Forensic Psychology and Criminal Jurisprudence: An Analysis as to the Admissibility of Expert Evidence in Adversarial System

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ABSTRACT

Forensic psychology is recognized in India as a branch of applied psychology that is used in crime investigation, victim assistance, and victim rehabilitation. Forensics plays a critical role in remodelling the rule of law by providing scientific evidence to support legal investigations, and proceedings. This evidence can be used to support a prosecution or defence in criminal cases, and can help to ensure that justice is served. Forensic evidence can also be used to exonerate individuals who have been wrongfully accused or convicted of crimes. Overall, forensic science has developed into a vital tool in the administration of justice, and its application has served to increase the fairness and certainty of courtroom procedures. The background of any illegal behaviour and activities of a mentally impaired person can be understood with the help of forensic psychiatrists, paving the way for the establishment of stronger evidence or undermining the probative value of already available evidence. This article provides an overview of forensic psychiatry in the Indian judiciary, highlighting the key areas where this discipline has a significant impact and to make a critical analysis of the efficiency of the existing machinery in evaluating the psychological expert's evidence and the suitable remedies for the effective working of the system in this field.

Keywords: *Forensic psychology, mental element, criminal law, expert evidence, Transparency Assumption*

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INTRODUCTION

Criminal law is based on the reality of intentional and preventable wrongdoings, and it holds the offender legally and morally responsible for their actions. According to the principle of subjective culpability, a person is only accountable if they subjectively anticipated or were aware of all the factors that made their behaviour punishable. To be considered a crime, there must be intention. One of the main standards for recognising the use of forensic investigative concepts and trials is the criminal justice system. The prime objective of this field of study is to provide the authorities such as police and judiciary, information which can be used for ascertaining the validity of evidence which have been produced subsequently.[1] It is essential to understand the phenomena associated with admissibility of witnesses and evidence in the court of law and the manner in which it can ensure a high degree of short term efficiency. It is important to understand the extent to which various factors involved in the process of management of judicial systems are involved in the acknowledgement and acceptance of evidence in the court of law.[2]

PSYCHIATRY AND FORENSIC PSYCHOLOGY IN THE ADMINISTRATION OF JUSTICE

Despite differences in subject and methodology, forensic psychology and forensic psychiatry are related to each another. The junction of the two specialisations can help in determining the characteristics of repeat offenders and further aid in determining whether a person has a psychopathic personality. Forensic psychologists can determine an offender's psyche in cases where several theories and elements are present. Forensic psychiatry is a subspecialty of psychiatry that involves the intersection of mental health and the law[3]. It involves the application of psychiatric knowledge to legal issues. In the Indian context, the role of forensic psychiatry has gained significance in recent times due to increased awareness about mental health issues. In Indian judiciary, forensic psychiatry plays a crucial role in the assessment, diagnosis, and treatment of individuals involved in criminal and civil legal matters[4]. An important aspect of forensic psychology is the ability to testify in court as an

1 M. Elavarasi and N.M. Elango, ―Analysis of Cybercrime Investigation Mechanism in India‖10(40) *Indian Journal of Science and Technology* 682-684 (2017).

2 G.Sujatha and J. Muruganandhan, ―Determination of reliability and practicality of saliva as a genetic source in forensic investigation by analysing DNA yield and success rates: A systematic review"31(3) *Journal of Oral and Maxillofacial Surgery, Medicine, and Pathology* 218-227 (2019).

3 American Academy of Psychiatry and the Law. (n.d.). *What is Forensic Psychiatry?* Retrieved from https://www.aapl.org/whatis

4 Math, S. B., and Nirmala, M. C. (2011). Forensic Psychiatry in India: Past, Present, and Future. *Indian Journal of Psychological Medicine*, 33(2), 119-121.

