

Decoding the crime: The Role and Impact of Forensic Psychiatry in the Criminal Justice System

Anjaly T.A¹

Abstract

Forensic psychiatry is in its infancy in India. Starting from social contexts, such as marriage and mental illness, to the interpretation of the criminal mind, there is a multitude of situations where forensic psychiatrists have a handful of jobs which suffer due to lack of infrastructure. In this article, an attempt has been made to delineate the importance of a forensic psychiatrist in different civil as well as legal scenarios and difficulties often faced while handling it.

Key words: *Forensic psychiatry, law, mental illness, offender*

Introduction

“Forensic psychology/psychiatry is an emerging field in India” is what usually hears while speaking to professionals who deal with crime in the country. Much like forensic science, forensic psychiatry also plays an integral part in decoding a crime. Forensic psychiatrists make up an integral part of criminal investigation systems, as well as prison systems in various countries. Their profiles are diverse, and comprise taking up roles such as criminal profilers, expert witnesses in courts, suspect interrogators, prison rehabilitation officers and victim counsellors. But before we trace the legal footprints of Forensic Psychology in India, it is imperative to understand the justice system and what part of the puzzle or the judicial system does forensic psychology fit. When a crime has been committed the point of contact is the police who eventually collect evidence from the scene of the crime and deliver it to the Forensic science laboratories. Once the laboratories complete their scientific assessment it is sent to the court of law to help in deducting who, when, where, what, why and how. Forensic psychology tends to play a very important role especially rendering to –why? -The motive

¹ 4th Year Student Of Integrated Five-Year Ba Llb Course Enrolled At Government Law College, Thiruvananthapuram, Kerala.

Objective

- The historical importance of Forensic Psychiatry
- To analyse the role of forensic psychiatry in the investigation process
- To analyse the scope of forensic psychiatry in India
- To discuss the Interphase between forensic psychiatry and legal authority
- To discuss present scenario of forensic psychiatry in India

To discuss the development and future of Forensic psychiatry in India.

History of forensic psychology

The history of forensic psychology is marked by many important milestones, both in the research laboratory and in the courtroom. Early research consisted of studies of eyewitness testimony and suggestibility, and many of the early court cases in Europe where psychologists appeared as experts dealt with similar issues. Hugo Munsterberg played a significant role in establishing the field of forensic psychology in North America and by the early 1900s, forensic psychologists were active in many different parts of the criminal justice system. Currently, forensic psychology is viewed as a distinct and specialized discipline, with its own textbooks, journals, and professional associations.

An overview of forensic psychiatry in India

The origin of Forensic Psychiatry in India dates back to the drafting of the Indian Penal Code (IPC) by Thomas Babington Macaulay during the mid-19th century. During the same time, the Mc Naughten's rules were incorporated into the IPC, Section 84, and are the basis for the insanity defense. This has not changed till date. However, there have been many landmark judgments with regard to Section 84, IPC. Regarding civil responsibilities, mental illness is relevant across diverse areas. The new provisions in the Mental Healthcare Bill, 2016, and the Rights of Persons with Disabilities are expected to bring a paradigm shift in the conceptualization of care of those with psychiatric disorders. In India, there is very little infrastructure and training for forensic psychiatry. Most of the psychiatric units do not have a dedicated forensic psychiatry ward/unit. Most of the forensic evaluations are conducted by the treating psychiatrist who has not undergone sufficient training in forensic psychiatry training. Hence, in many cases, the treating psychiatrist has to choose between making justice to the patient and making justice to the society. In India, there is a structured training program

for psychiatry as a whole, which is a 3-year training program, in which only 2 weeks is allotted for training in the area of forensic psychiatry.² Whereas in UK and Australia, there is a 3-year training program specially dedicated for forensic psychiatry which can be taken after finishing core psychiatry training of 3 years. Hence compared to western countries, we are lagging behind in having workforce in the field of forensic psychiatry.³

The role of forensic psychiatry and legal authority

Psychiatry and law

Mental health services and law meet at many points. There are even separate laws to handle the care of mentally ill patients, which is not there in any other medical specialty branch. There are quite a few legislations related to psychiatry directly or indirectly. To name a few, Mental Health Act 2017, Persons with Disability Act, National Trust Act, Juvenile Justice Act, Protection of Children from Sexual Offences Act, and different acts related to marriage and divorce; these legislations can be grossly divided into civil laws and criminal laws. There are many gray areas in these fields. Mental Health Act takes more of a paternalistic approach and gives lot of decision-making power to the judiciary, with psychiatrists and other mental health professionals allowed to make only recommendations. Even though the Mental Health Act has made provisions for free legal aid to mentally ill persons, the final authority is with the magistrate and legal aid is only given in “deserving” cases. There are very minimal provisions made for the independent tribunals, and consent to treatment and second opinions which reflect that patient autonomy and human rights have not been given the paramount importance.

