



FORENSIC PSYCHIATRY IN INDIA: AN OBSCURED TOOL OF CRIMINAL INVESTIGATION

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Abstract

Forensic Psychiatry is an imperative yet overlooked branch of forensic medicine, which fills in the gap between law and psychiatry by way of application of psychiatric knowledge in untangling the legal issues.

This paper will throw light upon the role of forensic psychiatrist in untangling the scepticism between the state of sanity and insanity for determination of criminal responsibility, medico-legal aspect of forensic psychiatry and the urgent need of its applicability in criminal investigation for better administration of justice which is extremely obscured in the current legal system in India.

Furthermore, the intersection between forensic psychiatry and forensic psychology to unravel the concept of mad versus bad shall be discussed in light of the case, *State v. Ravi & ors* and with a glimpse into the psychology behind crime.

Keywords: Forensic Psychiatry; Sanity; Insanity; medico-legal; forensic psychology

Research Methodology:

- **Primary sources:** Interviews, Questionnaires, Judgments and Relevant Statutes.
- **Secondary sources:** Books and Internet.

Introduction

Forensic psychiatry is the implication of psychiatric knowledge in untangling legal issues and is a key to better administration of Justice. Psychiatry is the study of origin, identification and treatment of mental disorder while the word forensic has its roots in Latin word 'forensis' which means 'of a forum'. Forum is generally referred to as a meeting or medium where people gather to exchange ideas and views on a particular issue¹.

Forensic psychiatry, a branch of forensic medicine and a sub-specialty of Psychiatry is an indispensable yet unnoticed gem in criminal investigation which creates a bridge between Psychiatry and law, hence connecting the dots of psychiatric study into legal issues which paves way for determining the criminal responsibility of an accused by identifying the state of sanity versus insanity. The basic components which assemble the concept of forensic psychiatry are Crime, Insanity, Sanity, Mental illness and criminal responsibility.

- **Crime:** the word crime has its roots in the Latin word 'crimen' which means charge or accusation and a Sanskrit word 'kri' which denotes 'to do'. Therefore combining the two

¹Oxford dictionary. Definition. Forum.



indicates the act which is accusable in nature².

According to oxfords dictionary, 'Crime is an act or omission which constitutes an offence and is punishable by law'³.

There are two essential elements which shall be present for an act to be regarded as crime, and they are:

- **Actus Reus** : It is a physical element which means an act or deed prohibited by law.
- **Mens Rea** : It is a mental element which denotes an evil intention.

- **Sanity** : The ability to behave, think and act normally and sensibly is known as the state of sanity.⁴ Sanity is the state of a sound mental health.

- **Insanity** : It is a state in which a person's mind doesn't function in a normal or sensible manner. According to oxfords dictionary insanity is a state of mind which prevents normal conduct, understanding or social interaction⁵

The word, insanity neither hold place in law nor in medicine or psychiatry, rather it is a socio-legal term used to portray those people who are mentally ill and are generally segregated from rights and responsibilities.

The term unsoundness of mind has its place in the Indian Penal Code and is synonymous to the terms such as insanity, madness, lunacy etc.⁶

- **Mental illness**: It is a medical condition which disturbs a person's ability to think, feel, relate and cope with things and can affect anyone irrespective of age, race, or any other factors. Mental illness is treatable and does not include mental retardation which in some degree might be permanent. Mental retardation is a condition in which a person's intellectual capacity is sub normal and occurs either at birth or during the developmental period wherein there is incomplete or restricted development of the mind⁷.

According to **section 2(s)** of the **Mental Healthcare Act, 2017**, " **mental illness** means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence⁸."

- **Criminal Responsibility**: The ability of the accused to understand the charges brought against and the act or conduct during the commission of any crime is known as criminal responsibility. The concept of criminal responsibility is related to the mental state of an accused during the time of commission of crime and therefore, it is

² KS Pillai, principles of criminology, TLL,1920,p 6; access from: www.etymonline.com/word/crime

³ Oxfords dictionary. Definition. Crime.

⁴ Collins Dictionary. Definition. Sanity.

⁵ Oxford dictionary. Definition. Sanity.

⁶ P.C. Dikshit. 2nd Edition. PEEPEE Publishers & Distributors (P) ltd; 2014. Textbook of Forensic Medicine and toxicology, p 434.

⁷Mental retardation and Mental Illness. available from: http://lucasdd.info/wp/wp-content/uploads/2015/12/Mental-Retardation-and-Mental-Illness_201405161349276399.pdf ; also see section 2(s) of The Mental Healthcare Act, 2017.

