

IMPACT OF FORENSIC PSYCHOLOGY ON THE INDIAN JUDICIARY

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ABSTRACT

The crime rate rapidly increases in a developing country like India. Forensic psychology is one of the various techniques for crime detection, intervention, and rehabilitation. It is a utilization of psychological expertise in the legal system. It's been used for evaluating trials, death penalties, offering expert testimony, child custody evaluation, jury selection, and reforming criminal offenders. This research aims to provide an overview of the significance of forensic psychology in the legal field and to elaborate on the difference between forensic science and forensic psychology. It comprises a review of academic articles, reports and other sources.

INTRODUCTION

In today's time, Crime is one of the significant vices in the World. The level of criminal activities has been raised over the years and has caused devastating effects on the countries. There are several techniques to deter such illegal activities. The methods include forensic science, forensic psychology, criminal profiling and forensic psychiatry.

The term forensic derives from the Latin term *forensis*, which refers to a court of law. Forensic psychology and forensic science are closely related, yet many differences exist. Forensic science is the implementation of scientific methods or expertise to investigate a crime and examine the evidence that a prosecutor may present in a court of law. In comparison, forensic psychology is the study of human behaviour by using psychological techniques in criminal matters. To explain criminal acts, forensic psychologists use psychological research, data and theories. Balck's law dictionary defines forensic as 'Belongings to courts of justice.' Forensic psychology is the merger of law and psychology.¹

RESEARCH METHODOLOGY

This research is based on analysing academic reports and articles. This research shows the correlation between psychology and law. It includes-

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¹ Dr. Sarita Jand, Forensic Science & Law (New Era Law Publication, 1st Edition, 2017)

- The use of psychological assessments in criminal sentencing,
- The Role of forensic psychology in eyewitness identification
- The Effectiveness of offender profiling in criminal investigations
- The use of forensic psychology in evaluating the competency of criminal defendants
- The implications of the insanity defense in criminal trials
- The use of forensic psychology in assessing the credibility of witness testimony
- The role of forensic psychology in evaluating the risk of Recidivism
- The legal and ethical considerations of using psychological coercion in interrogations
- The impact of forensic psychology on the treatment of juvenile offenders
- The legal and ethical implications of using psychological research in criminal justice.

REVIEW OF LITERATURE

In this research, I will give you an overview of forensic psychology, its historical background, and its use in criminal justice; a discussion on the application of forensic psychology in the insanity defense will follow it. It includes the functions and importance of forensic psychologists. Also, it provides the differentiation between forensic psychology and forensic science.

In the past several decades, the involvement of forensic psychology in the legal field has been rapidly increasing. Nowadays, Psychological expertise is used in almost every area of law; forensic psychology has significantly contributed to the legal field. This field of psychology generally focuses on criminals. Experts in this field explain the behaviour of criminals- they try to figure out why certain people commit a crime, what type of people achieve it, and how to restrict people from engaging in it. The forensic psychologist also helps criminal reform.

HISTORICAL BACKGROUND OF FORENSIC PSYCHOLOGY

Forensic psychology is broadly expanding in the Indian legal sector. It has a comprehensive history. It has been observed that there were no such techniques before the year 1968 when

the first lie detector was set up at the Central Forensic Science Laboratory (CFSL) of the Central Bureau of Investigation (CBI). At that time, there was a lack of training and professional guidance to operate the lie detectors; using the references from Western literature, experts have learned it from trial and error. Scientific mechanisms have helped to satisfy Indian courts with the significance of forensic psychology in the criminal justice system.

In 1989, Court granted permission to conduct a narco-analysis test, which was held under the observation of Dr. S.L. Vaya. This narco-analysis test was conducted against the consent of a person being interrogated. Further, she stated that approval from the court and consent of a person is equally important to conduct such a test; otherwise, it will violate the law and fundamental rights. Back then, infrastructure was not facilitated; hence this test was conducted in prison. These days there are well infrastructures and other facilities available; now, tests like- Narco analysis, Lie detection, and Brain electrical Oscillation are conducted in the presence of expert doctors, nurses and mental health specialists in a room that is a clone of the operation theatre. All the information obtained by such tests is used as evidence in a court of law, as per the judgement of the supreme court of India, 2010.²

