

Book Reviews

Forensic Psychiatry in Islamic Jurisprudence

Kutaiba S. Chaleby

Herndon, Virginia: International Institute of Islamic Thought, 2001. 189 pages.

Forensic psychiatry deals with mental illness from a legal perspective. The term *forensic* is derived from the Roman word *forum*, a meeting place where legal judgments were made on cases of a legal nature. In a sense, that ancient forum has become the modern legislature and courtroom. The forensic psychiatrist is not only a physician, but one who enters the house of law trying to protect the interest of society as a whole. There are many books on this subject, but the one under review claims to be the first to deal with forensic psychiatry from an Islamic perspective. The author, Kutaiba Chaleby, is a Distinguished Fellow of the American Psychiatric Association (APA) and has worked in the clinical, academic, and administrative settings for many years in both Muslim and non-Muslim countries.

In the introduction, Chaleby points out that the legal system in most Islamic countries is derived from British or other European legal traditions as a result of colonialism, except in matters of personal status, family relationship, and inheritance laws. However, he contends that this scenario is changing, as many Islamic countries are now trying to use Islamic law in their courts. Saudi Arabia is an exception, since it was never influenced by any type of western legal system and uses the Shari'ah in all legal matters, including forensic cases.

While forensic psychiatry, as such, does not exist in Islamic literature, its major issues of concern have been addressed by Muslim scholars over the years. The present work is intended as a basic guide for psychiatrists to make decisions on forensic cases from an Islamic perspective. The author also hopes to "illuminate" the thinking and practice of modern secular forensic psychiatrists. A short account of Islamic law covering the princi-

ples of *fiqh* and the judicial system is given in the introduction for the benefit of those who are not familiar with such concepts. The book is divided into eight parts, an appendix, notes, bibliography, and an index.

Chapter 1 describes the nature of the doctor-patient relationship from secular (Anglo-American) and Islamic perspectives. While secular law emphasizes the doctor's legal, rather than moral, obligations, Islam makes no formal distinction between legal and moral duties. In addition, a doctor is obliged to provide free medical care if the patient cannot afford to pay. Muslim scholars generally believe that abandoning a sick patient is like committing a sin punishable by God. Another major distinction between secular and Islamic law is that the former considers psychiatric evaluation without accompanying treatment to be "medical practice," while in the latter, evaluation alone is not enough to establish a doctor-patient relationship. Issues of diagnosis, confidentiality, privilege, and subpoena, as practiced in most American states, are discussed. The author points out that even though obliging a witness to testify is not totally unknown in the Islamic legal system, the concept of subpoena is not clearly defined.

Addressing issues pertinent to the insanity defense and criminal responsibility, chapter 2 points out that the first confirmed insanity acquittal was recorded in western history in the 1500s and that modern secular laws governing insanity were formulated over the last 500 years or less. Islam, on the other hand, addressed this issue in the seventh and eighth centuries. The stance finally taken by the American Law Institute on the insanity defense in 1965, which states that a person is not responsible for criminal conduct if it is a result of mental defect or illness, is essentially the same as the Islamic view. Islamic law states that a crime is not a crime unless there was an intention of doing it. Thus, an insane person is considered to be lacking intention because of a disturbed thought process, and so is not liable for the crime committed. A broad classification level of insanity under Islamic law also is given.

Chapter 3 deals with the criteria for involuntary hospitalization and treatment. The author indicates that the statutes on these issues may vary from one country to another, and from state to state within the United States. However, terms like *mental illness* are often loosely defined, and the responsibility for diagnosing a patient ultimately lies with the treating physician. Due to this vagueness, the term *mental illness* is not used in the *Diagnostic and Statistical Manual* (DSM IV) published by the APA or the *International Classification of Diseases* (ICD) of the World Health Organization. Instead, more specific diagnostic terms are used to describe the specific illness.

Especially interesting here are descriptions of patient consent and its classifications under Islamic law, ranging from restricted to absolute and implied forms of consent.