⁸ Section 2(s).The Mental Healthcare Act, 2017. 7th April, 2017



necessary to understand the mental state as it could be intentional, knowing, wanton or negligent⁹ and only a guilty state of mind and act of an accused can be held responsible for the offence.

Forensic Psychiatry helps untangle the question of criminal responsibility of a person accused of a crime, by diagnosis of mental illness which helps in determination of sanity or insanity and helps identify the truth behind the defence of insanity as opted by the accused. An accused with an ill state of mind in which he is unable to understand the cause, conduct and consequences of his act or the one who cannot even stand the trial are treated as a person of unsound mind clinically diagnosed with mental illness of grave nature and is exempted from conviction and liability of crime.

Dr Priyaranjan Avinash, a psychiatrist also specialized in forensic psychiatrist stated that, "A forensic Psychiatrist after multiple session of interview, clinical and mental status examination certifies a person suffering from mental illness. However, the term insanity has no place in the domain of forensic psychiatry. Further, Circumstantial evidences collected from the inquest helps in determining criminal responsibility." Beyond the court system, forensic psychiatrists and psychologists are often recruited in prisons, for providing rehabilitative treatment and education to convict and are also hired by police departments as consultants and profilers.

Determination of criminal responsibility of an accused becomes easier when Forensic psychiatry collaborates with forensic psychology which assesses the mental state of the accused with respect to the crime and helps distinguish between mad and bad and identifies the psychology behind crime by way of research on criminal behavior and development of effective clinical treatments. However, it is upon the judiciary to take the final decision on the basis of facts and issues of the case including the medical history and medical report of the accused as presented by the forensic psychiatrist or general psychiatrist. The opinion and statement of an expert witness such as a forensic psychiatrist and forensic psychologist also plays a role of utter importance in judicial determination by the court which further helps in taking the final decision in case when insanity is taken as a defence.

However, the question of exemption of an accused from criminal liability on defence of insanity has always been an intricate and elaborated matter and depends on case to case.

Evolution of Forensic Psychiatry

The case of **R v. M'NAGHTEN**¹⁰ popularly known as the M'NAGHTEN's case opened the doors to the defence of insanity in the year 1843, by establishing the rules in the case when the accused pleads not guilty on the ground of unsoundness of mind. In this case, McNaughton, a 29 years old paranoid schizophrenic had morbid delusions that Robert Peel, the then Prime minister of

⁹ Study.com. Criminal Responsibility: Definition, Evaluation & Legal defenses available from: <https://study.com/academy/lesson/criminal-responsibility-definition-evaluation-legal-defenses.html>

¹⁰ House of Lords.Mews' Dig. i. 349; iv. 1112. S.C. 8 Scott N.R. 595; 1 C. and K. 130; 4 St. Tr. N.S. 847.May 26, June 19, 1843



England was falsely accusing him for the crimes he never committed by constantly sending spies who were following and torturing him¹¹ and therefore made detailed plans to kill him but instead shot Edward Drummond, the private secretary of The Prime Minister, who died after five days. McNaughton pleaded not guilty on the ground of insanity. The medical evidence also suggested that a sane person or a person of sound mind may also be affected by morbid delusions.¹² The rule of defence on the ground of insanity was incorporated and established by the House of Lords. It was stated that “Every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused labouring 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, that he did not know he was doing what was wrong.”

The questions put up by Queen Victoria in the case w.r.t., the defence of insanity was transformed into **M’Naghten Rules (1843) 4 St.Tr.(N.S.) 847** which provides the legal definition of insanity and the grounds to be

established by the defendant for taking the defence of unsoundness of mind or insanity¹⁴. McNaughton was acquitted as he was proved to be insane and was later sent to Bethlem Mental Hospital for his whole lifetime.¹⁵

The English courts still follow M’Naghten’s rule in deciding matters on criminal responsibilities of insane. This rule ignited a spark among other countries to adopt the principle of insanity as a defence, however not every country still follows the rule of M’Naghten in its strict sense, however the defence of insanity has been adopted by several countries such as India, Canada, Australia, England and Wales, Hong Kong, the Republic of Ireland, New Zealand, Norway, Switzerland¹⁶ and most U.S. states etc with the exception of Idaho, Kansas, Montana, Utah, and Vermont¹⁷.

