

DR. D.L.N. MURTI RAO ORATION

FORENSIC PSYCHIATRY IN INDIA CURRENT STATUS AND FUTURE DEVELOPMENTS

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ABSTRACT

Forensic psychiatry is a developing superspeciality in India and other SAARC countries. After a brief historical review, the paper describes the current status of forensic psychiatry in India and compares it with the development in this field in Europe and America. It takes the stock of current scenario in three different areas viz., i) legal and clinical ii) teaching and training and iii) research. It deliberates on need for teaching this subject at the undergraduate and the postgraduate medical and legal courses and necessity of full time consultants devoted to the practice of forensic psychiatry. It focuses on the recent developments in the field of forensic psychiatry like enactment of Narcotic and Psychotropic Substance Act (1985), Mental Health Act (1987), Juvenile Justice Act (1989), Act for the Disabled (1994) and the Consumer Protection Act (1986). The paper also recommends some strategies for teaching, training, research and future developments in this field.

Key words : Forensic psychiatry, India

The current definition of forensic psychiatry as provided by the American Board of Forensic Psychiatry and The American Academy of Psychiatry and Law is as follows : It is a subspeciality of psychiatry in which scientific and clinical expertise is applied to legal issues in legal context, embracing civil, criminal, correctional or legislative matters; forensic psychiatry should be practiced in accordance with guidelines and ethical principles enunciated by the profession of psychiatry. Thus forensic psychiatry operates at the interface of two non-related disciplines viz. psychiatry and law. It will be interesting to know the extent of dimensions as well as the influence of one system on the other, their respective roles and professional sensitivity. The forensic psychiatrist has to offer his professional expertise to the criminal justice system, whenever required, for decision making in the greater interest of the society. While offering his expert services he has to keep in mind that he has to be objective, honest and

impartial so that full justice is done in the interest of the society.

Forensic psychiatry is comparatively a new upcoming and a developing field in India. In view of this, an attempt is made in this presentation to understand the historical background in India as well as in other countries like UK, European countries and USA and how it has developed to its current status, what is the scope of forensic psychiatry in India, the legal provisions as are available in relation to psychiatric patients, their implications, benefits and drawbacks. The training of the undergraduate and postgraduate medical students in forensic psychiatry viz. the role of psychiatrist, report writing, presentation in the court when called upon, etc. and research in forensic psychiatry.

Future developments regarding organizational setup, training programs, entry points for forensic psychiatry, intervention in criminal justice system so that in the long run

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the forensic psychiatrist can offer valuable expert services for the welfare of the society at large, safeguard his own interests as well as that of the patients.

Historical perspective

Review of literature : Since current Indian legal system is based on the British legal system, I have reviewed the literature pertaining to forensic psychiatry from UK and also from other European countries. There has been a very vivid systematic documentation about the historical developments in these countries. Davis Forshaw and Henry Rollin while writing the history of forensic psychiatry in England have given in details, the description of English law, punishment and penal system, the legal profession and the medical profession, the development of psychiatry in the 19th and 20th century, the insane and the English legislation, court procedures and detentions, criminal responsibility, the development of specific facilities for the criminally insane, the study of forensic patients, transfer of prisoners between prison and lunatic asylums, diminished responsibility and modern attitudes to forensic psychiatry. The role of law in the development of modern psychiatry was extensive, particularly after the 18th century and reflected both a growing public awareness of problems raised by mental disorder and community's need to express and enforce measures to manage the problems. Religion and utilitarian philosophies were influential in English public life during the 19th century and coloured the contemporaneous calls for the reforms of asylums, prisons and the legal system. Thus the English act of 1774 was replaced by the Country Asylum Act, 1808 which in turn was replaced by the English Lunacy Regulation Act, 1853 and the English Lunatic Act of 1853. These were further amended by the Lunacy Act of 1891. This was repealed by the Mental Health Act in 1959 in order to make fresh provisions for treatment and care of mentally disordered, provision for informal admission of mentally ill, to any hospital or nursing home without application or order for

