

PSYCHOLOGY AND LAW: A MULTI-DIMENSIONAL PRISM

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Abstract: The word “Forensic” is inherently associated with the words ‘court of law’. In its most general sense, forensic science is the application of scientific methods and techniques for the administration of justice. With time, the interaction between humans in society has become so intertwined that understanding human behaviour becomes necessary for the making and implementation of laws. Considering the increased complexities of human nature, the objective perspective to look at a problem is not the best choice which is why came the role of psychology in law.

INTRODUCTION

The objective of the law is to resolve disputes that arise due to certain acts of individuals, the understanding of which becomes beneficial to attain the very purpose of the law. Hence, the combination of psychology and law started developing in the form of Forensic Psychology. Forensic psychology today has become a discipline in itself, and people consider it as a prospective career option because of the importance it is garnering in the legal system. Several universities across the world are now offering dynamic courses on forensic psychology for those who wish to explore this field as a potential career. Furthermore, this discipline has become increasingly popular through the medium of popular TV shows like CSI, Unbelievable, Criminal Minds etc. Additionally, it can offer assistance to clients, lawyers, and judges and this could be practised by any psychologist or a law person. Further research in this field will help in better integration of psychology with law.

RESEARCH METHODOLOGY

This is descriptive research primarily gathered through secondary sources like journal articles, books, research papers, case laws etc. while also relying upon statutes as primary sources of data for a holistic understanding of the subject matter. This paper will analyze various aspects wherein forensic psychology is involved through case studies and identify the gaps related to formulation and implementation.

WHAT IS FORENSIC PSYCHOLOGY?

American Psychological Association in 2001 defined Forensic psychology as “the professional practice by psychologists who foreseeably and regularly provide professional psychological expertise to the judicial system. Such professional practice is generally within the areas of clinical psychology, counselling psychology, neuropsychology, and school psychology, or other applied areas within psychology involving the delivery of human services, by psychologists who have additional expertise in law and the application of applied psychology to legal proceedings”.

This concept is predominantly about undertaking various psychological assessments of the client by the psychologists operating within the legal systems (civil and criminal) and presenting these findings in the legal proceedings for consideration. However, it is not just that they operate within the system but also outside it as independent researchers whose research could help in possible decision-making. For instance, in the case of *Brown v. Board of Education*, 1954, three psychologists prepared research showing that segregation of children on the basis of race had negative effects on their self-esteem and their other personality traits. This particular research was cited by the Supreme Court in its final decision.

Within the legal system, forensic psychologists render assistance to lawyers, judges, police and others involved in the legal procedure. For example, murders by Ted Bundy, one of the most infamous serial killers in America, were

solved with the help of forensic psychologists who used information attained from Ted Bundy's former girlfriend to prepare his psychological profile. Therefore, two divisions exist in the discipline of forensic psychology in terms of clinical and non-clinical psychologists over which there has been discussion and disagreements. Few suggest a narrow definition of forensic psychology restricting it to clinical practitioners whose practices would be regulated by state licensure. This interpretation however carries its own disadvantages, for such narrow conceptualization could lead to divisions within the field. While there are others who advocate for a broad definition of forensic psychology wherein no such distinction between clinical and non-clinical practitioners exists, but even this conception could be problematic because it fails to consider the specialized experience that is required in this field. Neither of these definitions are wrong per se or lacks application in the practical sense but what is required is that we acknowledge the limitation, and accordingly decide upon the weightage or value to be given to each of the group.

Within the legal system, the attempt to incorporate the application of forensic psychology is visible through various provisions of expert evidence that exists in the laws of evidence of different jurisdiction. For instance, Section 45 of the Indian Evidence Act of 1872, provides for the option to avail the opinion of the experts whenever the courts deem it necessary. However, the opinion is not binding on the court and the judges could supplement the same with their own evaluation/assessment of other relevant evidence. The assessments made by forensic psychologists cannot be viewed in isolation as they do not provide conclusive certainty or accuracy regarding an issue however, they add to the burden of proof to be discharged and lead to an informed decision by the Courts. Thus, the outcome of a case does not render the use of psychology meaningless. What matters is the extent of careful consideration given to the psychological evidence by the court.

