

ROLE OF PSYCHOLOGY IN LEGAL STUDIES

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ABSTRACT

Psychology and the law are distinct disciplines of study. However, the study of psychology is important for the legal discipline, more particularly, criminal law. Criminal law employs terminologies associated with psychology which are integral for the constitution of offence-ingredients. The terminologies help the realisation of the objectives of the criminal law. Considering the importance of psychology in legal discipline, the paper introduces the subject for the beginners of legal studies.

KEYWORDS: Legal Psychology, Forensic Psychology, Psychological Jurisprudence.

INTRODUCTION

Psychology and The Law are distinct disciplines. One studies human behaviour while the other regulates it. But both aim for the betterment of society and enhancement of quality of living. Psychology is the science of mind and the behaviour, it is the study of mind and behaviour in relation to a particular field of knowledge or activity¹. The science of psychology provides a full and accurate explanation of human behaviour while the famous legal jurist '**Salmond**' defined law as "the body of principles recognized and applied by the state in the administration of justice". He believed that law develops from popular practices of a society. Law evolves from customary practice prevailing in a community and it is also defined as a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority.² One can say that the science of psychology is very intangible as it is the study of intellectual as well as the behaviour of an individual while laws are codified and well-written rules and hence are tangible. Law is the accumulation of rulings given by courts whereas psychology advances with the accumulation of data by scientists. Despite different psychological beliefs of people, the law is uniform for all.

¹<https://www.merriam-webster.com/> Merriam-Webster Dictionary.

²<https://www.merriam-webster.com/> Merriam-Webster Dictionary.

LAW AND PSYCHOLOGY

Legal rules, doctrines and procedures reflect basic assumptions about human behaviour and their nature. Psychology and law go hand in hand as the law is coded rules based on social psychology. Psychology and law is the scientific study of the effect of the law on individuals and the effect which individual have on the law. Without getting into the minds of the people, their usual practice, procedures, nature, want, beliefs and laying down the law to control them will eventually fail the entire legal system because the law is the product of its people's beliefs. The other side of it is Law demands consensus among the people, it takes into account the psychology of the majority of the people in the society, if the majority of individuals behave uniformly in the same type of situation that can be laid down as a law, binding for the whole society. If lawmakers do not take into account the needs and demands of its people, the law will be arbitrary and unreasonable.

To illustrate earlier the Indian society beliefs the institution of marriage as sacred, religious and Promotion of both religious and family values was considered to be in society's best interest, people were unknown or against the dissolution of marriage but with changing times, mind-set and social values have changed, so are the circumstances of relationships and now the people demand divorce is increasing every day. So with a change in the mindset of the people, the law is also changing. Earlier the courts were very reluctant to pass a decree of divorce and were aimed to protect the faith of people in the institution of marriage but nowadays the divorce law opens up more space to seek dissolution of marriage easily.

In a democratic form of government there are persons elected by people as their representatives, those representatives speak not on their own, they analyse the basic behaviour of the people and accordingly derived their needs and demands and put forth before the parliament and after discussions and deliberations, the law is made up after due consent of the majority of the representatives. For decades the laws are being developed for a specific society based on what the people in it thoughts are.

Although many legal scholars argue that there is no need for scientific information or any sort of opinion of psychological information but there are problems that might persist if that information would not be used in

laying down the law. Unless we have scientific research to identify how the law works in action and why it is working the way it does, the law would be ineffective in real life. The opposite is also true if psychologists in their research ignore the need and concerns of the law, then their scientific knowledge would be less beneficial to legal decision-makers. For example, without having the understanding of the assumptions the lawmakers had in mind while making laws, the psychologists will fail to provide the information on where the law is ineffective and where it requires modification.

Jurisprudence and Psychology

The study of founding ideas of law is jurisprudence. Jurisprudence is the knowledge of the law. The convergence of the study of jurisprudence and psychology is Psychological Jurisprudence. It is the area that aims to develop a platform on the philosophy of law and justice basing on psychological values. Psychological jurisprudence is the use of psychology in the real realm and it relies on theories and methods of criminal justice and mental health to make decisions about intervention, policy, and programming.³ Psychological jurisprudence focuses more on understanding human motivation and *human cognition* and decision making. The application of psychology to jurisprudence is an effort to define human nature through the systematic and scientific methods of study.

Application of Psychology in the legal discipline.

There are various ways psychology has the application in law and jurisprudence. One such branch is Legal Psychology that is basically, the application of psychological principles in the legal context. Legal psychology uses empirical research means to study issues that arise in the legal system. It helps to solve issues like eye witness accuracy, jury decision making, police selection, etc. Another branch of psychology is Forensic Psychology. Forensic Psychology often termed as clinical psychology involves the study of the *mental state of mind*, competency to stand trial, insanity or civil commitment, etc. Forensic psychology refers to professional practice by any psychologist working within any sub-discipline of psychology such as *clinical, developmental, social and cognitive* when applying the scientific, technical, or specialized