expert witness, reformulating psychological findings into the legal language of the courtroom, providing information to legal personnel in a way that can be understood[5]. Further, in order to be a credible witness, the forensic psychologist must understand the philosophy, rules, and standards of the judicial system. Lack of a firm grasp of these procedures will result in the forensic psychologist losing credibility in the courtroom[6]. The majority of the time, a forensic psychologist is asked legal questions by the court instead of psychological ones, and their answers must be provided in a language which the court can comprehend. Thus, the role of a forensic psychologist is to translate psychological information into a legal framework[7]. However, the answer lies in the case which must be identified to decrease crime rates for better administration of justice and steps should be taken to decrease crime rates with the aid of forensic psychiatry and psychology. The rapid growth of psychology and psychiatry since the Second World War has not been accompanied by a corresponding increase in the amount or the range of expert testimony from specialists in these fields. In the judicial system, there is no uniform standard for evaluating the psychological expert. Psychological expert evidence is a reliable piece of scientific evidence provided it is taken after rigorous checks according to prescribed scientific procedures. Provisions in the Indian Evidence Act, 1872 and other legislations in India are not flexible enough to accommodate psychological expert evidence.

PSYCHOLOGICAL TESTIMONY AND ADMISSIBILITY

In criminal law, forensic psychiatry is often involved in assessments of defendants to determine their mental status and the influence of mental illness on their actions. Following the ruling in R v. Turner[8], psychological testimony was deemed inadmissible in many cases, with the exception of those in which the defendants were thought to be in an abnormal mental state at the time of the alleged offences due to a recognised mental disorder, a mental disability, or automatism. Since, there was no indication of a mental disorder, the proposed expert testimony dealt with matters of common knowledge and experience, which could be comprehended by a jury without the assistance of an expert. This is the basis on which the expert evidence in Turner was excluded. The Transparency Assumption is the name given to this standard for expert psychological and psychiatric testimony's admissibility. In

5 Nietzel, Michael (1986), Psychological Consultation in the Courtroom. New York: Pergamon Press. ISBN 0-08-030955-0

6 Blau, Theodore H. (1984), *The Psychologist as Expert Witness*. New York: John Wiley & Sons. pp. 19–25. ISBN 0-471-87129-X

7 Shapiro, David L. (1984), *Psychological Evaluation and Expert Testimony,* New York: Van Nostrand Reinhold. ISBN 0-442-28183-8

8 [1975] QB 834

R. v. Weightman[9], the same court reaffirmed the revolutionary position established in R. v. Turner. The fundamental question in this case concerned the admissibility of a psychiatrist's testimony on the accused's hysterical nature. The Emery's[10] impact on the Transparency Assumption: Sally Emery was a 19-year-old single mother of a child named, Chanel who passed away when she was just 11 months old after suffering extensive injuries, including broken ribs and a perforated bowel, as a result of a protracted period of severe physical abuse. Sally Emery argued that she had been coerced into acting. A psychologist testified that Sally Emery had been experiencing battered woman syndrome, a condition brought on by a woman's partner's repeated acts of violence and abuse and characterised by a woman's inability to resist the abuser, her sense of dependence on the abuser, and her inability to leave the abusive relationship. The trial judge decided the evidence was admissible, citing the possibility that the jury would find the prisoner guilty in the absence of expert testimony, or they might find her innocent with the knowledge garnered from the expert testimony. The case was appealed, and Lord Taylor of the Court of Appeal stated that although the condition of learned helplessness, which was the topic of the proposed expert testimony, is not a mental disease, it is difficult and not widely understood by the general public. In the Emery decision, the Transparency Assumption was not entirely ignored. Although there have been changes to the rules governing expert psychological and psychiatric evidence, expert testimony on topics related to the common knowledge and experience of a jury is still not admissible. More specifically, it was no longer believed that all human activity, with the exception of mental illnesses, cognitive impairments, and automatism, is completely transparent and that, as a result, expert testimony regarding them is invariably part of common knowledge and experience and, as a result, is inadmissible. So, following the Emery ruling, it appeared that psychological and psychiatric evidence covered a much wider range of activity.

For seven decades, the Court of Appeals ruling in the landmark case Frye v. United States[11] controlled the acceptance of expert testimony in the United States. Indian psychiatrists utilised a variety of tests, including the Wild Beast test[12], the Insane Delusion test[13], and the "test of capacity to distinguish between right and wrong[14]," to determine whether a person was legally insane. The groundwork for the historic M'naghten rule was put out by these three tests.

9 11 (1991) Crim. L.R. 204

10 R v Emery (1993) 14 Cr App R (S) 394

11 Frye v. United States, 1923.

12 R. v. Arnold. 1724, 16 St.Tr.695.

13 Hadfield Case. 1800, 27 St.Tr.128.

14 Bowlers case. 1812, 1 Collinson Lunacy 673

M'NAGHTEN RULE AND SECTION 84, INDIAN PENAL CODE.