Protection of Children from Sexual Offences Act (Pocso)

Child sexual abuse has reached epidemic proportions in India. A study by the government of India conducted on 17,220 children showed that every second child has been sexually assaulted.⁴ To combat these increasing incidences of child sexual abuses, a separate law, that is POCSO Act, was formulated. This act is gender neutral, providing protection to children of both sexes. As per this act, it is mandatory to register a medical legal case in all cases of

²Sharma S. Postgraduate training in psychiatry in India. *Indian J Psychiatry*. 2010;52(Suppl S3):89–94.

³Royal College of Psychiatrists. [Last accessed on 2016 Nov 16]. Available from: http://www.rcpsych.ac.uk/pdf/Forensic_Psychiatry_Curriculum_August_2016.pdf.

⁴Moirangthem S, Kumar NC, Math SB, *Child sexual abuse: Issues and concerns*, *The Indian Journal of Medical Research* 2015; 142:1- 3.

sexual assault, but most of the times parents oppose it. In this act, the procedure of reporting has not been clearly described. Is it sufficient only if medico legal case (MLC) has been registered or if the information has to be formally forwarded to police personnel? If the child does not give consent for examination, then how to go about this issue has not been clearly defined in the POCSO Act. If there is no female doctor, then the examination of a female child becomes complicated due to conflicting statements given in Section 166A of IPC and POCSO Act. Sexual assault on a child inflicts lot of psychological trauma, so psychiatrists have a special role to play in the evaluation and management of victims of sexual abuse. However, this has not been clearly addressed in the act. In clinical practice, many of the times, the parents of the child (victim) insist the treating doctor not to report it fearing stigma and other social reasons. There are no clear guidelines of how to go about the issue in such situations. These are the issues that need to be addressed in POCSO Act.⁵

Mentally ill offenders

Prison- based mental health services are in a very rudimentary state in India, although most prisons do have facilities to address minor health issues. At some prisons, there are facilities of a visiting psychiatrist. A psychiatrist is called upon for the evaluation of a criminal if there any signs of mental illness or if there was a history of mental illness. The mental condition of the offender is of concern for judicial system in two situations, one at the time of committing the crime and other at the time of standing for trial. When a psychiatrist is called upon for such evaluation, the patient may be admitted in the psychiatric inpatient facility or he might be treated in outpatient facility. If such a patient gets admitted in the hospital then there is an issue of dual custodians, one is jail superintendent and the other being medical superintendent of the hospital. If the patient was ill at the time of committing crime, he can plead for insanity defense under Section 84 IPC, and this plea has to be raised at the time of commencement of trial. In many cases, the offender is sent for evaluation many years after the event of crime, so it becomes difficult to exactly tell about his mental status at the time of committing offence. Many a time's offenders try to feign insanity, and lack of any objective tests in psychiatry makes it all the more difficult to exactly comment on the mental status of the patient. Hence, to stop the patients from trying to feign insanity, they should be kept totally isolated from the rest of psychiatric patients. This can be implemented only by creating a dedicated infrastructure and workforce for forensic psychiatry. In some courts, noncriminal mentally ill

⁵Supranote 4.

patients are judged to have done the crime and are detained in prisons, and these mentally ill patients are kept in a very bad condition violating all human rights. A study in 1982 done in different jails of West Bengal reveals that among the mentally ill prisoners, 98% were noncriminal.⁶ Another study done by Chadda and Amarjeeth in Tihar jail of Delhi in 1998 revealed that the prevalence of psychiatric illness in prisoners was 3.4%. They also found that depression and schizophrenia were the most common diagnosis in patients involved in major crimes, and majority of the patients with schizophrenia were implicated in homicide case. The above findings indicate an urgent need to divert mentally ill prisoners to mental health setups.⁷

Section 84 IPC

This has been adopted straight from M'Naughton rule according to which “nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of an act, or that he is doing what is either wrong or contrary to the law.” Two very important terms here are legal insanity and medical insanity among which only legal insanity can be used for insanity defense. It should be established that the person who committed the crime was legally insane at the time when he committed crime to obtain insanity defense, and this is usually established by assessing the circumstances before the crime, at the time of crime, and following crime. Even with all these advancements, it is difficult to exactly comment about the mental status of the offender at the time of committing the crime, because in India more often than not the offender will be brought for psychiatric evaluation many years after the crime has been committed. One way to mitigate this problem is to have dedicated forensic psychiatrists in prisons, who are going to conduct mandatory pretrial observation in suspected offences by the mentally ill. By doing so, the offender can be screened as near to the event of crime as possible, and the necessary evaluations can be undertaken. Such system is in place in Norwegian legal system where the suspected mentally ill are screened and are labeled as either (1) evaluation recommended or (2) evaluation not recommended or as (3) undecided. This screening system helps in saving money and time of procedure.

