

EXPLORING BEHAVIORAL DYNAMICS THROUGH FORENSIC PSYCHIATRY IN THE INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

In criminal jurisprudence, the burden lies with the accused to prove insanity, often with expert testimony from Forensic Psychiatrists, demonstrating their inability to comprehend the nature or wrongfulness of their actions. Forensic Psychiatrists play crucial roles in assessing trial competence, determining detention security levels, and overseeing mental disorder treatment in criminal cases. The United Nations Convention on the Rights of Persons with Disabilities emphasizes equal legal capacity, prompting re-evaluation of the insanity defense globally. The research paper examines Forensic Psychiatry's methodologies and its pivotal role in criminal justice, particularly regarding mental health issues, distinguishing medical from legal insanity. It emphasizes the challenge of proving legal insanity amidst conflicting medical and legal perspectives, highlighting the need for standardized evaluation procedures and comprehensive mental state assessments in legal proceedings.

Keywords: Forensic Psychiatry, Criminal Justice System, UNCRPD, Penal Laws.

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INTRODUCTION

Forensic Psychiatry is a specialized area of psychiatry that applies scientific and clinical expertise to legal matters, including criminal, correctional, and legislative contexts. This practice is still developing in India and other emerging nations. It is crucial for Forensic Psychiatry to adhere strictly to the established guidelines and ethical principles of general psychiatry.

Forensic Psychiatry is essential for understanding and interpreting the behavior of criminal offenders within the justice system. It integrates psychiatry, psychology, and law to address the mental health aspects of criminal behavior, legal responsibilities, court roles, and the treatment of individuals with mental disorders within the legal framework.¹ At various stages, a forensic psychiatrist's role includes judging an individual's competence to stand trial, assessing risk to determine the appropriate level of security for detained individuals, and overseeing the treatment of the accused's mental disorders and other related factors.²

Contemporary Forensic Psychiatry has advanced significantly due to four key developments: improved understanding of the link between mental disorders and criminal behavior, refined legal standards for defining insanity, new treatment approaches offering alternatives to institutional care, and changing societal attitudes towards mental illness.³

The American Academy of Psychiatry and the Law defines Forensic Psychiatry as a subspecialty of psychiatry that deploys scientific and clinical expertise in legal contexts encompassing civil, criminal, correctional, regulatory, and legislative matters, and in specialized clinical consultations, particularly in areas such as risk assessment.

In Europe, psychiatric professionals focus on treating mentally disordered offenders. According to John Gunn and J. Taylor, Forensic Psychiatry is a medical specialty that combines detailed knowledge of legal issues and the criminal and civil justice system. Its purpose is the

¹ Scott Brown, 'United Nations Declaration on the Rights of Disabled Persons', Encyclopaedia Britannica's Available at <https://www.britannica.com/topic/United-Nations-Declaration-on-the-Rights-of-Disabled-Persons> Accessed 23 December 2024

² C.R. Hollin, 'Forensic Psychiatry' Encyclopedia of Forensic Sciences (2013) p. 188-191, <https://www.sciencedirect.com/science/article/abs/pii/B9780123821652000337> accessed 26 December 2024.

³ Henry Manresa, 'Forensic Psychology' https://www.researchgate.net/publication/337149695_Forensic_Psychology Accessed 26 December, 2024

care and treatment of mentally disordered offenders and similar individuals, including risk assessment, management, and prevention of future victimization.⁴

PIONEERING FORENSIC PSYCHIATRY

British colonial rule in India established mental asylums to segregate the mentally ill, supported by legislation like the 1912 Indian Lunacy Act. Alongside legal changes, British influence introduced modern psychiatry to India. Historically, mental illness provoked varied cultural responses, from divine reverence to exorcism. India's first mental health law, dating back to 1858, addressed lunatic detention and management, comprising the Lunacy (Supreme Court) Act, Lunacy (District Courts) Act, and Lunatic Asylum Act.⁵

These English Acts from 1853 were amended several times before being replaced by the Lunacy Act of 1890 and 1891. The 1911 Indian Lunacy Bill became Act IV of 1912 quickly. According to the Indian Lunacy Bill's Objects and Reasons, 1911, this legislation attempted to align Indian mental health regulations with England's and streamline the legal framework controlling mental diseases.

The 1986 Mental Health Bill, passed by the Rajya Sabha and sent to the Lok Sabha, continued the modernization of mental health laws. In 1987, the Lok Sabha enacted the measure after nine years of debate. The President signed it on May 22, 1987, making it the Mental Health Act, 1987.

