification of injuries differs from the medical classification. The new laws included examination by a medical officer appointed by the government for this purpose which was certainly a step forward. These laws also introduced the concept of compensation (Diyat) for an injury, which meant that, depending upon the type of injury the offenders were required to pay different types of compensations to the injured persons or the legal heirs who could accept or waive the compensation.

THE ISLAMIC LAWS IN PAKISTAN COVERING BODILY INJURIES AND DEATH

The Qisas and Diyat Ordinance (QDO) was incorporated into the Pakistan Penal Code (PPC) through the Criminal Law (Amendment) Act of 1997. This amended about 40 sections of the Chapter XVI of the Pakistan Penal Code, 1860, dealing with offences affecting the human body. The new law fixed the age for adulthood at 18 years in case of male and 16 years in case of female or having achieved puberty, whichever is earlier.
The QDO redefined hurt and divided it into different categories as per injunctions of Islam. This was surprisingly in line with modern forensic medicine only being somewhat more comprehensive. The law also separated the injuries to the head and face from other parts of the body, which practically redefined the types of the wound on the skull. Hurt was divided into two main subcategories besides injuries causing dismemberment/amputation of an organ or permanent impairment or the functioning/power/capacity of any organ limb of the body; other injuries were categorized as all other types of hurts:

1. **Shajjah**: this category encompasses the injuries to the head and face and is classified as follows:
   - (a) an injury without exposing any bone of the victim;
   - (b) an injury which exposes the bone without causing its fracture;
   - (c) an injury which fractures the bone of the victim without dislocating it;
   - (d) an injury which causes fracture of the bone of the victim and also dislocates it;
   - (e) an injury to the skull which causes fracture of the skull of the victim exposing the meningeal membrane;
   - (f) an injury to the skull which causes fracture of the skull of the victim and also ruptures the meningeal membrane.

2. **Jurh**: all injuries other than those of the head or face and also leaving a temporary or permanent mark of the wound. This was subdivided into two sub-categories:
   - (a) all injuries where the wound extends into the body cavities;
   - (b) all injuries where the wound does not extend into the body cavities which are of the following types:
     - (i) an injury in which skin is ruptured and bleeding occurs (however minute);
     - (ii) an injury causing an incised wound without exposing the bone;
     - (iii) an injury in which there is a laceration;
     - (iv) an injury exposing the bone without a fracture;
     - (v) an injury causing fracture of a bone without dislocating it;
     - (vi) an injury which causes fracture of a bone and also dislocating that bone.

3. All kinds of other hurts.

*Each subcategory/sub subcategory has an individual name in Arabic language and has its specific compensation which the offender is liable to pay if agreed by the person who has been injured.*

The offences of death due to an injury were also redefined and these repealed the concerning laws of the Pakistan Penal Code.

1. **Murder with intention to cause death** (*Qatl Amd. Sec. 300*). This category covers deaths caused with the intention of doing so or with the intention of causing bodily injury to a person, by doing an act which in ordinary course of nature is likely to cause death, or with the knowledge that his act is so imminently dangerous that it must in all probability cause death.

2. **Murder with intention to cause bodily harm** (*Qatl Shibh Amd. Sec. 315*). This category covers deaths caused with the intention of causing harm to the body or mind of any person not death per se and by means of a weapon or act which in the ordinary course of nature is not likely to cause death.

3. **Death without an intention to cause bodily harm** (*Qatl Khata Sec. 318*). Causing death without any intention to cause the death of or cause harm to a person causes death of such a person either by mistake of act or by mistake of fact. This category covers deaths like those due to negligent driving or medical treatment.

4. **Death without an intention to cause death or bodily harm but due to an unlawful act** (*Qatl-bis-Sabab Sec. 321*). Causing death without any intention to cause death of or cause harm to anyone, by means of an unlawful act.