detention were made. Now the primary concern was the welfare and treatment of the individual patient which was left to the doctors, social workers and hospital managers. This act was further amended in 1983. As far as the European countries are concerned, the literature claims about the relationship between law and psychiatry even in Greece and Rome 2000 years ago in the limited way. In the middle ages however, the social and legal status of the insane person was still largely determined by non-medical attitudes under the moralistic influence of the church. In the legal provisions for the insane, we find more concern for public order than for the care of such people. By the 14th century the legal status of the insane person was well defined, two issues central to the forensic psychiatry of today were already being discussed: the responsibility of the mentally ill person and the way he should be dealt with within the community. From the Renaissance to the 17th century Europe continued the legal traditions inherited from Rome. De Praestigiis Demonum by the German physician Johannes Weyer (1515-1588) which appeared in Latin in 1563 and later translated in French and German was published throughout Europe. It can be considered the first medical treaties to deal with mental disorders in connection with the law. In the 17th century a very elaborate medicolegal perception of the individual has been achieved. It was the judge who decided whether the individual was insane and it was his (individual's) relatives who asked that he be placed in the custody. The great currents of reform pervaded the legal system at the end of the 18th century. The interest was no longer on crime but on the criminal and his motives. In 1808, the term 'Psychiatrie' appeared for the first time. Among the achievements at that time 1) first was separation of mentally disordered from other prisoners and 2) was the creation of asylums and reorganization of the existing institutions. By early 20th century the use of psychiatric experts and the general influence of psychiatry in the criminal justice system was enhanced. After 1945 attempt was made to treat

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delinquency, keeping in mind the individual delinquent and crime prevention.

While European countries had a long evolutionary history as far as forensic psychiatry is concerned in USA it emerged as a professional activity during the early part of the 19th century when four major factors were considered : the medicolegal vision of the earlier American physician, the introduction of new theories about insanity, advent of market place professionalism and involvement in the adjudication of wills. The evidence suggests that postmortem diagnosis of insanity were employed through the middle decades of the 19th century to maintain stable and predictable patterns of property conveyance in the new republic. The courts and legislature reacted against that trend during the last decades of the 19th century in order to protect the individual testator and limit the power of forensic psychiatry. By early 20th century patterns emerged which have been since then taken as normative.

Now coming over to our country India, mental illnesses and the diagnoses and treatment of the mental illnesses has been well documented in Ayurveda, the Charak and Shushrut Samhitas, Vagbhat and Ashtanga Sangraha and Ashtanga Hridaya. Ayurveda is a science of life and not just a system of medicine. There are vivid descriptions about the symptoms, etiology and herbal medication, oil baths, fumigation, shock treatment, so also kindness and humane attitudes to be shown to the patient. But the legal aspects pertaining to the mental illness have not been mentioned anywhere in the ancient Indian literature before the advent of the British. The Institution of Mental Asylum, was a British concept, the first lunatic asylum was established at Calcutta in or about 1787. The purpose of these asylums was not the care and treatment of the mentally ill but to shut him up in places far away from towns to rid the society of his presence, while at the same time protecting him against himself. Mental health legislation was first enacted in India in 1858 based on the two English Acts of 1853. Law relating to the custody of lunatics and management of their

estates was introduced in India through three separate acts, The Lunacy (Supreme Court) Act, 1858, The Lunacy (District courts) Act, 1858 and Lunatic Asylum Act, 1858. This act was modified in 1883 and more elaborate instructions and guidelines for admission and treatment of lunatics were outlined. The next phase of development of lunacy act began in the early part of the 20th century. The central supervision of the mental hospital was established in 1906. This was brought out in the form of Indian Lunacy Act of 1912. In 1920, the names of all lunatic asylums were changed to mental hospitals and the control of mental hospitals was shifted from prison authorities to civil surgeons.