M’Naghten’s rule was the first brick established in the history of forensic psychiatry, even though the usage of the term and appropriate application of the amalgamation of psychiatric knowledge into law saw the light of the sun in the year 1964 when the renowned **forensic psychiatrist Dr. Lawrence Z. Freedman introduced the term ‘Forensic psychiatry’ as a sub-specialty of psychiatry** in the Review Of Psychiatry **1964** in his article titled ‘Forensic Psychiatry’ after the spine chilling

¹¹ P.C. Dikshit. 2nd Edition. PEEPEE Publishers & Distributors (P) ltd; 2014. Textbook of Forensic Medicine and toxicology, p 444.

¹² R v. M’NAGHTEN. House of Lords. Mews' Dig. i. 349; iv. 1112. S.C. 8 Scott N.R. 595; 1 C. and K. 130; 4 St. Tr. N.S. 847. May 26, June 19, 1843

¹³ Holding of Lord Chief Justice Tindal in the case of R v. M’NAGHTEN. House of Lords. Mews' Dig. i. 349; iv. 1112. S.C. 8 Scott N.R. 595; 1 C. and K. 130; 4 St. Tr. N.S. 847. May 26, June 19, 1843

¹⁴ LawTeacher. November 2013. R v McNaughten M’Naghten Case Summary. [online]. Available from: <https://www.lawteacher.net/cases/r-v-m-naghten.php>; also see: Jaising P Modi. 25th Edition. Modi A Textbook of Medical Jurisprudence and toxicology. edited by Justice K Khanna. p 913 - 916

¹⁵ id. at 5.

¹⁶ Section 84. Singapore Penal code.

¹⁷ Wikipedia, the free encyclopedia. Mc’Naghten Rules. Article, available from:

https://en.wikipedia.org/wiki/M%27Naghten_rules



assassination of President John F. Kennedy in 1963.¹⁸ Even though the term was introduced in 1964, the contributions made by him in this field dates back to 1950 when Freedman along with Harold Lasswell, Ph.D., formed a committee on law and psychiatry at Yales and then in the year 1962 Freedman helped in up-gradation and drafting of Model Penal Code of the American Law Institute criminal code by recognizing the relationship and interface between law and mental illness. The assassination of President John F. Kennedy urged Freedman to study psychological and behavioral science of criminals which further contributed majorly in the field of criminology and forensic psychology.¹⁹ Many other rules also emerged which contributed in defence of insanity and hence forensic psychiatry.

Fourty four years after the case of M'Naghten, in the year 1887 another case emerged in the Supreme Court of Alabama which gave rise to the **irresistible impulse test** in the judgment of Parsons v. State which added a variation to the M'Naghten's rule. In simple terms, this test discharged the accused from criminal responsibility even if he was aware of the unlawfulness of the act committed by reason that he was unable to control himself from committing such an act due to destruction of controlling agency or capacity ought of mental illness or disease.

However, this test has much criticism and is never used as the only test for identifying insanity.²⁰

The Durham Rule of 1954 reformed M'Naughten Rule and stated that "An accused is not criminally responsible if the unlawful act as committed by him was a product of mental disease or mental defect. However this rule was rejected by the federal courts and was finally abolished in 1972 on the ground that the definition was too broad and also covered alcoholics, drug addicts and compulsive gamblers who often misused this defence."²¹

The combination of M'Naughten and irresistible impulsive rule paves way for a better concept and rule w.r.t., criminal responsibility of a person of unsound mind which was inculcated by the **American Law institute in its model penal code** with the aid of forensic psychiatrist Lawrence Z. Freedman in the year 1962.²² The rule suggested that a person who lacks substantial capacity to either understand the wrongfulness of his conduct or conform his conduct to the requirements of law ought of a mental disease or defect shall not be responsible for such criminal conduct. However repeated criminals and anti-social conduct were excluded from this defence.²³ The test became popular and was used by a

¹⁸ The University Of Chicago News Office. Oct, 19,2004. Renowned Foresnsic psychiatrist Lawrence Z. Freedman, 1919-2004. Available at: <http://www-news.uchicago.edu/releases/04/041018.freedman.shtml>

¹⁹ Id. at 6.

²⁰ P.C. Dikshit. 2nd Edition. PEEPEE Publishers & Distributors (P) ltd; 2014. Textbook of Forensic Medicine and toxicology, p 445.

²¹ Ibid.

²²Ralph Slovenko. Second edition. Psychiatry in Law / Law in Psychiatry.

²³ Setion 4.01. Article 4- Responsibility.