The Indian Penal Code, 1860, by Thomas Babington Macaulay in the mid-19th century gave rise to forensic psychiatry in India. Section 84 of the IPC incorporates McNaughten's rules, establishing the insanity defense. This core framework hasn't changed much. However, Section 84 of the IPC has been the subject of major legal rulings.

Now the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNS) represents a significant overhaul of India's criminal justice framework, replacing the colonial-era Indian Penal Code, 1860, to better align with contemporary societal needs. The BNS focuses on streamlining criminal procedures, enhancing accountability, and ensuring swift justice through measures such as time-bound trials, victim-centric approaches, and the use of technology. It emphasizes safeguarding the rights of individuals while also addressing emerging challenges like forensic

⁴ John Gunn, Pamela Taylor, 'Forensic Psychiatry Clinical, Legal and Ethical Issues', p. 16, Routledge Publication, ISBN 9780367366476

⁵ Ibid

psychiatry. By modernizing outdated provisions and incorporating restorative justice principles, the BNS aims to create a more efficient, equitable, and transparent legal system for all citizens.

Mental illness holds significance across various aspects of civic responsibility. Recent provisions in the Mental Healthcare Act, 2017⁶ and the Rights of Persons with Disabilities Act, 2016⁷ have brought a transformative shift in the care and treatment of individuals with psychiatric conditions. Forensic psychiatry in India confronts problems, including limited infrastructure and training, despite strong laws.

Forensic psychiatric specialists explain criminal behavior in mentally incompetent people, altering evidence value, but only at the investigating agency's request.

FORENSIC PSYCHIATRY IN THE BACKDROP OF INTERNATIONAL INSTRUMENTS AND OTHER JURISDICTIONS

Internationally, mental disability rights were not recognized until the 1970s. The 1971 UN Declaration on the Rights of Mentally Retarded Persons established mental health standards. The UN established the International Year of Disabled Persons in 1981, followed by the Decade in 1983 and 1992, resulting in international treaties.⁸

The 1991 UN Human Rights Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care allow mentally ill people to select a personal representative. They have a right to legal representation, regardless of income.⁹

Further on December 13, 2006, the UN General Assembly adopted the main International Instrument to protect the rights of people with disabilities i.e the Convention on the Rights of

⁶ The Mental Healthcare Bill, 2016, Bill No. LIV-C of 2013, https://prsindia.org/files/bills_acts/bills_parliament/2013/Bill%20as%20passed%20by%20RS.pdf Accessed 20 December, 2024

⁷ Rights of Persons with Disabilities Act, 2016 <https://vikaspedia.in/social-welfare/differently-abled-welfare/policies-and-standards/rights-of-persons-with-disabilities-act-2016#:~:text=The%20Act%20replaces%20the%20Persons,which%20India%20is%20a%20signatory.> 26 December, 2024

⁸ Scott Brown, 'United Nations Declaration on the Rights of Disabled Persons', Encyclopaedia Britannica's Available at <https://www.britannica.com/topic/United-Nations-Declaration-on-the-Rights-of-Disabled-Persons> Accessed 23 December 2024.

⁹Ibid

Persons with Disabilities.¹⁰ Article 12 of this Convention declares that “persons with disabilities have the right to recognition everywhere as persons before the law” and “enjoy legal capacity on an equal basis with others in all aspects of life.” The idea that people with disabilities, particularly psychosocial difficulties, should have equal decision-making power is controversial.

While perusing Article 31(1)(a) of the International Criminal Court¹¹ The statute states that an individual is not criminally responsible if they "suffer from a mental illness or defect that impairs their ability to comprehend the unlawfulness or character of their actions or their ability to control their actions in compliance with legal standards." Rule 145(2) advises the Court to examine mitigating considerations that do not totally free from criminal culpability, such as considerably impaired mental capacity.

In Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹², was established in November 1950 in Rome and became effective in 1953. Article 5 of the ECHR, in its first paragraph (e), pertains to the detention of individuals deemed "*persons of unsound mind.*" Governments are obligated to inform these individuals about the reasons for their detention in subsection 2 and ensure a prompt judicial review of the detention in subsection 4.