The M'Naghten Rule, which was created in response to a long-running instance of confusion and delusion, represents the pinnacle of common law's treatment of insanity. The M'Naghten norms became a widely followed precedent in common law nations, mostly because there were no institutionalised alternatives at the time. They also served as the inspiration for Section 84 of the IPC[15].In its 42nd Report, the Law Commission of India attempted to revise the rule, but it remained unchanged and out-of-date. The phrase "*Furiosi nulla voluntas est,*" which states that a person with mental illness lacks free will[16], is embodied in this section. The M'Naghten guidelines place a strong emphasis on cognitive disability (inability to comprehend the nature, consequences, or wrongness of an act). India adopts the constrictive M'Naghten strategy.

CRIMINAL RESPONSIBILITY AND INSANITY DEFENCE[17]

In India, the concept of criminal responsibility is based on the idea that someone should only be held accountable for their actions if they are able to understand the nature and consequences of those behaviours. The insanity defence, sometimes known as the "mental disorder defence," is provided for in Section 84 of the Indian Penal Code. It states that a person is not held legally responsible for their activities if they were suffering from a mental condition at the time of the offence, which prevented them from understanding the nature of their behaviour or that what they were doing was either illegal or against the law.

INVESTIGATING PROBABLE INTENT- *MENS REA*

The "mens rea"—the state of mind of the person who often pleads not guilty while testifying at a trial—of the subject will be illuminated by the role played by forensic psychologists. When a defendant enters a plea of being guilty and argues that they committed the offence while impaired by drugs or alcohol or were ignorant that they had done so, the defence is given a chance to ask the judge to delay rendering a decision or ask for a lighter punishment. In such cases, experts are required to step in and assimilate the interview and assessment of the person in question to judge and give an opinion on how true the person's statement is. This helps the judge to execute a judgement which is fair and also is in light of

15 Sagar Dwarakanath Patil v. The State of Maharashtra Criminal Appeal No.1357 OF 2012

16 Ranchhoddas R, Thakore DK, Manohar V. Ratanlal & Dhirajlal THE INDIAN PENAL CODE Gurgaon:LexisNexis; 2013.

17 Shah, L. P. (2015). Forensic Psychiatry in India: Time to Wake up! Indian Journal of Psychiatry, 57(3), 229-230.

the safety of society and the individual. Basic human rights are violated when someone is punished, especially when the person is innocent or even has a chance of being innocent.[18].Two types of clinical evaluations can be inferred from the evaluation of a person's psychological composition.[19] in proving either that a person is incapable of making a logical and deliberate decision to commit a crime or that certain sub-psychotic tendencies increase the likelihood of the crime being committed.[20]. Forensic psychiatrists are often called upon to evaluate an individual's risk and dangerousness in the context of criminal proceedings. This assessment is crucial in determining the appropriate sentence for the accused, as well as the need for psychiatric treatment and ongoing supervision upon release[21]. In India, the assessment of risk and dangerousness is typically conducted using standardised risk-assessment tools and clinical judgement[22].

EXPERT WITNESS UNDER INDIAN EVIDENCE ACT, 1872

In India, except for the insanity defence described in Section 84 of the Indian Penal Code,[23]forensic psychiatrist experts are not often put under the spotlight in a criminal trial. However, the forensic psychiatrist expert is given the authority to sway the evidence in his capacity as an expert witness before the court under Section 45 of the Evidence Act, 1872, the moment the accused invokes his defence under Section 84 of the Indian Penal Code.

According to Section 45 of The Indian Evidence Act of 1872, forensic psychologists are also permitted to contribute their knowledge to the resolution of criminal investigations. This offers psychologists the freedom to adapt their forensic techniques to the demands of particular situations. When it comes to opining on the mental condition of an accused person whose psychological health is in issue, Indian courts have always valued the expert judgement of a psychiatrist. The Hon'ble Madras High Court acquitted the defendant and ordered that the defendant be admitted to a mental health centre for treatment in a case involving a prisoner who had been convicted for murder under Section 302. The Hon'ble

18 Morse SJ, Bonnie RJ. Abolition of the insanity defense violates due process. J Am Acad Psychiatry Law. 2013;41:488–95.