Forensic psychiatry cases in India

⁶Shah LP, *Forensic psychiatry in India current status and future development*, Indian J Psychiatry 1999; 41:179- 85.

⁷Chadda RK, Amarjeet, *Clinical profile of patients attending a prison psychiatric clinic*, Indian J Psychiatry 1998; 40:260- 5.

The CBI had engaged a forensic psychologist in the 2008 Aarushi Talwar murder case, who had concluded that the parents — now convicted of murder — were “innocent”. The specialist had used polygraph examination, narcoanalysis and brain signature profiling during the assessment. Forensic psychologists were engaged in the investigations of the 2006 Nithari killings, The Sunanda Pushkar Case and the 2003 Madhumita Shukla murder as well.

Future directions

Forensic psychiatry remains a neglected area in India and other countries in South-East Asia. This is unlike many of the developed settings where it has become an established subspecialty with a focus on clinical services, training, and research. Academic centers need to actively engage in developing this area. They need to consider the fast-growing need of developing this specialty, recognize the vast scope of the field, and devise curricula that cater to the diverse needs of the country. Dedicated clinical services need to be started for this vulnerable patient population. Apart from the dedicated fellowships and super-specialties, training courses catering to the different mental health disciplines (psychiatry, clinical psychology, psychiatric social work, and psychiatric nursing) students in other branches of medicine and law also need to be trained in the forensic aspects of mental health care. In addition, various other stakeholders who need regular sensitization and training in issues relating to mental health include law enforcement agencies, judiciary, advocates, and women and child welfare departments, commissions related to the mental health (including the Human Rights Commissions, Women's Commissions, Child Welfare Commissions, etc.). Support for focused research in many areas of overlap between mental health and the law is also critical. It is important for government to take initiatives to establish centers of excellence in forensic psychiatry.

One such effort has begun at the NIMHANS, Bengaluru, where such a center has been conceptualized, and a postdoctoral fellowship in forensic psychiatry has been initiated in 2016. The proposed center, called the Centre for Human Rights, Ethics, Law and Mental Health, has the objectives of (a) enhancing trained human resources in the areas of forensic psychiatry, law and human rights of persons with mental illness, (b) establishing and providing the highest standards in diagnostic and investigative approaches in forensic psychiatry, (c) developing a state of art clinical and resource facility in forensic psychiatry, (d) facilitating the development of quality forensic services in different parts of the country, (e) contributing to capacity building by providing training in forensic psychiatry for mental

health, medical, police personnel, human rights activists and law professionals, (f) developing and strengthening inter-disciplinary, inter-institutional and international collaboration to foster research in forensic psychiatry, (g) developing guidelines, standard operating procedures, providing expert opinion in the area of forensic psychiatry, (h) conducting research with regard to mental health laws, medico-legal psychiatry, forensic psychiatry and child forensic psychiatry, and to (i) guiding national policy and develop national guidelines for developing quality forensic psychiatric services in India.

Conclusion

Agencies such as central forensic labs, the CBI and even the police could employ forensic psychologists to undertake such tasks of compilation, analysis and extrapolation from crime data. Various studies, and reports in the Netherlands, Australia and the US, have provided evidence for success of such profiling, and it would be a step in the correct direction for Indian agencies to adopt the same on a more formal level. While these investigative benefits of forensic psychologists persist, their role in prison systems is also imperative.

Indian prisons fall behind significantly when it comes to offender interviewing and rehabilitation policies after sentencing. There is minimal structure in place when it comes to remanding offenders. While in countries such as the UK, forensic psychologists conduct objective interviews of offenders and then suggest a basic treatment plan to a clinical psychologist, who delves into the subjective issues, no such hierarchy prevails in India, where a prison psychologist is largely unheard of.

Prisons in India have a hosting capacity for over 366,000 offenders. However, there is more than 110% overcrowding, and an appropriate offender-psychologist ratio would be required in order to understand the perpetrators' mind sets and guide them through their issues. While the idea that prison systems are supposed to be rehabilitative in nature is often stressed upon, much needs to be done in order for that to be put into practice.

Indeed, Indian prisons would benefit the most from usage of forensic psychologists. Thus, working on the perpetrators' mind-set through individual and group therapy, and providing an assessment before they are released, might control for reoffending. There are no hard-and-fast interventions that work on all offenders, and therefore appropriate assessment is needed in order to effectively deal with prisoner issues.

As a country with one of the highest crime rates in the world, India faces several challenges when it comes to dealing with different aspects of crime. While applying these interventions may sound good in theory, there is a long way to go before these can be successfully implemented. The key is to solve this case of missing forensic psychologists, and make optimum the use of their expertise to strengthen the criminal investigation and correctional processes in India.