

APPLICATION OF FORENSIC PSYCHOLOGY IN INDIAN JUDICIARY- AN OVERVIEW.

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ABSTRACT- Forensic Psychology is an unique combination of Law, Forensic science and Psychology. Main function of forensic psychologist is to assess the individual's mental status. Forensic psychologists have various roles in court system, in law enforcement agencies, correctional institution and also in medical treatment. Forensic psychology involves various techniques such as narco-analysis test, lie detector test and brain mapping. Though these technologies are a boon to criminal investigation system, reliability of evidence derived from these techniques are questioned. Indian judiciary has been oscillating back and forth on admissibility of evidences derived by forensic psychologist. India lacks in expertise in this field. Training should be given to crime investigation agencies and judiciary should also provide more weightage to forensic psychology while adjudication a case.

KEY WORDS : Forensic science, psychology, crime investigation, expert evidence, technology.

INTRODUCTION

Psychology, forensic science and law is a unique combination which can make a criminal investigation system more effective. Law is a set of rules and regulations that controls human behavior. It is done by imposing punishments and penalties, on the individual who violates law. All crimes are man-made and it is executed by a human being. Psychology is the study of human behavior. According to psychology, criminals can be broadly classified into psychopaths and sociopaths. Psychopaths are those who are born with high criminal tendencies. Sociopaths are influenced by external factors like broken family, poverty etc. forensic science helps the court of law in investigating a crime. So putting it together "Forensic Psychology" is application of clinical psychology in a forensic investigation to facilitate the judicial process. American Psychological Association recently recognized Forensic Psychology as a specialty area in 2001. It is relatively a new concept.

Main function of forensic psychologist is to assess the individual's mental status, who are involved in a legal process. This requires expert skills in clinical psychology. Assessing the "guilty mind" is the goal here. "mens rea" is a person's malicious intention to commit a crime. It is an essential element of a crime, without which an act cannot be considered as a crime.

Insanity defense is available for an accused person during the time of commission of a crime. One major challenge faced by a forensic psychologist in assessing the mind of an accused is that, state of mind of the accused during the commission of the act should be assessed. The work here is retrospective. It is easier to assess a person's current mental status but doing it retrospectively can only be done through evidences from external factors. Similarly mental competency of a person to stand a trial should also be assessed. There is no point in trying a person who is incapable of understanding the process.

APPLICATION OF FORENSIC PSYCHOLOGY

Forensic Psychologists have various roles in court system, in enforcement of law, in correctional institution and also in medical treatments. Forensic psychologists are referred to as "criminal profilers" as they develop criminal profiles based on their assessment and behavioral history of a person.

Forensic psychologists comes in to play when the mental competency of a person is in question. When defense of insanity is pleaded under section 84 of Indian Penal Code, a forensic psychologist can examine the person and prove or disprove the defense claimed. Similarly when "doli incapax" defense is claimed by the defendant, forensic psychologist can assess the capacity of the child who committed the crime. "doli incapax" defense is provided under section 82 and 83 of Indian Penal Code. According to which, when a child below seven years commit a crime, he cannot be prosecuted. When a crime is committed by a child above seven years but below twelve years, if he does not possess mental competency of understanding the consequences of his act, he cannot be prosecuted. Section 85 of IPC provides for defense involuntary intoxication. Apart from alcohol, involuntary intoxication can also result from powerful dosage of medicines prescribed by a physician.

Forensic psychologist can also evaluate custody issues in a divorce case. A forensic psychologist evaluate the parenting capacity and moral fitness of the parties. Reasonable preference of the child is also considered if the child is of sufficient age to express preference.

Forensic psychologists also provides consultations to law makers about a psychological implications on public regarding a policy. Forensic psychologists cal also provide specialized treatment to adult and juvenile offenders and also to crime victims.

Indian prison system aims at rehabilitating the offenders but prison life can be stressful, especially for the first time offenders. Indian prisons are over crowded which creates various health and mental issues to the inmates. Prison psychologists can provide attention to such issues. Inmates often suffer from personality disorders for which individual or group therapy sessions can be conducted to address the issue. These techniques have been widely proven to be effective throughout the world.

EVIDENTIARY VALUE OF FORENSIC PSYCHOLOGY IN INDIA

Forensic psychology has proven to be more significant in many cases. For instance in Arushi Talwar's murder case in 2008, testimony given by S.L.Vaya, a forensic psychologist on some of the suspects were in fact very close to the actual event. But courts and CBI did not pay much attention to the testimony and it was considered as inadmissible in courts.