19 Gostin LO, Larry OG. A Human Condition: The law relating to mentally Abnormal Offenders. Vol. MIND; 1977

20 Neville K. The Insanity Defense: A Comparative Analysis Senior Honors Theses. Paper 244. 2010. Available from: http://www.commons.emich.edu/cgi/viewcontent.cgi?article=1219&context=honors

21 Singh, J. P., and Fazel, S. (2010). Forensic Risk Assessment: A Meta Review. Criminal Justice and Behavior, 37(9),1009-1035.

22 Natarajan, M., and Jayaram, G. (2011). The Role of Forensic Psychiatry in the Assessment of Risk and Dangerousness. *Indian Journal of Psychiatry*, 53(4), 304-307.

23 Gaur KD, Textbook on the Indian Penal Code. New Delhi: Universal Law Publishing; 2009.

Bombay High Court exonerated the accused in another murder case under Section 302 who, in accordance with the Medical Officer at the Prison's assessment, was mentally ill. The Honourable High Court observed that since the investigating officer had neglected to turn over the psychiatrist's report from the examination of the accused, the accused got the benefit of the doubt.[24] Forensic psychiatrists play a vital role in determining an individual's fitness to stand trial[25]. Evidence-based practise is being used more frequently in the fields of law and psychiatry, along with the rest of medicine[26].

TRANSPARENCY ASSUMPTION IN INDIA

The Supreme Court has ruled that when it comes to a subject that judges are familiar with, they are the experts among experts and do not need an expert's view as proof. This is important to determine criminal responsibility and competence to stand trial. The Supreme Court has issued guidelines for such assessments in its landmark judgement in the case of Dutta v. State of Bihar[27]. These guidelines provide a framework for determining unsoundness of mind under Section 84 of IPC and have been widely adopted. Forensic psychiatry also provides recommendations to the court regarding the mental status of offenders, need for hospitalisation and prognosis. In cases where the scientific evidence was acknowledged in accordance with Section 45 of the Indian Evidence Act, there have been both convictions and acquittals in India.[28] It is the section that discusses the expert's opinion. According to this, the opinions of people who are particularly knowledgeable about the relevant foreign law, science, or art, as well as questions involving the identity of handwriting or finger impressions, are relevant facts when the court must form an opinion on a given topic. The courts have stated that medical evidence is scarcely conclusive and is just an indication of opinion. It is insufficient as evidence. The Supreme Court of India has further ruled that the Court cannot substitute its own judgement for the medical report's findings unless there is anything fundamentally wrong with the report.[29]. Reports from specific government scientific experts are covered in Section 293 of the Code of Criminal Procedure. The Court may summon and question any such expert over the topic of his report, according to Section 293(2), if it

24 Paneerselvam v. State Criminal Appeal (MD) No. 317 of 2016

25 Bhugra, D., and Oommen, G. (2016). Fitness to Stand Trial and Criminal Responsibility. In Bhugra, D., and Malhotra, S. (Eds.), *Mental Health and the Law* (pp. 69-77). New Delhi: Springer.

26 Glancy GD, Saini M: The confluence of evidence-based practice and Daubert within the fields of forensic psychiatry and the law. J Am Acad Psychiatry Law 37:438–41, 2009

27 Dutta v. State of Bihar, 59 (1984) BLJR 190, 1984

28 KSN Reddy. "The Essentials of Forensic Medicine and Toxicology".23 rd ed.(2004) p.387

29 Murthy, P., and Narayanan, H. S. (2008). Forensic Psychiatry in India: Current Status and Future Development. *Indian Journal of Psychiatry,* 50(3), 157-158.

deems fit. The technique's core principles cannot be contested.[30] However, there are no valid national or international standards, and every testing facility uses its own standardisation and control procedures. However, it is still true that the court is not likely to fully comprehend the fundamentals of the procedure. The courts accept the expert's testimony on the basis of confidence and faith. Some courts may still be hesitant to accept some kinds of scientific evidence because they think it violates the Frye Rule. However, it is now generally accepted that all pertinent evidence is admissible absent a special circumstance.

