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Critical Review on Forensic Psychiatry and Its Medico-Legal Aspects

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ABSTRACT

Application of psychiatry for the purposes of law and administration of justice is called Forensic Psychiatry. In sanity or unsoundness of mind can be defined as a disease of mind which affects the personality, mental status, critical faculties, emotional processes and interaction with the social environment. Worldwide a wider understanding of the relationship between mental status and crime has led to an increased utilization of forensic experts in courts of law and different level of legal action. In Law, forensic psychiatrist must know the legal definitions, the legal policies and procedures the legal precedents relating to the question on case at hand. The domain knowledge in psychiatry and law defines the sub-specialty of forensic psychiatry and provides the ethical foundations for its practitioners. Forensic psychiatry is in budding stage in many developing countries including India. Law and psychiatry are two completely different disciplines, one being sanctioning discipline and the latter, therapeutic discipline. Forensic psychiatry is much misinterpreted, misunderstood, neglected and ignored in India. There is a relationship between the concept of mental illness, its treatment and the law, Legislation forms and integral component in the implementation of Mental Health Care Mental health legislation is essential in protecting the rights and dignity of the persons with mental disorders and for implementing effectively the mental health services effective mental health legislation can provide legal framework to integrate mental health services in the community as to overcome



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stigma discrimination and exclusion of mentally ill person. This article reviews the current scope of forensic psychiatry and the ethical dilemma that this subspecialty is facing, worldwide.

KEYWORDS

Forensic psychiatry, Mental health, Legislation, Stigma



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INTRODUCTION

Forensic psychiatry is that part of psychiatry which deals with the patients and problems at the interface of the legal and psychiatric systems¹. Such a definition implies a specialty that does not travel easily and the practice of forensic psychiatry does vary considerably from one country to another.

To evaluate on individuals competency to stand trial defences based on mental disorders and sentencing recommendations, forensic psychiatrists work with courts.

The relationship between psychiatry and law has grown ever since the Indian Mental Health act (MHA) was passed in 1987. Important advances in forensic psychiatry are- Laws relating to the possession and use of psychotropic drugs (Narcotic drugs and psychotropic substances act, 1985) and Consumer Protection Act, 1986 which were observed in recent decades.

Role of Forensic Psychiatrist:

Forensic psychiatrists are often called upon to produce legally binding documents which are presented before the courts that can determine the course of an individuals' life & liberty and his/her life choices.

An individual with a mental disorder should be assumed to have mental capacity to decide on various matters unless the contrary can be shown. The criterion for

incapacity is based upon the following when it is proved that the person is-

1. Unable to comprehend and retain information related to the decision and its consequences.
2. Incapable of believing the information.
3. Incapable of weighing up information to reach a decision.

In criminal cases²:

1. When an accused on the ground of mental analysis, expresses his inability to stand trial and plead his defense.
2. When a defense is attempted on the ground, that an act has been committed by a mentally ill person.
3. When an individual after being convicted in a court of law, pleads insanity so as to defer the execution of the punishment or to send him in a Mental asylum.
4. When it is claimed that a person committed suicide due to mental illness.
5. In connection with abetment of suicide of mentally ill person.
6. In connection with criminal breach of trust or fraud committed against the mentally ill person relating to business or property matter.

In civil cases:

1. Validity of Consent given by a mentally ill person.
2. Competency of a witness.



3. Continuance/dissolution of a business contract on the ground of mental illness of either partner.

4. Nullity of Marriage/divorce cases.

5. Case custody of a child whose parents are mentally ill.

6. Certain eventuality like appointment of a caretaker to a mentally ill person who is unable to look after his property.

7. Capacity to make valid Will (testamentary capacity).

Mental disorder and responsibility:

Responsibility, in the legal sense means the liability of a person for his acts or omissions and if, these are against the law, the liability to be punished for them. The law deduce that "Every person is mentally sound until the opposite is proved".

Civil responsibility³:

The question of civil responsibility arises in the following conditions-

1. Management of property- The court may appoint a Guardian to take care of the mentally ill and may appoint a manager to manage the property. The court may order the sale of the mentally ill person's property for the payment of his debts and expenses. Only persons competent to contract are authorized to transfer property.

2. Contracts: A contract is invalid, if one of the parties at the time of making it, was by

reason of mental illness, incapable of understanding its forming a rational judgment as to its effect upon his interests. However, a mentally ill person is liable for contracts entered into during lucid intervals.

3. Marriage and divorce: As per Hindu Marriage Act, marriage can be declared null and void if one of the parties at the time of ceremony was incapable of giving valid consent or was unfit for marriage due to unsoundness of mind.

4. Adoption: Under Hindu Adoption and Maintenance Act, taking or giving adoption of a child is not allowed if either of the parents are mentally ill.

5. Competency as witness: Under section 118-IEA, a mentally ill person is not competent to give evidences if he is prevented by his illness from understanding the questions put to him and giving rational answers to them.

6. Validity of consent: The consent given by an insane or introverted person who is unable to understand the nature and consequences of that, to which the he gives his consent, is invalid (Section 90 IPC).