Available from:

<http://www.icla.up.ac.za/images/un/use-of-force/western-europe-others/UnitedStatesofAmerica/Model%20Penal%20Code%20United%20States%20of%20America%201962.pdf>



majority of jurisdiction in USA for about a period of 20 years but then again in the year 1981 the acquittal of the John Hickey Jr of murder charge of the then U.S president Ronald Reagan's press secretary James Brady on the ground of insanity bought an outrage among the public.²⁴ The Congress removed the volitional condition of the A.L.I test and further in 1984 it passed the **Comprehensive Crime control act** with the short title, **Insanity defense Reform act, 1984**, which made it clear that to attain defence by reason of insanity the accused must give clear and convincing evidence during commission of the crime he/she was under severe mental illness or defect and because of that was unaware of the nature and quality of the criminality of the act so committed²⁵. This change bought a **turning back to the McNaughten's rule**²⁶

Forensic Psychiatry in India

It's been a while since Forensic psychiatry has been introduced in India but not many are aware of its existence and practical applicability in the Indian legal system. Unlike many other developed and developing countries, forensic psychiatry in India, a very useful and appropriate legal weapon in criminal trial is at introductory, buoyancy and an infant stage and yet not fruitfully employed in the administration of justice²⁷. Though in terms of theoretical

knowledge it has a role of utter importance but is not practiced in everyday scenario and only comes into picture either in the cases of defence on the ground of insanity or in legal matters of a very serious nature where forensic psychology also plays its part. Although a separate specialty section of forensic psychiatry has been formed by the Indian Psychiatry Society (IPS), the progress rate is developing yet lagging behind.²⁸

Historical background: Mental illness, its identification and treatment traces back to the Ancient India. The ayurvedic manuscripts included concepts of mental illness in the text such as the atharva veda which recognized mental diseases such as schizophrenia and bipolar disorders; The Siddha, medical system in southern India which identified various mental diseases; The Unani system of medicine which described seven types of mental disorders included Schizophrenia; depression, Organic mental disorder, paranoid state, delirium etc.; 'Agastiyar kirigai Nool', which identified about eighteen psychiatric diseases. Medical diagnosis of mental disorders was also carried by way of five senses and further interrogation. There was also a time before the identification of mental disorders when a person suffering from mental disorder was believed to be a result of witchcraft or possession by evil spirit and were treated inhumanly ought of such beliefs. The Buddhists kings were also the one who

²⁴ Jaising P Modi. 25th Edition. Modi A Textbook of Medical Jurisprudence and toxicology. edited by Justice K Khanna. p 916.

²⁵ Id. at 7.

²⁶ Jaising P Modi. 25th Edition. Modi A Textbook of Medical Jurisprudence and toxicology. edited by Justice K Khanna. p 917.

²⁷ Bolabhai Hirabhai Vs. State of Gujarat. Jun-20-2000.(2000)3GLR242.

²⁸ NCBI. Indian J Psychiatry. 2016 Dec; 58(Suppl 2): S175-S180. Forensic psychiatry in India: Past, present, and future. S. Nambi, Siva Ilango, and Lakshmi Prabh. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5282612/>



established a patronage of mental illness and its treatment.²⁹

Even though mental illness and its treatment were recognized in the country, the focus was on detention of the people with unsound mind rather than their proper treatment. There was no such law which focused on the defence of a mentally ill offender from punishment and such an offender was held responsible for his criminal acts.

It was only after the establishment of the section 84 of the Indian penal code by the British India that the defence of insane from criminal responsibility came into existence.

The Indian Penal Code was enacted way back in 1860 under the British rule in India which is still applicable in realm of criminal law, although several amendments have been made since its inception and post-independence from time to time.

It was a matter of less than two decades after the case of R v. M'Naughten when the Indian penal code as established by the British India legislative council was formed which also included insanity as a defence from the principles established by the M'Naughten Rules in the form of section 84.

Section 84 of the Indian Penal Code establishes unsoundness of mind as a defence from criminal responsibility by stating that, "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."³⁰

Although, unlike the M'Naughten's rule, the word 'insanity' does not have a place in the Indian Penal code and is merely a sociological and common term.