Researchers in psychology claim that there are numerous abnormal mental states that are brought on by environmental factors, many of which may not be mental diseases in the traditional meaning of the word and are difficult for most people to comprehend.[31]. In such situations expert evidence could contribute significantly to judges' understanding. It was in R v. Robinson[32]the rigorous requirement of common knowledge was broken by the English Court of Appeal. The decision was stated by the court in the following manner: "Evidence from a psychiatrist or psychologist may be admissible to show that a witness or a confession is unreliable, where the mental condition of the witness or defendant is such that it is outside the ordinary experience of the jury, including where the defendant is suffering from a personality disorder so severe that, although not a mental illness, it may be categorised as a mental disorder." For the trial process to be accurate, it is critical to take into account the results of contemporary social science research.

In civil law, forensic psychiatry undertakes assessments related to matters of mental capacity, competency and guardianship. The Mental Healthcare Act, 2017 provides a legal framework for the appointment of nominated representatives and guardians for people with mental illness. Forensic psychiatrists play a crucial role in this process by evaluating the individual's mental health status and determining whether involuntary admission and treatment are necessary[33].The Court often relies upon psychiatric assessments to determine if an individual has impaired decision-making capacity and is in need of guardianship. Forensic psychiatrists are often called upon to assess an individual's mental capacity to make a will or manage their own affairs[34]. Though the role of forensic psychiatry in India has expanded,

30 VV Pillay, "Textbook of Forensic Medicine and Toxicology". 14th ed. Hyderabad: Paras Publishing, (2004) p.89

31 R E. Mackay and Andrew M. Colman,;Excluding Expert Evidence: A Tale or Ordinary Folk and Common Experience ", (1991) Crim L. R. 800 at 809.

32 (1994)3 All ER 346

33 Math, S. B., and Srinivasaraju, R. (2010). Indian Mental Healthcare Laws: A Reappraisal. *Indian Journal of Psychiatry,* 52(3), 210-218.

34 Rao, G. P., Math, S. B., Raju, M. S. V. K., Saha, G., Jagiwala, M., and Sagar, R. (2018). Will and Testamentary Capacity. *Indian Journal of Psychiatry*, 60(4), 514-519.

there are some concerns relating to standards of assessments, overreliance on expert opinions and lack of continuous training[35].

CONCLUSION

Forensic psychiatry plays a vital role in the Indian judiciary by providing expert assessments, diagnoses, and treatment recommendations for individuals involved in criminal and civil legal matters. As the understanding of mental health continues to evolve, it is expected that the role of forensic psychiatrists in the Indian judiciary will continue to expand and become even more essential. Indian judiciary can improve the standards of forensic psychiatric assessments in several ways. Judges must act as gatekeepers while evaluating psychological evidence. A national level regulatory body must be created to establish and regulate the rules on some important aspects of forensic psychology. The body should develop and implement strict standards for the handling and administering of psychological techniques in the forensic arena.

The following suggestions are offered as possible means to ensure the judicial evaluation of psychological expert evidence is at par with the developed countries. Section 45 of the Indian Evidence Act should be suitably amended to expand the areas in which expert testimony may be given. The fields of testimony shall not be limited to "science or art" but should be extensive so as to inculcate the behavioural studies which falls somewhere in between science and art. There must be special provision in the Code of Criminal Procedure to deal with expert evidence in criminal trials. The accused may be permitted to call any expert to cross examine him regarding the reliability of the evidence in general or in connection with the tests or procedures applied for arriving at a particular conclusion. The evidence of an expert shall not be relied on unless his evidence is subjected to testing or clarified to the opposite party. The expert's report must be a speaking one in which he must state the substance of all material instructions on the basis of which the report was written. In the report, the expert must specifically state the name of the test conducted, the theory and technique he used, validity of that theory or technique, potential rate of error, standards maintained, general acceptance of the technique in the scientific community, availability of other experts to evaluate the technique, specific mention of statements relied by him. A permanent statutory body must be constituted to formulate and implement forensic science policy and also to control and regulate all forensic science professionals. The council shall be empowered to take disciplinary actions against the forensic persons who go against professional ethics. A special Act must be enacted for regulating forensic procedures.

35 Kulhara, Parmanand. "Forensic Psychiatry in India: Evolution and Challenges." *Indian Journal of Psychiatry,* vol. 60,Suppl 2 (2018): S257-S262. doi:10.4103/psychiatry.Indian journal of Psychiatry_43_18