In England, the M'Naghten Rule, originating in 1843, which revolves around whether the defendant was aware of the nature and consequences of their actions or understood that their actions were legally wrong at the time of the offense. This rule serves as a standard criterion for assessing insanity in both the United States and the United Kingdom.¹³

Forensic Psychiatry balances individual rights with justice and societal needs, influenced by international instruments, legal practices, and expert collaboration within evolving human rights frameworks.

¹⁰ United Nations, Department of Economic and Social Affairs Social Inclusion, ‘Convention On The Rights Of Persons With Disabilities (CRPD)’ Available at <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd> Accessed 19 December 2024

¹¹ ICRC, ‘Rome Statute of the International Criminal Court, 17 July 1998’ Available at <https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998> Accessed 12 December 2024

¹² Equality and Human Rights Commission, ‘What is the European Convention on Human Rights?’ Available at

¹³ European Court of Human Rights, ‘Guide on Article 5 of the European Convention on Human Rights, Right to liberty and security’ Updated on 31 August 2022 , https://www.echr.coe.int/documents/d/echr/guide_art_5_eng 16 December 2024.

NATIONAL LEGISLATION RELATING TO FORENSIC PSYCHIATRY AS A TOOL OF CRIMINAL ADJUDICATION

National legislations like the Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023, include provisions using Forensic Psychiatry to adjudicate criminal matters. While considering criminal responsibility under Bharatiya Nyaya Sanhita, 2023, the accused must prove that, at the time of committing the act, they lacked the capacity to comprehend the nature of the act or to understand that it was either morally wrong or against the law.

The Supreme Court has emphasized that the critical moment for establishing unsoundness of mind is when the crime is committed.

In the case of *Dahyabhai Chhaganbhai Thakker v. The State of Gujarat*¹⁴, The court ruled that if the accused cannot definitively prove insanity at the time of the offense, but the evidence raises reasonable doubt about elements of the offense, including criminal intent (mens rea), the court may acquit the accused due to the prosecution's failure to meet its burden of proof.

While discussing mental illness in the case of *Gyarsibai v. The State*¹⁵, under Section 471 (i) of the Cr.P.C., 1973 (Now Bharatiya Nagarik Suraksha Sanhita, 2023), Individuals who establish an insanity defense are committed to a hospital for treatment, often receiving reduced sentences due to mental illness.

Additionally, Section 115 of the Mental Healthcare Act, 2017, It decriminalizes suicide, except in cases of severe stress, and mandates the government to provide care, treatment, and rehabilitation to individuals who have attempted suicide to minimize recurrence.

The Bharatiya Nagarik Suraksha Sanhita, 2023, outlines procedures for investigating an accused's mental condition, allowing trial postponement if the accused is suspected and confirmed to be of unsound mind.

If the court finds that the accused was of unsound mind during the offense, it will record this finding and postpone further proceedings. The court may then order the accused to be detained in a mental hospital for treatment, prioritizing appropriate care over punishment.¹⁶

¹⁴ 1964 SCR (7) 361.

¹⁵ AIR 1953 MB 61

¹⁶ Code of Criminal Procedure, 1973, s 329.

If the offense precludes bail, the accused must receive regular psychiatric treatment and not be kept in a mental asylum in violation of the Mental Health Act, 1987.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), underscores the importance of addressing mental health concerns within the legal framework, particularly for individuals involved in criminal proceedings. Section 367 mandates that when an accused person is suspected to be of unsound mind, the Magistrate or Court must ensure medical evaluation and may postpone proceedings to safeguard their rights and ensure fair treatment. Section 368 further provides for the conditional release of such individuals during investigations or trials, highlighting the importance of care and supervision. These provisions reflect a balanced approach, prioritizing the mental well-being of the accused while upholding the integrity of legal processes.¹⁷

A forensic psychiatrist can testify as a fact or expert. Insanity defense and mental competency testimony from forensic psychiatrists helps courts decide liability. Indian courts value their mental state assessments.

ROLE OF FORENSIC PSYCHIATRY IN CRIMINAL CASES

Criminal cases and the judicial system depend on forensic psychiatry. It provides assessments, expert evidence, and insights to ensure fair and just judicial decisions while protecting mental health and justice.

a. The Insanity Defense

Forensic psychiatrists assist in insanity defense cases by answering questions raised by the accused, often involving the treating physician, and by evaluating the individual and the criminal act.¹⁸

An important divergence exists between medical and legal insanity in India. The famous Daniel M'Naughten case established the principle. Medical insanity is any mental ailment, but legal insanity needs impaired reasoning and a mental disorder. The court considers legal insanity, not medical insanity, when deciding criminal liability. Proving legal insanity under penal laws can lead to complex cases, often requiring treatment or institutionalization, which can extend beyond a standard sentence.