Forensic psychologist functions as "amicus curie" to the court and gives his testimonies or expert opinion. They use various techniques like Narco-analysis test, polygraph test to find out a person's involvement in a crime. Though admissibility of evidence extracted by using these techniques is still debated, these evidences are used as corroborative evidence

Though forensic psychology is proven to be significant in many cases, it is not formally made admissible in the courts. Many non-governmental investigation agencies use these techniques and it is not considered as substantive evidence. If these expertise are formally adopted by CBI and police department, crime investigation process will be much effective.

Due to technological advancement in recent decades, criminals also engage advanced technologies in committing the crime. Often forensic scientists are left without any physical clues in a crime scene. This makes it difficult to find out the involvement of suspects. Forensic psychology can be of greater use in these circumstances.

In *Selvi v. State of Karnataka*¹, Supreme court held that Narco-analysis test, brain mapping or polygraph test are unconstitutional if it is conducted involuntarily. These are some of the techniques used by forensic psychologists to extract truth from the accused. In narco-analysis,"thiopentone" or "sodium pentothal" which is also called as "truth serum" is diluted with distilled water and it is injected into the suspect's body along with dextrose solution at a regular interval. This puts the suspect in a dis-associative state. Then curated questions are carefully posted to the suspects, the drug administrated, eliminates the capacity of the suspect to come up with a lie. Instead, he confesses the truth. This method can also prove the innocence of a the accused person.

In polygraph test, which is also called as lie detector tests, computerized recording system is used. Pneumographs are wrapped around the suspect's chest to measure the rate and depth of respiration. Blood pressure cuff reads the cardio vascular activities. Galvanic skin or electrodermal response is measured through electrodes which are connected to the fingertips. Then controlled questions are posted to the suspect. Then changes in his readings are noted based on which, truthfulness of his response is analysed.

In 2003, prof. Dr.C.N.Mukundan, a neuroscientist, discovered the technique of Brain Electrical Oscillation Signature (BEOS). This is commonly known as "brain mapping test". In brain mapping test, sensors are

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attached to the subject's head, then he is made to sit in front of a monitor and he is shown a bunch of images from the crime scene. If he connects to any of the shown image his brain activities traces his familiarity with the image. This can prove his involvement in the crime.

Though these advanced techniques are boon to criminal investigations, information extracted out of these techniques are not considered as a conclusive evidence as the results are not one hundred percent reliable. Often lawyers raises issues such as admissibility of evidence given by a suspect when he was semi conscious or the results of polygraph tests are highly influenced by anxiousness of the person. Even though if a person is innocent, when he is put under such threatening conditions his readings might differ. This makes the information unreliable.

Brain mapping test is however proven to be more effective than narco-analysis and lie-detector test and the results are more accurate. For instance in October 2019, police department were finally able to crack a seven years old case where a man allegedly murdered his lover's husband in 2011. Kamal Singla and Shakuntala conspired to murder the deceased Siva kumar. Lie detector test was conducted in investigation process which stated that both accused were truthful in their statement but in fact they were the culprits. Unsatisfied with the findings of the case, Crime branch conducted Brain Mapping Test which revealed the truth.

These tests can be done with informed consent of the individual, but evidence extracted from an individual can be rejected by the courts, if it doubts the reliability of the evidence.

Section 45 of Indian Evidence Act 1872 provides for "Expert opinion" according to which a forensic psychologist can assist a court by producing his findings as a fact, which needs to be proved by other substantive evidences.

National Human Rights Commission in 2000, published a guidelines on administering narco-analysis, polygraph test and brain mapping. According to the guidelines these tests can be administered on a person only with his informed consent. Information regarding complete procedure of the test to be carried should also be informed to the accused. The recording of the test shall be conducted by an individual agencies such as hospitals, with the presence of a lawyer.

FORENSIC PSYCHOLOGY AND RIGHT TO PRIVACY

Another challenge that forensic psychology faces is the issue of "privacy". Psychology is indeed study of human mind. Forensic psychology aims at looking into the "criminal mind". Often privacy of the accused is raised as a defense. Right to privacy is declared to be fundamental rights in *Kharak Singh v. State of Uttar Pradesh*². In august 2017, *K.S. Puttasamy v. Union of India*, Supreme Court reiterated that right to privacy is a fundamental rights. In *Dharampal v. State*³, Supreme Court expressed its view that, no one can withhold criminal information and escape from social responsibility by avoiding such information in the name of "privacy". Looking at our judicial history, courts do recognizes the significance of forensic psychology.

CONCLUSION

Unfortunately India lacks in expertise in this field as it is relatively new. Judges and advocates lacks in scientific background. Special training should be given to police department and investigation agencies. Forensic Psychology should be given much weightage in a crime investigation, which is not the current scenario. Each forensic Laboratories should have a separate team for forensic psychology. Technical skills of a forensic psychologist must be utilized in investigations for an effective system.

² 1964 SC 332^[1]

³ MANU/SC/0260/2003.