ADDRESSING THE COMPLEXITIES OF PSYCHOLOGY AND LAW

Craig Haney, an American Social Psychologist, in 1980 suggested a three-fold taxonomy to understand the multiple relationships of

psychology and law - *Psychology in the law, Psychology and law, and psychology of law.*

a). Psychology in the law – The most recognised role of psychologists in the legal system is the use of psychology by the stakeholders involved in the legal process to assess various legal issues involved.

b). Psychology and law – This involves the use of psychological principles to analyse and examine the legal system. For example, as mentioned above, the use of psychological research by non-clinical psychologists.

c). Psychology of law – This studies and addresses issues such as why people need the law and why people obey the law.

Forensic psychology will be covered under the first two aspects giving forensic psychologists a more autonomous role in the legal system.

HOW DO FORENSIC PSYCHOLOGISTS FUNCTION?

Forensic psychologists need to have a proper methodology in place to make their assessments more reliable in a court of law. Every jurisdiction has a different set of standards for the admissibility of forensic evidence. One such standard is popularly known as the Daubert standard introduced by the U.S. Supreme Court in the case of *Daubert v. Merrell Dow Pharmaceuticals Inc.*, which requires the court to consider whether the expert's methodology is valid based on factors such as whether the technique or theory used can be tested, whether it has been subjected to publication and peer review, its known or potential error rate, the existence and maintenance of standards controlling its operations and whether it has attracted widespread acceptance within a relevant scientific community. Considering these standards, the methodologies used by forensic psychologists include collecting test data on which various tests like the Wechsler Adult Intelligence Scale, Minnesota Multiphasic Personality Inventory, Rorschach Test, Sentence Completion Test etc. could be conducted. It is the duty of the psychologists to review all the records addressing both pre- and post-event data in order to get a comprehensive picture of the issue at hand and while doing so they also have to follow certain ethical standards like obtaining informed consent of the person being assessed or evaluated. Sometimes, collecting collateral third-party information also helps to get a more accurate perception of the problem. Which test would be the most suitable

is to be assessed by the psychologist based on the situation. A proper conducive environment should also be set up by the psychologists to be able to derive maximum benefits from the tests. For example, while examining a child in a sexual abuse case it might be beneficial if the examination is conducted in the presence of the person with whom the child is comfortable like her mother. Furthermore, the extent of information to be collected is determined on the basis of the value addition it offers. Lastly, a conclusion has to be drawn and a formal report prepared that would be used in the court of law. This would provide a reasonable degree of scientific certainty which is a commonly accepted standard within the legal system.

CLASHES BETWEEN THE TWO SUBJECT MATTERS

Psychology and law as separate fields have some differences in the way they work. Law is a discipline that requires a particular level of certainty and hence, it follows the principle of stare decisis wherein, the judgments passed by higher courts in the past become binding precedents for similar cases in the future. Certain interpretations are carried forward and applied uniformly to all the cases involving similar issues. Psychology, on the other hand, is tilted towards creativity and uniqueness. The evaluation and result in every situation differ and one cannot apply similar interpretations to other cases as well. Psychologists consistently try to develop innovative ideas and methodologies of assessments.

Furthermore, the law governs the behaviour of people in terms of what ought to be done by an individual. However, psychology analyses and understands human behaviour as it exists. Psychology tries to understand the cause of a particular behaviour, deal with those causes and provide appropriate treatment whereas the law prescribes punishment for any deviant behaviour that is proved according to the required standards. The punishment system could either be reformatory or retributive. Moreover, the adversarial system of law provides difficulties to psychologists as they would then be hired by lawyers individually, who would try to influence their evaluations in order to get a favourable outcome as opposed to an inquisitorial system where the judge hires the psychologist to assist them in analysing the case objectively.