The field of psychiatry and mental health laws were also established by the British India during its governance. The first three acts governing mental health in India were enacted in the year 1858 namely, the Lunacy (Supreme Court) Act, 1858 dealing with judicial inquisition as to lunacy in presidency towns, The Lunacy (District Courts) Act, 1858 with respect to proceedings outside of presidency towns, and The Lunatic Asylum Act, 1858 which focused on the confinement of the insane in asylums. Further in the year 1912 Indian Lunacy Act, 1912 which aimed in amending, assimilating and rearranging the laws related to the custody of lunatics.³¹ although India had legislations w.r.t., mental illness but the basic aim of these enactments were to confine and get rid of the mentally ill people as they were not accepted by the society. However, the mentally ill offenders were acquitted and sent to mental asylum, if the defence of mental illness was established as per section 84 of the Indian penal code.

Before the stroke of midnight of 15th august 1947, i.e., on the eve of independence of the country, Indian psychiatric society was formed. For about 40 years after independence, the Indian lunacy act, 1912

²⁹ NCBI. Indian J Psychiatry. 2010 Jan; 52(Suppl1): S7-S12. History of psychiatry in India. S. Haque Nizamie and Nishant Goyal. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3146221/#sec1-3title>

³⁰ Section 84. Indian Penal Code, 1860.

³¹ Id. at 9.



was followed until mental health act, 1987 came into picture whose main aim was consolidation and amendment of the laws relating to treatment and care of mentally ill persons and further to make better provisions for their matters and property.

Forensic Psychiatry in Present Scenario:

The plea of insanity as a ground for defence established under section 84 of IPC and its criminal proceedings given under section 328-339 denotes that India has a strong hold in the provisions as established and theoretical grounds w.r.t., the forensic psychiatry in Indian Legal system. However, it is expedient to note that the applicability and the awareness of the sub specialty of forensic psychiatry in its strict sense is diminished and shadowed in the present scenario in India and many other developing countries. Not many are well aware of the scope of forensic psychiatry and the indispensable role it plays in criminal investigation, even though the awareness of the defence of unsoundness of mind is present. The role of forensic psychiatrist and forensic psychologist in evaluations is generally done by general psychiatrist and psychologist who do not have sufficient training in the field of forensic psychiatry specifically. The Indian medical education lacks adequate infrastructure and training program for the sub-specialty of forensic psychiatry. The training program in psychiatry is for a period of 3 years wherein

only 2 weeks are allotted to the training of forensic psychiatry as compared to Australia and UK, where there is a 3 year special course for forensic psychiatry which can be opted after previous 3 year course in Psychiatry³². A post-doctoral course in forensic psychiatry exists at NIMHANS, Bangalore, however only one seat per year is available for the same in the whole country. Therefore, it can be seen that we are lagging behind in the field as compared to western countries and even Singapore, where there is a separate department of forensic psychiatry and the sentencing is basically focused on rehabilitation.³³

The statutes like The Indian Penal code, 1860(substantial law), code of criminal procedure, 1973(procedural law) and mental healthcare act, 2017 consists of provisions with regard to mentally ill offenders which encompasses the involvement of forensic psychiatrists in criminal investigation and proceedings.

Legal Implications

Substantial aspect: Section 84 of the Indian Penal Code, provides unsoundness of mind as a defence from criminal responsibility. According to this section a person who commits a crime ought of unsoundness of mind where he/she is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law, is exempted from criminal

³² Indian journal of psychological medicine. Review Article. Year 2017. Being a forensic psychiatrist in India: Responsibilities, difficulties, and criticalities. BC Malathesh & Soumitra Das. Available from: <http://www.ijpm.info/article.asp?issn=0253-7176;year=2017;volume=39;issue=6;spage=732;epage=736;aulast=Malathesh#ref3>

³³NCBI.PubMed.Chan LG,et al. asia pacific Psychaitry.2013.Forensic Psychaitry in Singapore. Available from: www.ncbi.nlm.nih.gov/m/pubmed/23857802/



responsibility. However, insanity to be proved shall be legal insanity rather than medical insanity as in medical terms even an acute depression or an uncontrollable impulse to kill someone is considered as mental illness, but such minor aberrations amounting to madness or mental illness is not considered in the eyes of law³⁴.

In the case of *Yosef v. State of Maharashtra*³⁵, the Bombay sessions court stated that, Even though the accused was suffering from suspected epilepsy and severe personality disorder, it won't be considered as of unsound mind in terms of legal insanity.