³ISBN-10: 0791461521, ISBN-13: 978-0791461525, Bruce A. Arrigo, *Psychological Jurisprudence-Critical Explorations in Law, Crime, and Society*, State University of New York Press (August 2, 2004)

knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters.⁴ Forensic psychology is an integral part of the criminal investigation system. Section 45 of The Indian Evidence Act, 1872, allows forensic psychologists to lend their expertise in criminal investigations. Generally, An expert in forensic psychology can *assist in assessing the mind* of an accused with *mens rea*. Mens Rea is the guilty intent for the commission of an offence which the prosecution or the state must prove to convict an accused person. This duty of assessment of mind is so far discharged by the court. Collecting and systematically compiling data of criminals, a psychologist can improve the efficiency of a criminal investigation. Employing various parameters used for the analysis of the behaviour of a person, he can help drawing inferences from the conduct of the accused to eliminate various hypothesis suggested by the police during the investigation. An expert in forensic psychology helps in understanding the risk behind a person if set free or the harm he can do upon himself or to the society. He can help in understanding a killer's next move. Apart from the traditional task of analysing the mental condition to certify if an accused is fit to stand for trial, he can also assist in empowering victims of crimes to bring their life to normalcy. He can empower the victims in unconditional self-acceptance and encourage them to move back to society to live a healthy life once again. That apart, since prison-institution is an integral part of the criminal justice system, he helps to a great deal to bring positive reform to the prison administration. A Forensic psychologist helps prisoners deal with stress and adapt to prison life more healthily. He also uses various therapeutic methods for the rehabilitation of criminals.

Understanding the Psychology of the Judge

In the legal justice system, the importance of judge's psychology is of utmost relevance. The realist school of jurisprudence considers the judgements of the court as the source of law rather than, any legislature. For them, the law is, in reality, what it means, what the judge says. Whatever is written in the Act or legislation is just bare word, what ultimately law is, the decision of the judge. So, the law is the judgement of the courts. Lawyers argue before the court based on the judicial officer who is hearing the case, once that judge changes, the same case is to be argued differently to get a favourable order. There is a popular saying in the court of law, "a lawyer may know the law, but a seasoned lawyer knows the judge". Mostly in the criminal

⁴(Division 41, The American Psychology–Law Society) A Division of American Psychological Association, "specialty guidelines for forensic psychology" Vol. 68, No. 1, 7–19 (JAN 2013).

side of the practice, on Bail-Application matters, this is observed fervently. Most often, the practical view of the Bar regarding the arguments presented for a Bail application is, "My Lord, My Lord and My Lord" than the section and provisions of the law. That's why it is always advisable to visit the court regularly to understand how the psychology of a judge works, to understand the practice of the judge and the likes and dislikes of him/her. One may concern about when the law is same for all, why different judges have a different interpretation of that same law. Believe it or not, interpretation of the law is done less based on principles and rule of interpretation and more on the psychological perspective of the judicial officer and his/her understanding of the law. Each judge may have a different interpretation of the same law backed with right and logical reasoning because each one has a different approach and understanding of the law. Judge's decisions are influenced by their state of mind, their personality, attitudes, past experiences, or other factors of human behaviour. It is already been discussed that every individual holds different perspectives of a situation and that's why the judges also have a different approach towards a thing.

Judge's psychology is also controlled by external factors such as they are bound with the legal precedents, many times the judicial officer holds a different perspective towards a matter but due to the binding nature of precedents on them, they have to act according to the reasoning of that judge who set that precedent. Other factors are societal pressure, political influence, fear of not getting a promotion to higher judiciary etc. Knowledge and experience about the mind of a judge and how it works is a way to make a case in your favour or to get a good deal for your client. Simple real-life illustration being lawyers do bench hunting to get relief for his/her client. Bench hunting or forum-shopping refers to a method where lawyers manage to list and heard his/her client's matter/case by a particular judge or a bench for ensuring a favourable order. This occurs because in some way or the other judges get influenced, play bias. This is against the legal justice system. Lawyers are using this technique because they see an opportunity to play with the judge's psychological beliefs.

Challenges for the psychology in law

One important question is whether every time the law takes into account the psychological beliefs of the people in society? The answer is an obvious no. As to illustrate let's take a real-life scenario: Due to the social perspective towards homosexuality, it was criminalised under the Indian penal code until when after so much of struggle it was decriminalised by the Apex court of India and allowed the LGBT community to live life as per their choice. It acts as a major recognition to the community but in doing so did the court

took into account the psychological beliefs of the people in the society? Has the psychology of the people really changed towards Homosexuals? The answer is no, instead, the law bereft of what the people's thoughts take stand for what is right. Here first law comes to rescue its citizens which are being vulnerable for many decades and then mandates the people to change their attitude towards homosexuals and give them a place they need in the society. The result being now the people are bound to accept the LGBT community and to treat them with respect even if their psychology towards them is still the same. Many times the situation demands law to change with changing times to protect its citizens. This is a challenge for psychology to address. Another challenge for the application of psychological principles is that those are developed in clinics/laboratories and many times they are not fit real-life settings. Psychologist's research findings should be demonstrably true in the real-life setting. They must be concerned with using reliable and valid scientific methods. Psychologists must also revisit their methods and check whether those methods are truly addressing the real-life legal problems or simply they are internally valid.

Criminal law, to stop the reoccurrence of crime in future, the lawmakers always believe that they can do so by enhancing the punishment, they believed that by doing so they could create a sense of fear of punishment for the future offenders. Criminal law assumes that if people expect punishment from actions, they are less likely to do them. But the psychological study of a criminal mind says otherwise, in most of the situations the criminals do not care about the punishment or are unaware of the consequences that will follow from their actions. This a challenge for the law and psychology to address in most of developing the legal system.

Conclusion

The role played by legal and forensic psychology are beneficial for a health institution of administration of justice. These days psychologists are studying law as well to apply their knowledge in the legal system, to strengthen the legal system. If legal and psychological research recognises the unique problems of the psychological study of law pose for, the objectives of both the disciplines shall be realised. At the last, the role of psychological scientists and their potential to overcome problems concerning law should always be hoped.