APPLICATION OF FORENSIC PSYCHOLOGY IN A COURTROOM

The Forensic psychologist gives expert testimony in a court of law regarding the accused's competency to stand trial by using psychological techniques and assessments. Through this examination and evaluation, they can give testimony in a court about whether the offender has done this act due to his mental incapacity and if the person needs treatment. In order to provide clinical judgement, forensic psychologists use various methods such as interviews, assessment tools, and psychometric tests like particular questionnaires. Forensic psychologists also play the role of advisors. They help the police conduct an effective investigation while questioning the accused. Alternatively, they advise the defense lawyer or public prosecutor on dealing with vulnerable or expert witnesses while cross-examining. Crime analysis is one of the vital processes of forensic psychology. It helps to understand the connections of crime based on the similarities in the behaviours of the offenders as reported by the victim or as deduced from the place of crime. Forensic psychology also plays a

² Havovi Hyderabadwalla, 'Forensic Psychology in India- Where we are and Where we are going'(2018),5(2) 256.

https://www.indianmentalhealth.com/pdf/2018/vol5-issue2/Viewpoint_Article_Forensic_Psychology.pdf

significant role in making the court understand the fallibility of memory, affecting eyewitness testimonies' accuracy.

Forensic psychologists have responsibilities in civil matters such as doing mental health checks, dealing with the case of child custody, consulting in divorce matters, etc.³

VARIOUS ACTS RELATED TO FORENSIC PSYCHOLOGY

According to the Indian Evidence Act of 1872,

Section 45 states- " Opinions of experts.—When the Court has to form an opinion upon a point of foreign law or of science or art, or as to the identity of handwriting 35 [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, 36 [or in questions as to the identity of handwriting] 35 [or finger impressions] are relevant facts. Such persons are called experts."⁴

The above provision explains that Forensic psychologists play a vital role in the criminal justice system. They act as a friend of a court by presenting facts, using expertise and scientific and psychological tools. They apply their expertise and skills to serve the evidence in a court of law. 'Men's rea'- guilty mind has to be proven as per the rule of law. Forensic psychologist works to understand the person's state of mind. They evaluate by using psychological assessments whether the person has the mental ability to stand trial. It has been observed that most of the accused use a defense of insanity to escape the punishment. In such cases, forensic psychologists use techniques to understand the truth of a defendant.

The Mental Health Act of 1987,

This act was framed for the well-being of mentally ill individuals. This Act contains 98 sections and ten chapters, which are as follows-

1st chapter includes definitions.

2nd chapter consists of the procedure for establishing mental health authorities at the centre and state levels.

³ Role and functions of a Forensic Psychology (2017) Unit 4
<<https://egyankosh.ac.in/bitstream/123456789/24164/1/Unit-4.pdf>>

⁴ Indian Evidence Act, 1872

3rd chapter lays out a plan and policy for establishing and preventing psychiatric hospitals and nursing homes.

4th chapter states clauses for the admittance of a mentally ill person in psychiatric hospitals and nursing homes.

5th chapter includes clauses of examination, discharge, leave of absence and withdrawal of a mentally ill person

6th chapter added provisions related to the property possession of a mentally ill person and the management of his property

7th chapter comprises clauses on the cost of maintenance of a mentally ill person

8th chapter explains the human rights of a mentally ill person

9th chapter inserted provisions of punishments and procedures.

The 10th chapter deals with other aspects.⁵

ROLE OF FORENSIC PSYCHOLOGY IN INSANITY DEFENSE

On the basis of Mc Naughten's 1843 rule, provisions of section 84 of the Indian Penal Code Act, 1860 have been framed. It is defined- as any act done by a person of unsound mind at the time of doing such act, and the person is incapable of knowing the nature of the act and does not know that the act he is doing is wrong or contrary to its law.

Medical science has mentioned that an unsound state of mind is an inability to perceive things normally. A person with an unsound mind or who is mentally ill fails to comprehend the nature of his act; this disease affects the person's brain cells, leading him to behave abnormally.

A person who is unsound of mind since birth without any interlude is an 'idiot'.

A person triggered by several mental disorders for a definite period is a 'lunatic'. This kind of person is not mentally ill by birth; lunacy is insanity acquired because of a malfunctioning mental health condition.

⁵ The Mental Health Act, 1987.

A person who faces severe changes in mental abilities because of an illness becomes an unsound mind that lacks the ability to understand his surroundings and loses control over thoughts, is considered as an unsound mind by illness.

A person who is intoxicated without his understanding or consent. If a person intoxicates himself voluntarily, he does not fall under this category and cannot use an insanity defense.

These are four categories considered under unsound of mind in the insanity defense.