Before the independence of India in 1946, The Health Survey and Development Committee, popularly known as 'Bhore Committee' was asked to survey mental hospitals. It was reported that the majority of mental hospitals in India were quite outdated and were designed for detention and custody without regard to curative treatment. It was highlighted that Indian Lunacy Act of 1912 had outlived its usefulness. A draft of the Mental Health Act was prepared in 1949 by Indian Psychiatric Society. After persistent efforts of Indian Psychiatric Society the Ministry of Health introduced the Indian Mental Health Bill in the Lok Sabha, but before it could be passed, the bill lapsed when the parliament was dissolved in 1980. The same bill was introduced afresh in 1981. The Mental Health Bill was passed by the Rajya Sabha on 26th November, 1986 and Lok Sabha on 19th March, 1987. After it was assented to on 22nd May, 1987, it became an Act no. 14 of 1987. The Central Government of India passed orders that the Act would come in force with effect from 1st April, 1993 in all the States and Union Territories of India.

As per the Bhore Committee recommendations special treatment facilities for children in the form of Child Guidance Clinics were established. Though the first Child Guidance Clinic was established in 1909 in Chicago to deal with the problems of juvenile delinquency and later other childhood

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psychological problems. The first Child Guidance Clinic in India was started in Mumbai in 1938 by the Tata Institute of Social Sciences. The Children's Act for juvenile offenders was enacted in 1960, which later was replaced by the Juvenile Justice Act in 1989.

Let us now, understand the current status of forensic psychiatry in India. At present it is a new and developing field but the relationship between psychiatry and law has started taking momentum ever since the Indian Mental Health Act was passed in 1987. One can take a stock of things in three different areas 1) Legal and Clinical 2) Teaching and Training and 3) Research.

1) Legal : Mental health legislation is an essential part in the overall mental health program of a country and is widely recognized as critical factor which can either impede or facilitate development of mental health services. It reflects the attitude of the people towards mental health problem of the country, resources and available manpower in the country which can be utilized by proper planning for the implementation of the policies. The law if not enacted and interpreted in accordance with actual program can force alteration in service and create barriers between the program and the people who need services. Indian Mental Health Act, 1987, unlike Indian Lunacy Act recognizes the crucial role of treatment in the care of the mentally ill person. It also incorporates the newer knowledge and recent concepts in the field of mental health. It discards the outdated concept of custodial care and segregation of mental patients from the community. For the first time it brings out judicial safeguards for patients' rights. It introduces humanitarian considerations to prevent any indignity and cruelty to the mentally ill. There is explicit protection of their human rights. The admission and discharge procedures have been simplified. The Act has also made an attempt to bring mental illnesses at par with other physical illnesses, thus reducing the stigma attached to mental illnesses. The Act separates out the mentally ill person who is in need of treatment by reason, from the mentally retarded. It

recommends outpatient treatment facilities. It recommends an authority to be established for mental health at the central and state level. It envisages rules regarding establishment of psychiatric hospitals and nursing homes. There is separate mention of judicial inquisition regarding alleged mentally ill person possessing property, his custody and management of his property, outlining various related procedures and penalties.

Dutta (1985) mentions about certain controversies in certain sections :

i) That plea of insanity is generally brought forward in charges of murder in order to escape capital punishment. The crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed. The accused has to prove that, but if the psychiatric examination of the accused is done long after the commission of the offense it can frustrate the objective of this section 84 IPC. In some courts judgments are given on non criminal mentally ill persons to be detained in jails. In this country there are several such people detained in jails for years together violating all provisions of law and human rights enjoyed by the sick persons. They are kept in much worse conditions than animals in a zoo. In 1982, 1267 mentally ill prisoners were kept in different jails in West Bengal for years of which 98% (1242) were non criminal patients, though the reception order allows a police person to detain any one under trial for 24 hours only. The term 'dangerous by reason of lunacy' has not been defined clearly by law, hence it gets interpreted in any manner by police and magistrate. Let us hope with help of Indian Mental Health Act, 1987, this situation gets corrected. Dr.A.B. Dutt has been fighting for the human rights of the mentally ill people.