Nonetheless, both fields have one thing in common, that is, human behaviour. One tries to control it while the other attempts to understand it. Hence, psychology, even though has its own differences, supplements the law and also in a way helps to discharge the burden of proof.

ROLE OF FORENSIC PSYCHOLOGISTS

Forensic psychologists play a multi-faceted role in the legal system. As stated earlier, their contribution could be in the form of research (non-clinical tasks) or direct involvement in the legal procedure (clinical tasks). Their methodologies and tools could be used in litigation (be it civil or criminal), witness examination, judicial decision-making, punishment determination and rehabilitation of violators of law. These aspects are further examined in this section.

1.1 Criminal Assessment

In cases involving criminal charges, two things are required to be proved – actus reus and mens rea. Actus reus refers to any physical or overt act or omission which constitutes the crime while mens rea is the mental capacity or intention to commit a crime. Mens rea, being an essential element in criminal activity, could be assessed and proved with the help of forensic psychology.

This could be analysed with the help of a case study. In the case of *Ratanlal v. State of MP*, Ratanlal, the appellant, had set fire to nearby grass thereby causing mischief and damage without specifying any reason for the same. He was also in the habit of setting fire to his clothes and house. He was arrested and upon investigation was sent for psychiatric treatment and was diagnosed with manic depression. Based on this unsoundness of mind the Supreme Court of India had acquitted him and sent him for treatment.

This case brings about the defence of insanity. A person of unsound mind cannot understand the nature, scope and consequence of an act. Therefore, the element of intention does not get fulfilled. The M'Naghten Rule, which arose after the case of *R v. McNaughten* (1843), has given a threefold test to identify whether an individual was sane or not during the commission of the crime. If the defendant's state of mind indicates that they did not know what they were doing while committing the crime or they knew what they were doing but

did not know it was wrong, it would prove that the individual was not sane and could avail the defence of insanity. These rules have been subsequently altered and used in numerous cases dealing with mental health issues.

This also leads to the question of whether the defendant has the competency to stand trial considering their state of mind. In the above-mentioned case of Ratanlal, the assessment made by the Psychiatrist reported that he remained depressed, did not talk and required treatment. In situations such as these, it would become practically impossible for the defendant to be able to defend himself by way of understanding and participating in the trial procedure. The role of forensic psychologists then comes into play in assessing the mental state of the defendant through various tests such as the *Rogers Criminal Responsibility Assessment Scales (R-CRAS)*, the *Defendant's Insanity Assessment Support Scale (DIASS)* etc. They have to assess whether the defendant is actually insane or just malingering it. The behaviour of the defendant is examined through historical data as well as information collected from third persons who would act as witnesses in the trial procedure.

Thus, lawyers and judges could opt for psychological analysis to determine the applicability of the defence of insanity.

1.2 Police Investigation

Any criminal trial first begins with a police investigation where the police officers collect evidence and prepare a report stating their findings and conclusions in relation to the crime being investigated. This is done through medical tests, interrogation of witnesses (be it eye witness or indirect witness), assessment of crime scene, conducting of forensic tests etc. The police also have the authority to arrest suspects for their interrogation. Sometimes an individual may even confess to committing a particular act. However, the police need to determine the truthfulness and accuracy of any information received from any individual. While investigating victims, suspects or any other related individual, forensic psychologists and their methodologies could play an important role.

In 2008, Marie Adler, an 18-year-old girl was raped by a man who broke into her apartment. The rapist also took photographs of her. When she reported this to the police, they persistently questioned her about her story and gave very little regard to the traumatic effect the incident had on her. She was asked to narrate the

incidents repeatedly and made to recall every single detail about the entire event as if she were the suspect. This also portrayed that neither the police officers nor her foster mother believed her version of the incident. Eventually, she recanted and as a consequence, was charged with making a false report. However, she had never lied, and similar incidents elsewhere came to light which in future led to a detailed investigation and the rapist was caught hold of and punished.