¹⁷ Ministry of home affairs, The Bharatiya Nagarik Suraksha Sanhita, 2023 Available at <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023> Accessed on 15 Dec. 2024

¹⁸ Vaidehi gupta, 'Insanity Defence: A Loopholes For Criminals' Available at <https://www.legalserviceindia.com/legal/article-7216-insanity-defence-a-loopholes-for-criminals.html> 16 December, 2024

b. Competency to Stand Trial

The Hon'ble Supreme Court in *Zaheera Habibullah Sheikh V. State of Gujarat*,¹⁹ 2006 stated that 'Denial of a fair trial is as much injustice to the accused as is to the victim and the society.' The need for such assessment has been recognised by Article 14 of International Covenant on Civil and Political Rights²⁰ which recognises the right to a fair trial. It is also recognised by Article 14, 21, 22, 39A of the Constitution of India.

In the *United States*, the standard developed in *Dusky v. U.S.*²¹, Competency evaluations determine if a defendant can understand the legal proceedings and participate in their defense.

The threshold for establishing competency is low. A defendant can request a competency hearing at any time, involving supporting evidence and a psychological evaluation.²²

Determining competency assesses if a defendant can understand the charges and court processes, with efforts to restore competency if found unfit.

c. Risk assessment

In Forensic Psychiatry, evaluating risk and protective factors is crucial for assessing and preventing repeat offenses. In Europe, risk assessments utilize unstructured clinical assessments, actuarial risk assessments, and structured professional judgments.²³

Actuarial risk assessments use statistically determined factors to provide numerical estimates of future criminal behavior, such as violence. Structured professional judgments incorporate both static and dynamic risk factors, allowing professionals flexibility in risk evaluations.²⁴

In India, the evaluation of risk within criminal trials follows a somewhat different path. The focus is primarily on legal and medical components, examining the mental state and legal culpability of the accused.

¹⁹ Appeal 446-449 of 2004 decided in 2006.

²⁰ All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

²¹ 362 U.S.402(1960).

²² Steven K. Hoge, 'Competence to stand trial: An overview' *Indian Journal Psychiatry*. 2016 Dec; 58(Suppl 2): S187-S190. doi: 10.4103/0019-5545.196830,

Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5282614/> Accessed 16 December 2024

²³ Philipse, M.W. Predicting 'criminal recidivism: empirical studies and clinical practice in Forensic Psychiatry' 2005, Febodruk Enschede.

²⁴ Shiina, 'A.Risk assessment and management of violence in patients with mental disorders: a review'. *J Forensic Legal Investig Sci* 2015;

d. Investigating Criminal Activities:

The role of a Forensic Psychologist in criminal investigations can manifest in various ways. Professor Laurence Alison from the University of Liverpool²⁵ has outlined several roles and functions through which psychologists can support and assist the Police in their work. He emphasizes that psychologists' contributions go beyond offender profiling. They enhance law enforcement by improving police decision-making, leadership skills, interviewing techniques, data management of prior convictions, suspect prioritization based on research, and intelligence-led policing.²⁶

e. Intelligence Analysis:

Crime Analysis, sometimes referred to as intelligence analysis, is a field of work that makes use of methods from forensic psychology.

Employed by law enforcement, Crime Analysts examine data to assist police. A primary function is case linkage, connecting crimes based on similarities in offender behaviors reported by victims or deduced from crime scenes.²⁷

f. Offenders Profiling or Criminal Investigative Analysis:

Media portrayal of forensic psychologists in high-profile cases has raised public awareness of offender profiling but often leads to misunderstandings about its nature, frequency, and practitioners. Profiling lacks a universal definition, even in academia, but generally involves analyzing crime scene information, especially offender behavior, and combining it with other data, like victim statements, to infer characteristics of the perpetrator.²⁸ Profiling aims to determine if the crime was planned or impulsive, the offender's proximity to the crime scene, and the likely age and gender of the offender. These insights assist law enforcement in investigations and resource allocation.

²⁵ Sohini Basu, 'Role of Forensic Psychologists' Available at <https://www.legalserviceindia.com/legal/article-7367-role-of-forensic-psychologists.html> 23 November 2024.