ii) As the problem of drug addiction reached its peak during the 80s, the Narcotic Drugs and Psychotropic Substances Act of 1985 came into force. Trafficking in drugs and possession of drugs is considered an offense for which if found guilty 10 years imprisonment and a fine of Rs.1 lakh is given. If the offence is committed second time the punishment is 20 years rigorous

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imprisonment and fine of Rs.2 lakh is fixed. It is made a non bailable offense and death penalty can be given. Those possessing drug have to prove that they are carrying the drugs as they are addicts and thus prove not guilty. If they are in possession of 'small quantity' which is not fixed by law, they often land up in jail. But if they admit their offense and are proved sick and they ask for treatment they can be treated, for which we do not have enough facilities in the country.

iii) The Juvenile Justice Act, 1989 has replaced the earlier Children's Act of 1960. It caters to the need of the juvenile delinquents as well as the other children needing protection. Unfortunately the state of affairs of the Children's Homes is so deplorable that the court committed children often run away from these institutions.

iv) Human Rights - India being a signatory to the U.N. Human Rights Commission Chapter VIII of the Indian Mental Health Act deals with the prevention of cruelty and maltreatment of the mentally ill. At present the commission has appointed a committee to go round the various mental health institutions to understand the state of affairs in the country.

v) Act for the disabled, 1994, by which there are various provisions made for the physically disabled and there is a special inclusion of the chronically mentally ill as well as the mentally retarded among the disabled to receive the benefits in the form of employment, institutional stay, disability determination for compensation and insurance coverage.

vi) The Consumer Protection Act of 1986 which safeguards the interest and welfare of the consumer viz. the patient who takes treatment from the doctors and hospitals has alerted the psychiatrists also, as any acts of omission are penalized and compensation is given to the patients provided the application is made within two years.

vii) Civil Forensic Psychiatry deals with the conservation and guardianship, child custody determination, parental competence, termination of parental rights, child abuse/neglect, testamentary capacity, psychiatric negligence and malpractice and personal litigation issues.

viii) Criminal forensic psychiatry concerns with competence to stand trial, testimonial capacity, voluntariness of confessions, insanity defense, diminished capacity, sentencing considerations and release of persons who have been acquitted by reason of insanity. Legal regulation of psychiatry includes civil involuntary commitment, voluntary hospitalization, confidentiality, right to treatment, right to refuse treatment, informed consent, professional liability and professional ethical guidelines.

Though these legal provisions are existing in books of law they are seldom practiced.

Under section 309 of IPC, attempted suicide, suicide and parasuicide are punishable. Thus if a person commits suicide and dies cannot be punished but a person who survives after the attempt has to be reported to the police for punishment rather than be treated for his condition. According to Justice Jahangirdar rather than considering it a cry for help the law has considered it as a crime.

From the legal provisions and issues connected with them at the present juncture, we will turn to second area i.e. the teaching and training facilities in forensic psychiatry in India. As far as the undergraduate medical students are concerned they study a subject Forensic Medicine which does not highlight any psychiatric aspects. Even in the faculty of law the students are not exposed to legal aspects of psychiatry. The postgraduate students of psychiatry are just aware about the Indian Mental Health Act but are not taught forensic psychiatry as a subject. The law enforcement agencies viz. the police officers are not taught about forensic psychiatry during their training. So also the judicial authorities often are unaware about the implications of some of the psychiatric conditions.