7. Testamentary capacity: This means the capacity of a person to make a valid will. The law defines it as the position of a sound disposing mind (compos mentis) which must be certified by doctor.



Criminal responsibility⁴:

Section 84 IPC, deals with the criminal responsibility of insane persons.

It states 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 what he is doing is either wrong or contrary to the law.

McNaughten Rule:

In 1843, Mr. Edward Drummond., the Private Secretary of the Prime Minister of England-Sir Robert Peel, was shot dead by a young Scotsman Daniel Mac Naughten. McNaughten was suffering from delusion of persecution and believed that his life was in danger due to the acts of persecution by the Tory party on him.

He shot dead Mr Drummond, on the belief that he was going to kill the Tory party. Prime Minister Mr Peel. It was established that McNaughten suffered from Paranoid delusions and was acquitted on the ground of insanity. Upon this development, the Supreme Court judges of the UK were summoned by the House of Lords to know the position of the law of England regarding crime and insanity. From the answers given by then rules, were framed for criminal responsibility of the insane and they have been named after Mc Naughten.

The most important and relevant part of the Mc Naughten rules States: “Every man is to be presumed to be sane and to acquire a adequate degree of reason to be accountable for his crimes until the converse be established and that to set up a defense on the ground of insanity, it should be clearly proved at the time of consigning the act, the party accused was working under such a imperfection of reason from disease of the mind, so as to know the nature and quality of the act he was doing or if he did be acquainted with it, that he did not be acquainted with that what he was doing was wrong.”

These rules are given the status of legal test for Insanity

The legal test of insanity (the right or wrong test)-

Under this test a person was not criminally responsible if, at the time of the crime he did not know the nature of the act or that it was wrong. It excludes responsibility of the insane for the commission of crime and has the following requirements-

1. There should be evidence of mental disease.
2. This mental disease or defect must exist at the time of commission of crime.



3. It should be of such degree that, the person is unable to understand that the act is wrong and/or contrary to the law.

Law and psychiatric problems of children:

Rights of children clearly mentioned in convention on the same by General Assembly of United Nations Resolution 44/25 of 20 November 1989.

Relevant Indian laws:

The persons with disabilities (equal opportunities, protection of rights and full participation) Act 1995, provides for prevention and detection of disabilities, education, employment, non-discrimination, research and manpower improvement, positive action, social safety and complaint restore of people with disabilities.

Juvenile justice (care and protection of children) Act 2000, enacted by the Parliament for to provide for the care, protection, development, rehabilitation and social integration of delinquent juveniles and for the adjudication of certain matters relating to, and deposition of, delinquent juveniles.

- The national trust for the Welfare of persons with Autism, cerebral palsy, mental retardation and multiple disabilities Act 1999.

Law in relation to organ transplantation:

- Transplantation of human organs act, 1994.
- Transplantation of human organs rules 1995.
- Transplantation of human organs (amendment) act 2011.
- Transplantation of human organs and tissues rules 2013.

The acts and rules make it mandatory for every proposed live voluntary donor to undergo psychiatric evaluation, by a psychiatrist appointed by authorization committees at hospital, district and state levels. The authorization committees has to mention reasons for approval/rejection of application of every voluntary donor in a prescribed form. One of the conditions mentioned for approval is psychiatric clearance, is mandatory to certify the applicants mental condition, awareness, absence of any overt or latent psychiatric disease and ability to give free consent.

Laws in psychiatry:

- Indian Lunacy Act, Act 4 of 1912.
- Mental Health Act 1987.
- Central Mental Health Authority Rules 1990.
- State Mental Health Rules 1990.
- State Mental Health (Amendment) Rules 2007.
- Mental Health Care Bill 2013.



- Narcotic Drugs And Psychotropic Substances Rules 1985.
- Narcotic Drugs And Psychotropic Substances Act, Act 61 Of 1985 As Amended Upto Act 2 Of 1989.
- Narcotic Drugs And Psychotropic Substances (Execution Of Bond By Comics On Addicts) Rules 1985.
- Prevention of Illicit Traffic in Narcotic and Psychotropic Substances Act, Act 46 Of 1988.
- Consumer Protection Act 1986.

CONCLUSION

We need more inter professional dialogue about the best arrangement for people with mental disorders and inter-disciplinary education. Forensic psychiatry practice creates ethical predicaments, which in turn hoist questions regarding medical and professional identities in forensic background and the principles associated with those individualities.



REFERENCES

1. Textbook of Postgraduate Psychiatry 2nd Edition Editors J N Vyas, Neeraj Ahuja, Jaypee Publications, 1989.
2. Forensic Psychiatry Clinical Practice Guidelines for Psychiatrist in India., Editors Prof. Shiv Gautam, Prof. Ajith Awasthi, published by Indian Psychiatric Society-2009.
3. Dr Nambi, "Legal aspects of psychiatry" - IPS Publication for young psychiatrists.
4. Text book of Review of Forensic Medicine and Toxicology, 3rd edition, editor Gautam Biswas, Jaypee publications 2015.