Procedural implications and its medico-legal aspects : It is pertinent to note that section 84 of the Indian Penal Code gives the substantial rule of defence on the basis of unsoundness of mind, where on the other hand, **Sections 328-339 of code of criminal procedure, 1973** gives provisions as to accused person of unsound mind. Section 328 talks about the procedure during inquiry while section 329 emphasizes about the procedure during trial. It is the duty of the magistrate, in case of inquiry to cause such person of unsound mind to be examined by the civil surgeon or other medical officer and if such medical expert finds the accused to be of unsound mind he shall refer such person to a psychiatrist or clinical psychologist who shall inform the magistrate if the accused is suffering from an unsoundness of mind or mental retardation³⁶, while in case of a trial, the magistrate or court of sessions shall

directly refer such person to a psychiatrist or clinical psychologist who shall diagnose such person to be either of sound or unsound mind and further report the same to the court or magistrate³⁷.

The evaluation process by the psychiatrist, encompasses of three main stages, namely, **i) Interview with the accused; ii) Use of forensic assessment instruments such as mental state at the time of offence screening evaluation and Rogers Criminal Responsibility assessment scale; iii) Third party information, which includes statements of victims and witness, reports of police etc.**³⁸

Further, when the accused is found incapable of entering the defence by reason of unsoundness of mind or mental retardation and the court finds that no prima facie case is made out against him/her, then the court instead of postponing the trial shall discharge the accused on the basis of bail where such person shall be under treatment as either an out-patient or an in-patient. In case of in-patient treatment, a friend or relative shall take the responsibility of taking the accused for regular out-patient treatment. However, in the case when the bail cannot be granted or any appropriate undertaking is not given, the accused shall be kept in a place where he can attain regular psychiatric treatment and such detention in a mental asylum shall be in accordance with mental healthcare act, 2017³⁹. In case the trial or inquiry is postponed on the basis of the opinion of an expert i.e., a psychiatrist or clinical

³⁴ Id. at 8.

³⁵ *Yosef v. State Of Maharashtra* (2015) CLR 192.

³⁶ Section 328. Code of criminal procedure, 1973.

³⁷ Section 329. Code of criminal procedure, 1973.

³⁸ Jaising P Modi. 25th Edition. Modi A Textbook of Medical Jurisprudence and toxicology. edited by Justice K Khanna. p 918-919.

³⁹ Mental healthcare act, 2017 superseded the previously existing Mental health act, 1986. Also see: section 328, 329 and 330 of code of criminal procedure.



psychologist, its resumption will be done w.r.t., section 331 of the code. When further the accused is brought before the magistrate or court and the court thinks fit that the accused is capable of making his defence then the inquiry or trial will continue⁴⁰. In case the accused is acquitted on the basis of unsoundness of mind, the finding in the judgment shall specifically state if the offence was committed by the person accused or not⁴¹ and further upon acquittal such person shall be detained in safe custody either in a place or manner the court thinks fit such as psychiatric hospital, psychiatric nursing home⁴² or mental asylum or at a friend's or relative's place⁴³.

The mental healthcare act, 2017: The act was recently passed on 7th April, 2017 and came into force on 7th July, 2018⁴⁴ thus entering into the realm of medical jurisprudence while superseding the previous Mental Health act, 1986. Section 2(w) of the act defines "prisoner with mental illness" as the one who is an under-trial or convicted of an offence and detained in a jail or prison⁴⁵. This act consists of provisions with respect protection, treatment and transfer of mentally ill prisoners. These provisions as inculcated in the act are a boon in the field of forensic psychiatry. Section 103 of the act specifically lays down provisions with regard to prisoners with mental illness, wherein a mentally ill prisoner shall be admitted to a psychiatric ward in the medical wing of prison or jail or in case when there is no such psychiatric

ward, he/she shall be admitted or transferred to mental health establishment with prior permission of the mental health review board⁴⁶ with respect to an order under section 330 or section 335 of Code of criminal Procedure; section 30 of prisoners act, 1900 and as contained under section 103(1) of the mental healthcare act, 2017.⁴⁷ Duty is also imparted on the medical officer of the prison or jail to make sure that no mentally ill prisoners are still in prison or jail and thereafter send quarterly reports to the board⁴⁸ and the Board may also visit the prison for verification of the same⁴⁹. The medical officer in-charge of a mental health establishment is under obligation to make a special report in every six months regarding the mental and physical condition of the detained mentally ill prisoners⁵⁰ and such mental health establishment shall be registered under mental healthcare act, 2017⁵¹. The act also makes a compulsion on the appropriate Government to setup mental health establishment in the medical wing of at least one prison in each State and Union territory and further makes it clear that the mentally ill prisoners should be taken care of⁵².

A police officer on the request of medical officer or mental health professional in-charge shall find and take in protection of a prisoner with mental illness when he/she elopes without leave or discharge from the

⁴⁰ Section 333. Code of criminal procedure, 1973.