**THE MEDICOLEGAL SYSTEM**

The medicolegal system of Pakistan is based on an inquest by the Police which investigates the crimes and seeks the help of the medical profession in relevant cases. In most cases, now there is a legal requirement of a medicolegal examination/or an autopsy as the case may be. Medicolegal officers (MLOs) are appointed by the health departments in various hospitals at the district, divisional and provincial levels. There is no requirement of a postgraduate qualification or training in forensic medicine for such an appointment and doctors can be designated as MLO within 2 years of graduation. The only exposure to forensic medicine that these graduates have is the 60–100 h teaching/training included in the undergraduate medical curriculum. At the provincial level almost all the departments of Forensic Medicine at the medical schools perform medicolegal work, where most of the faculty members in the department have a postgraduate qualification in forensic medicine and are
trained to perform the medicolegal work. Autopsies are performed only for the purposes of investigation of death due to a criminal act. These are mostly conducted at the hospital mortuaries though few medical schools also have their own mortuaries. The forensic medicine departments as well as the hospitals do not provide any forensic laboratory services which are solely provided by the government chemical examiner laboratories. Only their reports are admissible in the courts of law.

**DISCUSSION**

The imposition of the Islamic laws and the requirement therein for a thorough medicolegal examination by an authorized physician is in line with the prevalent forensic standards. For the first time in the history of Pakistan medicolegal examination was given its due respect through legal reform. The intention of the law was to enact laws according to the injunctions of Islam. Since this was done without proper planning, it imposed additional burdens on the medical and legal systems of the country.

**Medical aspects**

The examination of injuries and their certification require special forensic training as an untrained physician can easily misinterpret, overlook, contaminate or even destroy valuable evidence. Certain areas (such as paediatric forensic examination) are highly specialized since the classical signs might be altered and numerous conditions mimic the injuries. In Pakistan as in other jurisdictions documentation of the emergency room diagnosis, management and therapeutic interventions of a patient who has been abused physically is important from forensic point of view as assessment of this record is the basis for establishing facts of the injury during court proceedings at a much later stage.

The government was not able to make arrangements for catering to the needs of training in Forensic Medicine before the enactment of new laws. Currently there are negligible numbers of trained forensic physicians to shoulder the load of the medicolegal work in Pakistan (pers. commun. Prof Khalid Aziz, Department of Forensic Medicine, F.J. Medical College, Pakistan). Training facilities in the subject are limited and until recently there were only two postgraduate training courses in the subject: the Diploma in Medical Jurisprudence (DMJ) and the master’s course (M.Phil.), offered at the King Edward’s Medical College under the University of Punjab. Realizing the acute need for training facilities in forensic medicine, recently the College of Physicians and Surgeons Pakistan started offering its fellowship in forensic medicine in order to cater for the needs of training in forensic medicine within the country. In the absence of forensic physicians in Pakistan the emergency room physicians have the additional responsibility to handle the forensic examinations. These physicians in most cases are designated as medicolegal officers by the relevant health authorities; however, they have not undergone any training/residency programs in forensic medicine. The medicolegal officers are not allowed to stay in the same position for substantial length of time and new doctors designated in their place are again not qualified in forensic medicine and are also not trained in legal/testimonial procedures.

The determination of age of the person as required by law has to be done before further proceedings of relevant cases. In Pakistan, this is an important medicolegal question due to a lack of a system of registration of birth, though now the government is taking active steps towards it. Presently, however it means that the physician is responsible to determine the age of the offender or the victim but without proper training and tools he/she cannot be expected to make a meaningful diagnosis.

Further the laws have redefined different injuries and the usual forensic classification of wounds has been extended. This system of classification of injuries though more comprehensive is also more complex than the medical one. In typical cases, there are multiple injuries to be looked for, defined, and properly documented. Often the victims reach the medicolegal facility after a considerable delay due to long distances, lack of transportation or police procedures further complicating diagnosis of the injury. The physicians are required by the health authorities to classify the injuries according to the new laws which seem unrealistic, time consuming and sometimes quite confusing. The role of physicians is to describe the injuries completely, collect the evidence found therein and submit a detailed report to the investigating agencies who can then present the records to the courts for interpretation in accordance with the law.