This case shows the need and presence of an experienced psychologist at the time of interrogation of victims of such sensitive crimes. A psychological assessment of this case tries to point out the causes of why Marie withdrew and accepted that she had provided false information. She was repeatedly asked questions about the incident immediately after it happened while also pointing out inconsistencies in her story and doubting her. However, traumatic events such as sexual assault affect the memory of the victim. The timing of police interviews also has implications for the retrieval of information. A victim interviewed shortly after an assault or while still traumatized will not be able to retrieve everything that happened to them. Two full sleep cycles may be necessary for the memory to consolidate all the information related to the traumatic event like sexual assault. Yet, in the case of Marie Adler, she was not given the time required for the consolidation of memory leading to some inconsistencies in her account.

Keeping this in mind, forensic psychologists could play two roles – training police officers on how to interview victims and crime suspects or they themselves could be present during the interview to better understand the mental state and behavioural hints of the victim or suspect. Various interviewing and observation methods used by the psychologists could provide information pivotal to the case. Additionally, the Reid Technique, introduced by Inbau and Reid in 1962 is one of the interrogative techniques used by the police and detectives in interrogating the suspect. It also lays down how the interrogation room must be set up. This shows the role of non-clinical psychologists participating in the legal system through their research and development of methodologies.

Furthermore, there have also been incidents of false confessions by individuals. One of the most famous cases of false confessions is the NY Central Park Jogger Case wherein five black youths confessed that they had attacked and

raped a female jogger under intense police questioning. However, their DNA did not tie them to the crime and their versions of stories also differed. Such forensic testing methods could provide ways to identify false confessions. A lot of forensic psychologists researched to understand the causes behind false confessions. Kassin and Kiechel (1996) tried to determine through a laboratory experiment whether police interrogation techniques could be used to get participants to confess to a crime they did not commit. The results of this experiment showed that participants will confess to a crime they did not commit. Therefore, it becomes imperative to identify false confessions and develop different techniques to avoid getting false confessions for the purpose of justice.

1.3 Prison Inmates and Correctional Psychology

Individuals who come into contact with the criminal justice system as offenders can from the perspective of forensic psychology be divided into three broad categories namely –

a) Those individuals for whom their mental disorder is the primary reason for involvement in the crime. This group encompasses those individuals who are incompetent to stand trial by virtue of their mental disorder. For instance, an insane person is considered incompetent to stand trial because the individual lacks the capacity to understand the nature of the question which is put before him.

b) The second category includes those individuals whose mental condition is not the primary factor contributing to their involvement in crime but it is nonetheless a reason for their involvement.

c) The last category encompasses those whose mental disorder has only a minor role to play in their involvement with crime. Offenders under this category are usually those who are in jail and their rehabilitation and reintegration into mainstream society is the underlying idea behind correctional treatment meted out to these offenders.

Psychological considerations become paramount to identify the nature of relevant treatment that is to be given to individuals under these categories. Reducing the intensity of the mental disorder becomes the primary goal of treatment for offenders who are incompetent to stand trial on account of their mental disorder. In the case of offenders whose mental disorder is not the primary factor, the treatment aims to reduce not only the mental order but

also the probable future criminal behaviour. Intensive research in this regard indicates that behavioural-oriented programs are the most effective way of treatment. The most effective way of addressing the issues of rehabilitation and treatment of offenders comes from community care and services.

Society and law are increasingly moving away from the idea of retribution to that of reformation. The objective behind detention or imprisonment is not to punish the delinquents but to offer them better institutional support and care to ensure rehabilitation and integration into mainstream society. The idea is not to treat them as an outsider or exile them to a life of punishment but to reform them.

1.4 Witness Identification

Eyewitness evidence is a crucial testimony based on which conviction is often decided. In fact, as per the statistics around 75,000 criminal cases annually in the United States are decided based on eyewitness evidence. But is this evidence absolutely accurate or is there a scope for mistaken eyewitness identifications?