⁴¹ Section 334. Code of criminal procedure, 1973.

⁴² Id. at 8.

⁴³ Section 335, 339. Code of criminal procedure, 1973

⁴⁴ Wikipedia. Article. Mental healthcare act, 2017.

Available from:

https://en.wikipedia.org/wiki/Mental_Health_Care_Act,_2017

⁴⁵ Section 2(w). Mental healthcare act, 2017.

⁴⁶ Chapter XI. Mental Health Review Boards. Mental Healthcare Act, 2017.

⁴⁷ Section 103(1). Mental Healthcare Act, 2017.

⁴⁸ Section 103(3). Mental Healthcare Act, 2017.

⁴⁹ Section 103(4). Mental Healthcare Act, 2017

⁵⁰ Section 103(5). Mental Healthcare Act, 2017

⁵¹ Section 103(7). Mental Healthcare Act, 2017

⁵² Section 103(6). Mental Healthcare Act, 2017



mental health establishment⁵³. Section 93(2), of the act further gives power to the State Government to make such general or special order in directing the removal of any prisoner with mental illness from the initial place of detention, to any mental health establishment or other place of safe custody.

Intersection between Forensic Psychiatry and Forensic Psychology and a glimpse in the Psychology behind Crime

Forensic psychology is the intersection between law and psychology while forensic psychiatry forms a bridge between Psychiatry and law and is related to criminology. Both are different sets of science but are inter-related and can work together to diagnose mental illness and treatment according to their respective methods. The forensic psychiatrist examines the accused through medical tests; lab results; psycho-diagnosis tools such as PGI battery, RORSCHACH, TAT; brain scans and imaging⁵⁴ to determine mental illness associated and the criminal responsibility associated with it. Forensic psychologists on the other hand also examines the mental and emotional disorders, but they use non-pharmacological or non-medicated methods to study the mind and behavior and further evaluates the patient's emotional and mental health and the treatment includes counseling,

psychotherapy, stress inoculation therapy to name a few⁵⁵.

Once collaborated they can help together during evaluation of a person accused of a crime by determining the state of mad or bad and by studying the risk factors associated with repeated criminal behavior. The member of the bar and legislature relies on both the experts who can read the mind of the dangerous among us in order to protect the society. Further both the experts together research the psychiatric and psychological aspects of psychopathic personalities to predict possible threats to society at large⁵⁶.

Psychopathy is a condition, where a person has uncontrolled, impulsive and severe anti-social behavior. Not all psychopaths but the aggressive ones are the one who commits crime⁵⁷.

In the spine chilling case of **State v. Ravi & ors**⁵⁸, the Delhi High Court recognized the gang rape and murder committed by all the accused to be crime of psychopathic nature, wherein they came like predators to fulfill their lust and evilness and took the deceased from the society. In this case the court commented and concentrated on the concept of mad versus bad by stating that, "Psychopathic personality disorder occupies a position at the heart of both forensic psychiatry and psychiatric criminal jurisprudence. This is because psychopaths

⁵³ Section 92. Mental Healthcare Act, 2017

⁵⁴ NCBI. 25,Nov,2015.Collaboration: The Paradigm of Practice Approach between the Forensic Psychiatrist and the Forensic Psychologist. Available from- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3498621/>

⁵⁵ Achieve wellness group, LLC. Understanding the Relationship Between Psychiatrists and Psychologists. April 8, 2016. Available from: <http://achievewellnessgroup.net/uncategorized/relationship-psychiatrists-psychologists/>

⁵⁶ Supra note 54.

⁵⁷ 2006 RESERVED. Rajpal Kaur. Forensic Psychology- Trends and Innovations. p 23.

⁵⁸ DEATH SENTENCE REF. 1/2014



lie at the intersection between the so-called mad and bad- that is, between those who clearly warrant treatment (the seriously mentally ill) and those who should properly receive punishment. Psychopaths are thought to be peculiarly and inherently untouched by therapeutic or rehabilitative interventions - two of the commonly accepted diagnostic criteria for psychopathic personality disorder being a failure to learn from experience and a failure to show remorse. Psychopathy comprises forms of egotism, immaturity, aggressiveness, low frustration tolerance and inability to learn from experience that places psychopaths at high risk of clashing with any community that depends upon co-operation and individual responsibility of its members for its continued existence⁵⁹”.