²⁶ Crime Analysis and the Profession, Available at https://www.sagepub.com/sites/default/files/upm-binaries/46973_CH_1.pdf Accessed 16 November 2024

²⁷ Ibid

²⁸ Asha Bolton, 'Media Effects and Criminal Profiling: How Fiction Influences Perception and Profile Accuracy' NSUWorks, Available at https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1205&context=fse_etd Accessed 16 November 2024

g. Interviewing, Detecting Deception and Eye Witness Research:

A primary responsibility during an investigation is collecting reliable evidence, with eyewitnesses being a significant source. Police officers must conduct detailed interviews to gather accurate information from witnesses and suspects. The interview process critically impacts a case's outcome. Forensic psychiatrists have developed guidelines and provided training for effective witness and suspect interviews. Psychologists also offer expertise on interviewing specific groups, such as vulnerable witnesses including children, the elderly, and those with learning disabilities.

h. Forensic Psychiatrist and Assessment and Treatment of Offenders:

Forensic psychiatrists in Australia, Canada, and the UK assess, rehabilitate, and manage offenders, both in the community and in custody. They work to reduce reoffending, address psychological needs, and assist with reintegration. These needs may include PTSD from their crimes or increased awareness of their impact on victims. The incarceration environment, including separation from family and inmate bullying, can also cause mental health issues like depression and anxiety.²⁹ Forensic psychiatrists conduct assessments, evaluate risks, and provide support for offenders, including monitoring and assistance in community settings.

The standardized instrument employed for Psychiatric assessments intended for court submissions is the 'Forensic Psychiatry Assessment Proforma.' The National Institute of Mental Health and Neurosciences,³⁰ provides a 'Detailed Workup Proforma for Forensic Psychiatry Patients-II,' a tool utilized by the institute for many years in conducting semi-structured assessments of Forensic Psychiatric cases, as evidenced in the case of *State of Rajasthan v. Shera Ram @ Vishnu Dutta*.³¹ This proforma is periodically updated to align with changing legal prerequisites.

TECHNIQUES OF FORENSIC PSYCHIATRY

Forensic Psychiatry employs various techniques, including psychiatric evaluations, structured interviews, psychological testing, and risk assessments, to provide expert insights in legal matters. These methods encompass competency and insanity evaluations, violence and sex

²⁹ Ibid

³⁰ National Institute of Mental Health and Neurosciences, Available at <https://nimhans.ac.in/wp-content/uploads/2022/04/NIMHANS-Prospectus-2022-23-Session-1-1.pdf> Accessed 13 November 2024

³¹ 2012, 1 SCC 602

offender risk assessments, substance abuse evaluations, expert witness testimony, forensic reports, child custody evaluations, legal consultations, and mental health care in correctional settings.³² These techniques collectively aid in elucidating the intricate interplay between mental health and the legal arena, influencing just outcomes and interventions.

During forensic assessments, psychiatrists generate and test hypotheses based on legal standards through interviews and examinations. This iterative process continues until all relevant psychiatric, medical, and legal diagnoses are confirmed or rejected.

CONCLUSION

The criminal justice system aims to seek justice for society and victims, with forensics and evidence playing a crucial role in this pursuit. There is an intricate connection between crime and psychiatry, as some individuals with severe psychiatric disorders may engage in criminal activities. The underlying factors contributing to both crime and Psychiatric disorders can overlap and intertwine.

In the medical field, mental health assessments vary along a continuum, from severe illness to complete health, whereas legal language often simplifies this to classifying individuals as criminally responsible or not. Psychiatrists prioritize individual medical treatment, whereas courts prioritize safeguarding society from potential harm posed by offenders.

In India, establishing the insanity defense necessitates thorough consideration due to limited forensic evidence use, requiring proof of the individual's mental illness and incapacity to understand their actions or wrongdoing.

Forensic science, including disciplines like forensic psychology and forensic psychiatry, plays a vital role in uncovering the truth behind criminal activities within the Criminal Justice System. This relationship between crime and psychiatric disorders reveals intertwined factors such as substance abuse, trauma, and social determinants of mental health.

Forensic Psychiatry has emerged as a crucial branch of forensic science, bridging medical and legal systems to assess individuals' mental states in legal cases. Balancing justice and addressing complexities of mental illness highlights the need for collaboration between legal and mental health professionals within the criminal justice system.

³² Simran, 'Forensic Psychiatrists : Role, Responsibilities and Controversies' Mantra Care Available at <https://mantracare.org/therapy/psychiatry/forensic-psychiatrists/> Accessed 21 November 2024