

IMPORTANCE OF FORENSIC PSYCHOLOGY IN ADJUDICATING JUSTICE

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What is Forensic Psychology?

Forensic Psychology is a discipline where psychology and legal system overlaps. American Psychological Association refers to Forensic Psychology as;

“a specialty in professional psychology characterized by activities primarily intended to provide professional psychological expertise within the judicial and legal systems.”¹

It is also defined as the application of clinical specialties to legal institutions and people who come into contact with the law.

Role of Psychology in legal field

A forensic psychologist is a professional who is capable of and able to assist the police in investigation, provide advice on

interviewing suspects or witnesses, work as expert witness in court cases particularly in relation to mental status of an alleged victim or perpetrator, work in the rehabilitation of offenders, piloting and implementing treatment programs for offenders, modifying offender behavior, responding to the changing needs of prison staff and prisoners, conducts Forensic Psychology Research work in academia.^{2,3}

Psychological service is very essential in both criminal and civil proceedings. The areas that need psychological intervention in legal system are of several folds. The most known and famous role of a forensic psychologist is to assess the psychological condition of the suspect or the victim. Expert evidence in that context is one of the essential features which can assist the Court

¹ American Psychological Association, 'Forensic Psychology' <<https://www.apa.org/ed/graduate/specialize/forensic>> accessed 02 October 2019

² . Egyan Kosh, 'Roles and Functions of a Forensic Psychology- Unit 4' < <http://egyankosh.ac.in>

/bitstream /123456789/24164/1/Unit-4.pdf> accessed 02 October 2019

³ The British Psychological Society, 'The Psychologist' < <https://thepsychologist.bps.org.uk/volume-22/edition-9/reality-work-forensic-psychologist>> accessed on 02 October 2019

to adjudicate justice and make use of when arriving at a judgement. Expert evidence is important in both criminal and civil procedures. At present, a written report from an expert in relation to mental illnesses would suffice the purpose in relation to the defense of insanity but if the reports are submitted many years ago, a testimony in courts may be necessary.⁴ Expert witnesses are different from the other witnesses as their opinion is based on educated observations. In the case of forensic psychologists, the opinion is based on educated observations, training, experience, research, studies and scientific data.

The most discussed topics in forensic psychology include offender profiling and eye witness testimony.⁵

It is important to differentiate between Forensic Psychologist and a Forensic Psychiatrist; Forensic Psychologists are involved in understanding an accused

person's mental/psychological status and Forensic Psychiatrists are involved in diagnosing and management of mental/psychological illnesses. Both disciplines are useful in justice system (specially in criminal justice system), yet different approaches are being incorporated. The most important responsibility of both disciplines is to determine the mental capacity of the person concerned in each case. This may involve measuring the intelligence level of a victim; for instance, ability to comprehend, ability to read etc. Assessment of the said mental capacities is done by carrying out psychological tests and/or through clinical interviews.⁶ These tests are essential in identifying whether a person has intention/ knowledge at the moment of committing the crime and also to understand the whether a person is capable of being tried.

⁴ Angelo de Alwis, Neil Fernando, 'The insanity defense and the assessment of criminal responsibility in Sri Lanka [2013] <file:///C:/Users/ASUS/Downloads/6313-22378-1-PB.pdf> accessed 02 October 2019

⁵ Brian A Thomas Peter and Sarah Warren, 'Legal Responsibilities of Forensic Psychologists' <

<https://link.springer.com/article/10.1023/A:1008871314661> > accessed 02 October 2019

⁶ Priyanjali de Zoysa, 'The Use of Psychology in the Administration of Justice in Sri Lanka- A point of view-' (2011) Sri Lanka Journal of Forensic Medicine, Science & Law-Vol 2 No 1

There are three primary ways in which psychology and law can relate to each other. They are referred to as “psychology and the law”, “psychology in the law”, and “psychology of the law.”⁷ Psychology and law refers to analyzing various components of legal system from a psychological perspective such as, “is eyewitness testimony accurate?”, factors affecting jury decisions etc.