Psychology behind crime: Psychology in itself is not just a field of science, rather it is an amalgamation of philosophical and scientific study of the brain and its psychological functions and chiefly those affecting behavior, attitude and the thinking ability of the person⁶⁰. The professional who identifies the psychology of an offender behind a crime are known as Forensic Psychologists or criminologist, who endeavors to understand the mental function and social behavior and also deals with the delinquent people.

⁵⁹ Paragraph-149. State Vs. Ravi Kumar and ors. DEATH SENTENCE REF. 1/2014

⁶⁰ Simply psychology. What is psychology? Access from: <https://www.simplypsychology.org/whatispsychology.html>

⁶¹NCBI. J Family Community Med. 2005 May-Aug; 12(2): 63–70.The Role of Psychologists in Healthcare Delivery. Saeed H. Wahass, PhD. Access from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3410123/>

Forensic Psychologist takes a great interest in human behavior as their main area of study which helps in criminal investigation to explore behavior and mental process including perception, cognition, attention, emotion (affect), intelligence, phenomenology, motivation (conation), brain functioning, and personality of the subject, that in what state of mind he was while attempting the crime⁶¹.

From many decades, investigators have dug into the cause and root of crime and the psychology behind it. Many theories suggests that genetic orientation can be the reason for criminal behavior. However many criticizes the same, whereas others suggest that environmental factors can give rise to the same. According to another research, it was stated that the link between intelligence and crime is directly proportional to each other where it was assumed that an individual with low IQ becomes criminals. However this theory was much debated and criticized⁶². Some people have natural urge to commit crimes as they don't have any control on their desires, like an individual become addicted towards nicotine and cant rid of it⁶³. Stress, emotional distress may result in a deviant behavior patterns.

Furthermore confessions obtained in the Nithari killings such as “even I felt the urge, the demon in me used to wake up” obtained

⁶² Ian Marsh, 2011. Psychological explanations for criminal behavior. Access from: https://is.muni.cz/el/1423/podzim2016/BSS166/um/Ian_Marsh._2011._Psychological_Explanations_for_Criminal_Behaviour.pdf

⁶³Chameleon. Michelle Bingert. Jan 17, 2013. Psychology Behind Crime. Access from: <http://sites.psu.edu/michellebingerttrclblog/2013/01/17/psychology-behind-crime/>



in the influence of truth shows that the convict was not suffering from any mental illness or disorder but was a sexual psychopaths, a necrophilic and a paraphilic wherein killing was rooted in the fantasy and overpowering compulsion to kill.⁶⁴

With a rise in the rate of sexual crimes, there is an urgent need to come with a solution. In the evaluation of sexual arousal pattern it was found that high level of testosterone hormone is responsible for irresistible impulse. Countries like Canada & USA uses chemical castration as a method of treatment which reduces the level of high testosterone in sexual offenders⁶⁵.

Conclusion

Forensic psychiatry plays a vital role in determination of the state of sanity versus insanity by medical diagnosis and examination of the accused. The scope of forensic psychiatry in India exists in terms of legal provisions w.r.t., section 84 of the IPC, sections 328-339 of Code of Criminal Procedure and sections 2(w), 103, 91(2) and 92 of the mental healthcare act, 2017. However, forensic psychiatry as a branch of forensic medicine & sub-specialty of psychiatry is not known to many. Although a separate specialty section of forensic psychiatry has been formed by the Indian Psychiatry Society (IPS), the progress rate is very slow. Clinical psychiatrists or psychologists plays the role of forensic psychiatrist ought of diminished knowledge, infrastructure and courses available.

Forensic psychology and forensic psychiatry although differs in their subject and approach are inter-related to each other. The intersection between the two specialties can lead a way in identification of the nature of repeated offenders and can further help in identification of a psychopathic personality which lies at the intersection between mad and bad. The psychology of an offender behind a crime can be identified by forensic psychologists or criminologist where different theories and factors exists. However, the answer lies in the case which must be identified to decrease crime rates for better administration of justice. . Punishment shall be given and death sentences shall be declared in cases of crimes of diabolical nature. However, steps should be taken to decrease crime rates with an aid of forensic psychiatry and psychology.

⁶⁴The Indian Express. Inside Nithari killer's mind: 'Would watch girls come in,even I felt the urge'. access from:

<https://indianexpress.com/article/india/crime/inside-nithari-killers-mind-would-watch-girls-come-in-even-i-felt-the-urge/>

⁶⁵ Paragraph 162. State Vs. Ravi Kumar and ors. DEATH SENTENCE REF. 1/2014