Even when we have a speciality section of forensic psychiatry in Indian Psychiatric Society for over a decade, there have been Annual CME programs so far, there have been very few seminars at the annual conference and hardly any publications. There are hardly any

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clinical or biochemical or neurophysiological researches conducted on this speciality in the country. So far there only two books on forensic psychiatry (Joshi, 1997; Marfatia, 1972) and other 10 books by Indian authors which contain a small chapter on forensic psychiatry (Buckshey, 1984; Malik, 1974; Munjal & Ahuja, 1992; Shah & Shah, 1997; Sharma & Chadda, 1997; Venkoba Rao & Kuruvilla, 1997). As against this one finds 113 articles within one year (1998) from other countries on this subject. Of these 50% are from USA, 30% from Europe, 9% from UK and 11% from Australia, South Africa and Pakistan. The topics covered in these articles are : Forensic Mental Health - 40%, Court Trials - 16%, Criminality - 15% Brain and Neurochemistry-15%, Psychometry - 5% and other subjects like suicide, juvenile delinquency, biological markers-9%.

Taking into consideration the current state as far as forensic psychiatry is concerned I am compelled to suggest certain areas for future developments. From the practical point of view there are two operational areas of functioning viz. i) teaching, training and research and ii) the clinical area.

I) There should be training of postgraduate psychiatry students and the junior staff doctors on forensic psychiatry and the relevant law of the country.

II) There should be a designated forensic psychiatry center where OPD facilities will be available and all police and court referred cases should have clinical evaluation and reporting. Those under training should have a practical exposure to psychiatric evaluation, interviewing patients, preparing case histories and report suitable for the legal procedures, giving evidence in the court when called to give expert opinion, how to maintain confidentiality, develop decision making in cases of mental abnormality in the legal context. The psychiatrist in charge should have received adequate forensic psychiatry training from well recognized centres in developed countries like UK, USA. His appointment should be done through proper government channels and fees for consultation

be settled by the court. Since the referral will be from the law enforcement agencies as well as the judiciary and the prisons, the officers in these agencies should have training either during their recruitment or in-service training about psychiatric conditions and legal implications.

Prison Mental Health Services have yet to be started in this country. Since all the states in this country have central prisons, the mentally ill prisoners - both under trial as well as convicted can be referred, evaluated, given clinical care and proper treatment and follow up. The psychiatrist-in-charge for the medical college hospital could visit the jails and treat these cases who need these services very much. If there is a proper training given to the jail officers and if there is a good rapport between them and the psychiatrist-in-charge through joint case discussions, conferences and workshops for the jail officers, the inmate will get better mental health services in the long run.

The CME for psychiatrists can cover the following areas :

- 1) The psychiatrist as Expert Witness, Deposition, Reports, Effective Testimony, Attorney-Psychiatrist Interaction, cross examination.
- 2) Laws, Ethics and regulations in the practice of forensic psychiatry, standards of practice and violations.
- 3) Work place and school violence.
- 4) Work place injury claims including sexual harassments, emotional distress, unjustifiable termination.
- 5) Establishing psychiatric damages in civil cases.
- 6) Child abuse and sexual abuse cases, validating victimization testimony.
- 7) Professional issues in private practice.

Research needs to be conducted in the following areas :

- 1) Relationship between neurophysiology and criminal behaviour.
- 2) Relationship between hormones and antisocial behaviour.
- 3) Modalities of treatment and improvement in the criminal behaviour.

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- 4) Interface between law and psychiatry.
- 5) Correction of the criminal behaviour by psychopharmacological agents, cognitive and behaviour therapy as well as psychotherapy.

The clinical services will deal with the application of forensic psychiatry for certification, expert witness in the court and reports for the judiciary. Such services should be set up not only at the teaching hospitals but also at the non-teaching hospitals and district civil hospitals in the country.

In conclusion, the future development of this subspecialty of psychiatry is envisaged on the basis of the developments which have taken place in first and second world countries.

In UK the debate has already started to replace the Mental Health Act of 1983 by the Medical Incapacity Act. Against this background we have to go a long way to achieve further goals.

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