Psychology in law refers to specific applications of psychology into legal questions., for instance parental fitness/capacity to obtain child custody, how to reduce the risk of an individual reoffending. Psychology of law focuses on abstract issues such as factors influencing people’s attitudes towards different laws and different forms of punishment. Yet the famous argument is that forensic psychology should only be applied to psychology in law from the said

categories as the purpose is to serve the legal system.⁸

The roots of forensic psychology run back to over a century and in 1985, Catell conducted a study by asking his own students a simple question; “What was the weather one week ago today?”. This study can be considered as one of the first studies in relation to psychology of testimony. Even in 1985, it was established that courtroom eye witness testimony could be unreliable.⁹ Yet this said study drew attention of several psychologists and the study was repeated and extended among psychologists in order to bring about new findings. By conducting number of studies, Alfred Binet; a famous French psychologist showed that the testimony provided by children was highly susceptible to suggestive questioning technique.¹⁰

William Stern is a German psychologist who put forward the concept that eye witness testimony often can be incorrect and also

⁷ Brian A Thomas Peter and Sarah Warren, ‘Legal Responsibilities of Forensic Psychologists’ < <https://link.springer.com/article/10.1023/A:1008871314661> > accessed 02 October 2019

⁸ ibid
⁹ ibid

¹⁰ Pearson Higher Education, ‘An Introduction to Forensic Psychology Chapter 1’ < https://catalogue.pearsoned.co.uk/assets/hip/gb/hip_gb_pearsonhighered/samplechapter/0205949932.pdf > accessed 02 October 2019

demonstrated that the observer's level of emotional arousal can have an impact on the accuracy of the said person's testimony.¹¹

Albert von Schrenck- Notzing (1896) is considered to be the very first expert witness testified in Court on the effect of pretrial publicity on memory.¹² The case he testified of, took place in Munich, Germany and it involved a series of three sexual murders.

The court case drew a massive attraction from press/ media and Schrenck- Notzing testified that the press coverage could impact on the testimony of witnesses. This process was referred to by Schrenck- Notzing as "retroactive memory falsification".¹³ "Retroactive memory falsification" is referred to as a process in which the witnesses confuse actual memories of events with the memories described or discussed by the media. Schrenck- Notzing supported this expert evidence/ testimony with laboratory research. This said case is a classic example

to show the credibility of testimony by witnesses in general.

Competency to stand a trial

There are several instances, where the psychological state of a party has to be taken into consideration in courts. It does not necessarily mean to be applied at the time of trial. Competence to stand a trial has to be considered or tested before starting the trial.¹⁴

Well renowned case in United States; Dusky v. United States,¹⁵ depicts the concept of competency. Mr. Dusky drove two friends of his son and they encountered a girl the boys knew on their way. Then the two boys raped the girl. Even though Dusky attempted to rape the girl, he could not. But he could not remember the occurrence of events. Dusky was arrested. Two psychological assessments concluded that Mr. Dusky was mentally ill with schizophrenia and he was unable to properly understand proceedings against him and to adequately assist his

¹¹ ibid

¹² Irwing B Weiner and Allen K Hess, The Handbook of Forensic Psychology (Third Edition, John Wiley & Sons Inc, 2006)

¹³ Irwing B Weiner and Allen K Hess, The Handbook of Forensic Psychology (Third Edition, John Wiley & Sons Inc, 2006)

¹⁴ Dennis Howitt, 'Introduction to Forensic and Criminal Psychology 4th edition [2012] 401

¹⁵ 362, US 402 [1960]

counsel. Court of Appeals affirmed the conviction but the Supreme Court of United States held that,

“a federal court in which criminal proceedings are pending to make a finding regarding the mental competency of the accused to stand a trial, may not make a determination that an accused is mentally competent merely because he is oriented to time and place and has some recollection of events; the test must be whether the accused has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him.”