A well-known case of mistaken identity was that of Tony Ford wherein he was identified as one of the two men who broke into Ms. Murillo's house and did the shooting which killed her son, Armando. Tony Ford was identified as the perpetrator by Ms. Murillo's daughters. However, his defence was that he was not involved in the break-in and was waiting outside the car. There was no knowledge on his part that the other two were planning to break into the house. The jury was concerned with the reliability of the identification of Tony Ford made by the Murillo girls from a photospread because there was no other evidence that linked him to the crime scene. The defence claimed that such identification was susceptible to error because Tony and Victor (one of the two men who broke into the house) were strikingly similar in appearance and thus there was a high likelihood of mistakes in identification. The request for expert opinion on eyewitness identification was declined and Tony was ultimately convicted. Subsequently, an appeal was made by Tony wherein he was allowed to hire an expert on eyewitness identification. The expert highlighted certain relevant issues which were affecting the credibility of the identification made by Ms. Murillo's Daughters like the high likelihood of mistakes in inter-racial identification, the presence of weapons etc.

In light of the aforementioned, it is necessary to take note of the factors which may account for mistaken eyewitness identification. System variables are those factors over which there is some legal control which the judiciary can exercise, but estimator variables, on the other hand, are those over which the legal system has no control. For instance, the duration for which the witness saw the perpetrator or the amount of light that was present when the perpetrator was viewed by the witness. There are other post-event factors as well that influence errors in identification like the passage of time, witness confidence, misleading information etc. Since estimator variables are those over which there is no judicial control, their effect cannot be reduced but the effect of system variables in the justice system can be effectively addressed through the use of forensic psychology like expert testimony. Forensic psychologists can assist the courts in avoiding these probable identification errors by educating them on the relevant factors to be considered for evaluating eyewitness evidence.

A lot of convictions which happen on the basis of mistaken witness identification can be avoided if forensic psychology comes to the aid of the court. For instance, in the case of Tony Ford, the execution was stayed and DNA testing was permitted to be able to identify the actual perpetrator. But Tony Ford's case is not the only one of such mistaken identification, in fact in a study conducted by Penrod and Cutler (1999), they estimated that there were around 4,500 wrong convictions which happen every year. Reportedly, a similar incident was that of Kirk Bloodsworth who was undergoing a twin conviction for the rape and murder of a 9-year-old girl in Maryland. He was sentenced to death but interestingly, no evidence which directly linked him to the crime scene was found. He was convicted because five witnesses had testified that they had seen him in the close vicinity of the victim at the time when the crime was committed. Subsequently, a DNA test was done which established Mr. Bloodsworth's innocence. He was finally exonerated of his sentence by the Governor of Maryland. These case studies imply that forensic psychology can often help identify the actual perpetrator through methods like DNA testing and this essentially can help the courts to reduce the rate of wrongful convictions.

1.5 Juveniles in the Legal System

Children unlike adults are not usually capable of forming an intention to commit a crime i.e.,

mens rea and hence there are fundamental differences between the juvenile justice system and the adult criminal justice system. Positive changes focusing more on reformation have been introduced to ensure that such children are reintegrated into society. The justice system has changed considerably for juveniles and forensic psychologists have played a crucial role in this by way of expert opinions on factors pertaining to psychology like treatment, case mitigation etc.

The rights that can be availed by a juvenile today are different from what used to be the scenario earlier. The jurisprudence of juvenile rights has developed through notable judgments and decisions. One such decision was given in *re Gault* (1967), wherein a minor was arrested on account of making obscene calls to his neighbour. His parents were neither notified of his arrest nor any notice of his hearing was given to them. The Supreme Court criticized the unbridled discretion exercised by the Juvenile Courts and held that juveniles were entitled to the same procedural safeguards as that of an adult including the right to have an attorney.

Roper v. Simmons was another landmark decision that added to the objective of rehabilitating juvenile delinquents. In this case, Christopher Simmons, a 17-year-old boy, was arrested on the charge of murder. He was convicted and sentenced to death. Subsequently, an appeal was filed by Simmons wherein he cited *Atkins v. Virginia*, which prohibited the execution of "intellectually disabled". The ground upon which he relied was that the death sentence for a juvenile constituted the cruelest form of punishment and hence his death sentence was set aside.