According to section 84 of the Indian Penal Code Act, the insanity of a person must be proven legally with accurate and valid proof.

Essential factors for using the insanity defense-

1. A person must be incapable of understanding the nature of the act
2. A person must be incapable of comprehending the act he is doing is contrary to the law.

Forensic psychologists use varied expertise and psychological methods to help the court to identify a person's mental state. They evaluate whether the offender could comprehend his act when committing it. To do so, they may use clinical tests, and the psychological test may follow it. Hence, forensic psychologists are called upon in the matter of the insanity defense.⁶

FORENSIC PSYCHOLOGY IN THE JUVENILE JUSTICE SYSTEM

It has been stated under Section 83 of the Indian Penal Code Act that “nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”

Juvenile Justice Act has been provided for the protection of children who are involved in acts that are contrary to the law.

Before understanding the critical role of forensic psychology in the Juvenile Justice System, let's find out the variations between Juvenile Justice System and Criminal Justice System. In the criminal justice system, offenders are referred to as 'Criminal' whereas, in a juvenile

⁶ The Indian Penal Code Act, 1860.

justice system, perpetrators are named 'Juvenile delinquents.' Secondly, the Criminal justice system punishes wrongdoers; it is believed that crime is not only against the victim but also an offense against society. In the Juvenile justice system, there are two types of delinquent acts; one is an act that is not considered an offense if an adult has committed it. Like, consumption of alcohol, possession of tobacco, etc. Another type is where an offender may be tried as an adult depending on the gravity of an act. The juvenile justice system believes in reforming an offender so he can live a life like any other individual.

Forensic psychologists understand the educational background, maturity, emotions, surrounding, criminal history, medical history, disabilities and many other aspects which are essential for examining and evaluating the offender's behaviour. It helps the psychologist understand the perpetrator's state of mind and whether he could comprehend the consequences of his actions when he committed a crime. They also work for the reformation of juveniles. Forensic psychologist helps the court know whether the offender should be tried as a juvenile or an adult. By assessing the case of juvenile forensic psychologists try to dictate the seriousness of the alleged offense by using forensic psychological expertise; they find out whether the crime was committed in aggression, under any influence, in violence or willingly.

In a prevalent Nirbhaya case, young men brutally raped a young woman from Delhi on a bus. This case shook up the whole country. It has been said that there are loopholes in this case while reasoning. Among all the offenders, there was one Juvenile delinquent; as per the court order, he was tried as a juvenile and sentenced to three years in a reform facility. Even though he was a few months away from completing 18 Years, it has been presumed that he could understand the consequences of his action; still, he was prosecuted under the Juvenile justice act. After this incident, Juvenile Justice Act was amended. In 2016, It was implemented that the court reserves the power to waive off the protection the Juveniles enjoy in such heinous crimes.⁷

CONCLUSION

This study investigates the relationship between psychology and law. Forensic psychology is

⁷ Gautam Bhardwaj, 'Forensic Psychology in the Juvenile Justice System: Determining Competency of Adolescents to Stand Trial as Adult' (2017) <<https://jguforensics.wordpress.com/2017/02/13/forensic-psychology-in-the-juvenile-justice-system-determining-competency-of-adolescents-to-stand-trial-as-adults/>>

the utilisation of psychological expertise in the legal system. It's been used for evaluating trials, death penalties, offering expert testimony, child custody evaluation, jury selection, and reforming criminal offenders. This research aims to provide an overview of the significance of forensic psychology in the legal field and to elaborate on the difference between forensic science and forensic psychology. It comprises a review of academic articles, reports and other sources. This research shows that with forensic science, forensic psychology also plays a role in criminal justice. It concludes that forensic psychology plays a crucial role in criminal justice. Forensic psychology is as essential as forensic science in the legal field. Both methods are necessary to serve effective justice. It has been observed that forensic psychology is not only responsible for the investigation matter, but it also plays a role in the reformation of criminals. It is essential to spread mental health awareness, and adequate help should be provided. The person may commit the crime if the root cause is not treated. Hence, we must take mental health issues seriously to control the increasing crime rate. Forensic psychology should be studied deeply and effectively in India. This will help to include more experts and expertise in this field, which will directly help in effective criminal justice. There should be sufficient infrastructure and training institutions for forensic psychology in India. Forensic Psychology becomes all the more important when one realises that it seeks to connect human behaviour with the body of law, with the understanding of law as an aspirational body of knowledge. Law is a force to regulate society and facilitate the growth of the community and every member.