A person can be considered to be incompetent to stand a trial due to poor cognitive functioning or mental illness. Competency to stand a trial refers to a person's situation not at the time of

committing the offence but at the time of the trial. Furthermore, when a person is assessed to be incompetent to stand a trial, it does not amount for acquittal of the said person but a different process has to be employed such as referring that person to a psychiatrist facility.¹⁶ In United Kingdom, prior to the commencement of the trial, competency is assessed. According to Grubin (1996)¹⁷, the criteria used for the said purpose is as follows; ability to comprehend the details of the evidence, ability to follow court proceedings, ability to instruct lawyers effectively, ability to understand that jurors may be challenged, ability to understand the meaning and implications of the charges.¹⁸ It is evident from the previously stated facts that if the said criteria are not met, the said person whether he/she is a perpetrator, victim or any other witness, that person lacks the ability to stand a trial.

Sri Lankan context

It can be considered that most frequent role of forensic psychologists is the psychological

¹⁶ Ibid 14

¹⁷ . Egyan Kosh, 'Roles and Functions of a Forensic Psychology- Unit 4' < <http://egyankosh.ac.in>

/bitstream /123456789/24164/1/Unit-4.pdf>
accessed 02 October 2019

¹⁸ Ibid 14

assessment of individuals who are involved with the legal system.¹⁹ One of the most important requisites of a crime is “*mens rea*” which is also known as the intention of the offender/ suspect. In United States, a person cannot be held responsible for a crime if that person was without the ‘guilty mind’ at the time of the criminal act was committed.²⁰

In Sri Lanka, ‘intention’ is part of the definition in most offences that are stipulated in the Penal Code, including culpable homicide (s.293), murder (s.294), voluntarily causing grievous hurt (s.312), assault (s.342), theft (s.366), extortion (s.372), cheating (s.398), mischief (s.408), criminal trespass (s.427), forgery (s.452) etc.²¹ In Sri Lanka, *mens rea* is characterized by the intention of causing a particular effect, or by the knowledge that the effect will be caused by the accused’s act.²²

It is noteworthy to refer to M’Naughten rule in relation to ‘*mens rea*’ in legal matters.

M’Naughten rule means that, if at the time of the committing of the act, the party accused was under such a defect of reason from disease of the mind, as not to know the nature and quality of the act, he was doing; or if he did know it, he did not know he was doing what was wrong.

M’Naughten rule with some modification is incorporated into Sri Lankan law, which reads as;

“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 the act, or that he is doing what is either wrong or contrary to law.”²³

Insanity is an exception used by the defense counsels in criminal offences. However, exception of insanity in Sri Lanka is an exculpatory defense. Penal Code provides for the interpretation of the “unsoundness of mind” as the existence of mental illness and

¹⁹ Jane Tyler Ward, ‘What is Forensic Psychology’, American Psychological Association [2013] <<https://www.apa.org/ed/precollege/psn/2013/09/forensic-psychology>> accessed 02 October 2019

²⁰ Jane Tyler Ward, ‘What is Forensic Psychology’, American Psychological Association [2013]

<<https://www.apa.org/ed/precollege/psn/2013/09/forensic-psychology>> accessed 02 October 2019

²¹ G.L.Peiris, General Principles of criminal liability in Ceylon, A Comparative Analysis (first published in 1972) 22

²² *ibid*

²³ Ceylon Penal Code No.2 of 1883, s 77

the presence of specific incapacities. Mental illness is not properly defined in any of the statute. In order to prove insanity, evidence should be provided to show that the person in question has a severe mental illness. The said severe mental illness is generally categorized by psychotic disorders such as schizophrenia or major affective disorders such as severe depression, bipolar disorder or an organic psychiatric illness such as delirium, dementia.²⁴

In Sri Lanka, no laws are available for people with less serious mental illnesses/ disorders or personality disorders to be considered to have no intention at the time of committing an offence by invoking the defense of insanity.²⁵

However, in the case of *Barnes Nimalaratne v The Republic of Sri Lanka*, the concept of 'irresistible impulses' was taken into consideration.²⁶ As per the said case, the defence of the irresistible impulses was denied as the evidence produced could

not satisfy the jury. In light of the *Barnes Nimalaratne v The Republic of Sri Lanka* (supra), the concept of irresistible impulses can be taken up when insanity defence is invoked but strong expert evidence has to be produced to succeed the defence. Importance of forensic psychology becomes very useful at instances like this.