Chapter 4 deals with mental competence from secular and Islamic perspectives. In Islam, competence (*ahliyah*) is divided into the competence of entitlement and the competence of performance. The age of mental competence, entering a contract, marriage and divorce, committing oneself to a mental hospital, and making a will are discussed. The issue of interdiction (*hajr*) upon a person and guardianship rules are discussed based on the views of different legal schools. It is interesting to note that in the Hanafi school, *hajr* prevents a mentally ill person from conducting certain transactions (e.g., handling money). Although known as partial guardianship in the secular system, it is not discussed in this book. Why a mother cannot be a legal guardian, which is not explained clearly, certainly would be questioned by a Westerner.

Chapter 5 covers family laws relevant to forensic psychiatry. Chaleby mentions several important laws, including the opinion of scholars that divorce is valid even if it is jokingly declared three times by the husband to his wife, and that children of any age can get married or be given into marriage by their guardians. What would have been an interesting discussion is how such rules apply in non-Muslim societies and whether they are strictly followed in Muslim countries.

Chapter 6 makes a distinction between guardianship and child custody. In secular law, child custody includes legal guardianship. Islamic law, on the other hand, distinguishes between custody (caring/residential responsibility) and legal guardianship (full responsibility for the child's welfare, including, among others, decisions regarding money, contracts, and career). Legal guardianship always belongs to the father, while the Qur'an and the Hadith emphasize the mother's custodial responsibility for the child. Details on the criteria for custodial fitness are discussed, including religious requirements. Most Islamic jurists consider the "best interest of the child" as the main objective in granting child custody.

Chapter 7 discusses child abuse and child witness. The author says that these issues received the attention of lawyers in the secular tradition only in the 1960s, while Islamic jurists addressed them much earlier. Parental punishment, assault, chastisement, legal implications of child abuse (including confidentiality), failing to report abuse, protecting the child from abusive parents, and so on are discussed based upon the rulings of the four legal schools.

The last chapter describes such malpractice and liability issues as negligence, intentional and unintentional harm, violation of professional standards, ignorance, deception, and so on. Euthanasia is briefly mentioned: Islamic law forbids the deliberate termination of life, no matter how noble the cause. It may even be considered a crime in a Shari'ah court. Certain Muslim scholars argue that while it may be a sin, it is not murder, and that judgment should be left to God, not the court. *Diyah*, in which a monetary value is set for the life of a human being or for lost or damaged body organs, is another interesting topic. The appendix covers questions and answers with Shaykh Salih ibn Sa'd al-Lehaidan, a senior judge in Saudi Arabia, on matters generally arising in clinical practice. The examples given are fictional, but the details are derived from actual cases in "an Islamic country," most probably Saudi Arabia itself. Thirty-three different cases and questions on common but difficult matters are covered.

Undoubtedly, this book is well-researched and packed with almost every issue that may be related to forensic psychiatry. The serious reader would be pleasantly surprised by almost 100 Arabic references ranging from the first Islamic century to the present. The book is written in an easy-to-understand manner, and should serve as an excellent resource for Muslim psychiatrists and other practitioners in the secular system who are grappling with difficult issues related to forensic psychiatry.

However, the book suffers from the lack of a clear source on Islamic references in several places, including patient confidentiality, mental competence, classification of insanity, patient consent, categories of parental assault on children, and the author's comment that recent child psychologists do not object to corporal punishment for disciplinary purposes. Important areas that need more coverage include an evaluation of the *Diagnostic and Statistical Manual* from an Islamic perspective and the concept of "possession" in mental insanity, with the author's recommendations to Muslim psychiatrists on diagnosis and treatment. How to narrow the gap between the secular and Islamic systems for a forensic patient's benefit also would have been an interesting discussion. Despite these shortcomings, however, the book is well worth buying and will serve as a guide to practicing forensic psychiatrists and others interested in the subject. It is a fine addition to the collection of works that IIIT has published over the years.

Amber Haque
Department of Psychology
International Islamic University
Kuala Lumpur, Malaysia