Whatever the case may be, the criminal justice system of Pakistan needs appropriately trained doctors to cater for the forensic needs of the country and they must function under an appropriately designed system applicable to all the federal and provincial jurisdictions of the country. In the UK the system of police surgeons has worked satisfactorily, where physicians mostly with some training in forensic medicine are responsible for most of the clinical forensic work. In the US where an elaborate medical examiner system already exists for investigation of
death, efforts to train doctors in clinical forensic medicine are on their way.\textsuperscript{11–13} The forensic community of Pakistan has to take urgent steps in the similar direction in order to streamline forensic education, training and work standards.

**Legal aspects**

The concept of compensation under these laws has changed the way prosecution of such crimes was done before. If the victim or the legal heir chooses to waive compensation, or compensation is judicially held to be inapplicable, an offender is subjected to discretionary punishment in the form of imprisonment.\textsuperscript{14} In these instances, the trial judge determines the extent of punishment and whether to punish the offender at all considering all evidence including the medicolegal information. This has caused an anomaly of rich being able to pay the compensation and the conversion of the crime against the state to a crime against an individual. The situation becomes grave when one considers the concept of compensation in the context of factors like poverty, lack of education, low standard of legal provision and corruption.

**RECOMMENDATIONS**

The new hurt laws in Pakistan have challenged the already compromised medical and legal systems of the country. This situation needs immediate rectification with an alignment to the modern principles of forensic medicine.

1. Clinical medicolegal examination in cases of personal injuries and the documentation of injuries during an autopsy should be limited to examination, medical description and proper documentation of the injuries besides collection and preservation of evidence.

2. There is an urgent need to frame laws detailing the medicolegal duties of doctors with an intention to install a proper medicolegal investigation system in Pakistan. Institution of a model forensic investigation system like that of the developed world might not be feasible in Pakistan due to lack of resources, but working within the resources and making a realistic framework of medicolegal work are definitely possible. Along with a central forensic authority, a special cadre of trained doctors having a high standard such as police surgeons in the UK\textsuperscript{15,16} can be created who would perform the medicolegal work for the state besides performing the usual medical duties. This can be done without much expense as doctors are designated for medicolegal work routinely except that presently their careers are managed in a haphazard fashion.

3. The doctors performing medicolegal work presently can be certified through standardized training courses which can be developed at the college of Physicians and Surgeons with the help of notable medicolegal experts of the country. In this regard, a fast-track course in Forensic Medicine can be established on the lines of the DMJ.

4. There should be a minimum qualification for new physicians before getting into the forensic cadre like the well-established postgraduate diploma in Medical Jurisprudence (DMJ) during which they can be trained in examination of injuries, examination of victims of sexual offences, autopsy techniques, histopathology, court procedures and medicolegal certification. Considering the prevailing standard of forensic work it is highly advisable that the medicolegal work performed by these doctors be assessed at regular intervals by a board of forensic experts including international experts as part of continuing medical education of the medicolegal officers.

5. In Pakistan, young doctors have to perform medicolegal work in early stages of their careers, therefore they have to be trained in the undergraduate years to shoulder that job competently. Teaching of the subject of Forensic Medicine and Science should be remodelled in order to train the graduates for performing forensic duties. Training programs instituted in other countries may act as a guideline in this regard.\textsuperscript{17} The postgraduate training in forensic medicine should similarly meet minimum international standards.\textsuperscript{18}

6. An aspect of the new hurt laws is that only authorized doctors can perform medicolegal work, which means that a report by another physician is not acceptable evidence in the courts. In the far-off regions of the country where the nearest hospital facility is not within easy reach of most people, private and other doctors should be allowed to examine injuries and document them in time. This again would call for a minimum training in forensic medicine for graduate students.

7. Police and public must be made aware of medicolegal work, its importance and availability.

**ACKNOWLEDGEMENTS**

I acknowledge Dr. Khalid Aziz, Professor and Head of the Department of Forensic Medicine, Fatima Jinnah Medical College, Pakistan, for thorough discussion and making some references available to me.

**REFERENCES**