No forensic psychologist is found in our country and clinical psychologists have been called to furnish expert evidence also started only a decade ago.²⁷

It is important to note that the role of forensic psychologist does not limit to engagement with the perpetrators or the offenders, they also get involved with victims.

In cases involving children and their custody issues, a forensic psychologist may serve either of the functions from the two below; to provide the court with information that assist court to understand the situation/issue or to provide court with an

²⁴ Angelo de Alwis, Neil Fernando, 'The insanity defense and the assessment of criminal responsibility in Sri Lanka [2013]

<file:///C:/Users/ASUS/Downloads/6313-22378-1-PB.pdf> accessed 02 October 2019

²⁵ *ibid*

²⁶ 78 NLR 51

²⁷ Priyanjali de Zoysa, 'The Use of Psychology in the Administration of Justice in Sri Lanka- A point of view-' (2011) Sri Lanka Journal of Forensic Medicine, Science & Law-Vol 2 No 1

opinion.²⁸ In custody cases, the psychological status of the parents can be assessed and the most suitable parent can be chosen or the best custody arrangement can be picked up with the assistance of the forensic psychologist.

By reasoning out the psychology and the science behind the laws and regulations that need to be repealed, forensic psychologists can assist legislature which in turn help the people who are marginalized. Homosexuality is one example for the previously stated. Homosexuality is considered an offence in Sri Lanka and this legal position can be repealed/ revised with the assistance of psychologists. Homosexuality now considered as a sexual orientation not as a mental illness as it was referred to previously, yet it could not be legalized in our country until now. In instances like this, the psychologists can take the initiative and assist the legal system and/or the legislature to revise/repeal the law as they are equipped with knowledge.

Another area where expert opinion of a psychologist is needed in Sri Lanka is to evaluate existence of a psychological condition of the victim, suspect or even a witness in alleged child abuse cases.²⁹

The role a forensic psychologist can play in correctional system can be considered as a long-term solution in improving the status of the society. Assessment of the convicted offenders' psychological status, improving treatment areas, evaluation of treatment interventions such as sex offender therapy, and interventions targeting propensities for violence, emotional regulation, adaptive thinking, and the development of healthy beliefs which support offence-free life style are the areas that can be focused by forensic psychologists.³⁰ The concept of rehabilitation in criminal justice can be considered as highly essential feature.

Conclusion

Forensic Psychology is relatively a new discipline but when it is incorporated, the ultimate goal of a legal system which in fact

²⁸ *ibid*

²⁹ Angelo de Alwis, Neil Fernando, 'The insanity defense and the assessment of criminal responsibility in Sri Lanka [2013]

<file:///C:/Users/ASUS/Downloads/6313-22378-1-PB.pdf> accessed 02 October 2019

³⁰ *ibid*

bringing justice to every human being can be achieved. Punishment is one concept in legal system which comes under negative reinforcement technique. In order to keep the law and order intact in a country, correctional system has to be maintained and managed properly. For the above said purpose, it is mandatory that forensic psychologists take initiative. In Sri Lanka, exception of insanity cannot be invoked for mental disorders or psychological conditions which do not come under severe mental illness category as it is hard to prove. The defence of insanity is an exculpatory defense, yet needs an amendment as there can be cases where a person would undergo a different state of mind due to severe stress or as a result of other illness in nervous system or otherwise in which *mens rea* couldn't have been complied with. Custody cases, offender profiling, expert testimony, planning and designing the prison system to minimize reoffending are fields that need psychological intervention. The main role of the Forensic Psychologist is to assist courts/ judicial system to adjudicate justice and also to assist maintaining the psychological

interest of the people that may contact legal system.