It is a prevalent understanding that most of the juvenile crimes are committed out of the peer pressure. The age group of 12-17 years is the time when children are most likely to be influenced by their peers and are often impulsive and rebellious. They often want to imitate what the others are doing and care less about risks or consequences. The problem with this is that often the necessary *mens rea* may be lacking on the part of the offender who is a juvenile. He/she may not be able to understand the nature of questions that are put before them and hence this is where the role of forensic psychologist comes in. In the criminal justice system, they can help assess factors that contribute to the child's involvement in a crime. There is in fact a very popular mental age test used by forensic psychologists to assess a

juvenile's understanding of the act that he/she commits. This test assesses a child's mental age vis a vis his/her biological age. For instance, a child aged 11 years might have a better understanding of his/her situation as compared to an adolescent aged 17 years. Forensic Psychology in this way has a proactive role to play in advocating for the special needs of these children.

1.6 Civil Assessment

Forensic psychology, unlike criminal psychology, is not restricted to criminal cases. It also plays a beneficial role in civil matters as well. It could range from torts, claims for compensation and damages, matrimonial disputes, child custody disputes, intellectual property rights disputes etc. Forensic psychology here would help in determining personal injuries caused to an individual. Specifically in child custody cases, psychologists could play a major role in finding out the best interest of the child.

Fletcher v. Western National Life Insurance Company (1970) is a case wherein Fletcher, a 48-year-old man working in industry, suffered from an industrial accident. He had purchased a disability insurance policy. After the accident, the employer placed him on disability. However, the insurance company refused to pay the insurance and avoided Fletcher's claims. Aggrieved by this, Fletcher sued the company for emotional distress caused due to such refusal. The Court, in this case, had awarded compensatory damages to Fletcher.

Analysing the above case, identifying the emotional distress and harm caused to Fletcher becomes an important aspect in determining the compensation. Assessments such as his entire family being dependent on him and his earnings and the subsequent disability combined could cause psychological and emotional distress. Based on the intensity and extent of such harm, the compensation is decided by the Courts and forensic psychologists could act as *Amicus Curiae* to assist the court in identifying and assessing the emotional and psychological damage caused.

Additionally, in the cases of child custody, whether the parents should get joint custody, sole custody or custody with visitation rights would be better analysed if a forensic psychologist is involved. The psychologist could carry out multiple interviews with the parents to determine their personalities, strengths, weaknesses, mental health, child-rearing practices etc. Furthermore, the child would also

be interviewed and observed before making a decision. Especially, in complex cases involving child abuse, substance abuse etc. having a psychologist as a neutral evaluator would significantly affect the outcome of the case. For example, in the case of Britney Spears, who lost the joint custody of her children due to her mental health issues and substance abuse problems.

The role of psychologists in civil matters is very wide due to the inclusive nature of civil disputes and hence, there exist varied ways in which psychologists could be of assistance to the legal system.

CONCLUSION

The ultimate aim of every legal system is to achieve justice and to ensure a fair assessment of every aspect involved in the procedure. However, the pertinent question that is often faced by most of the legal systems is how to achieve justice. Can observance of law be the only standard based on which an individual is judged? Would simply punishing someone for deviation from the prescribed norms serve the purpose of justice? The answers to these questions lie in the complex nature of the human mind and behaviour. Psychologists have long studied the human mind and have found reasons which could be attributed to a particular behaviour. These researches have contributed to a better understanding of human psychology. In a legal system, an evaluation of an issue should not be restricted to legal considerations. Instead, efforts have been increasingly made to understand and consider the cause of why an individual behaves in a certain way. This is where the role of psychology comes into play to assist the people involved at various levels of the legal process leading to the modern notion of a just outcome. Given the importance that psychology has gained in recent times, it can no longer be considered as being entirely distinct from law and owing to the multiple interactions of psychology with law, the distinct field of forensic psychology has developed.

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