

## Being a Forensic Psychiatrist in India: Responsibilities, Difficulties, and Criticalities

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### ABSTRACT

Forensic psychiatry is in its infancy in India. There is a clear module or a well-structured training in the country except for recently opened few courses. Lack of trainer in the field might lead to compromised state when one has to take decision between the well-being of a person versus society. Starting from social contexts, such as marriage and mental illness, to the interpretation of criminal mind, there is a multitude of situations where forensic psychiatrist has a handful of jobs which suffer due to lack of infrastructure. In this article, we delineate the importance of a forensic psychiatrist in different civil as well as legal scenarios and difficulties often faced while handling it.

**Key words:** *Forensic psychiatry, law, mental illness, offender*

### INTRODUCTION

#### An overview of forensic psychiatry


It is generally said that maturity and humanity of the nation can be gauged by the way it treats its socially and economically disadvantaged groups. As per National Human Rights Commission 2012, treatment given to one of the economically backward groups, i.e., people with mental illness, is unsatisfactory in India.<sup>[1]</sup> Mentally disordered offenders are still more underprivileged, so services and infrastructure for them are even worse. The area of forensic psychiatry deals with several areas, among which one area is dealing with mentally disordered offenders. The areas of forensic psychiatry include conflict with criminal laws, testamentary capacity, marriage issues, sexual perversions, fitness to work, and ethical issues (confidentiality, privileged

communication). Pollack defined forensic psychiatry as “broad general field in which psychiatric theories, concepts, principles, and practices are applied to any and all legal issues.”<sup>[2]</sup> In India, there is very little infrastructure and training for forensic psychiatry. Most of the psychiatric units do not have a dedicated forensic psychiatry ward/unit. Most of the forensic evaluations are conducted by the treating psychiatrist who has not undergone sufficient training in forensic psychiatry training. Hence, in many cases, the treating psychiatrist has to choose between making justice to the patient and making justice to the society. In India, there is a structured training program for psychiatry as a whole, which is a 3-year training program, in which only 2 weeks is allotted for training in the area of forensic psychiatry.<sup>[3]</sup>

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**How to cite this article:** Malathesh BC, Das S. Being a forensic psychiatrist in India: Responsibilities, difficulties, and criticalities. *Indian J Psychol Med* 2017;39:732-6.

Access this article online	
<b>Website:</b> www.ijpm.info	<b>Quick Response Code</b> 
<b>DOI:</b> 10.4103/IJPSYM.IJPSYM_334_17	

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Whereas in UK and Australia, there is a 3-year training program specially dedicated for forensic psychiatry which can be taken up after finishing core psychiatry training of 3 years. Hence compared to western countries, we are lagging behind in having workforce in the field of forensic psychiatry.<sup>[4]</sup> Keeping the same in the view recently, Postdoctoral Fellowship course has been started at NIMHANS, which is a stepping stone at creating a workforce in the field of forensic psychiatry. However other than NIMHANS, there is no other center which is offering any sort of special training in forensic psychiatry. At present, there is only one seat per year for forensic psychiatry training in the whole country, and this looks grossly insufficient. At NIMHANS, we annually receive around 100–110 external students (MD Students) for training in forensic psychiatry, each having posting for around 1 or 2 weeks.

### **Interphase between forensic psychiatry and legal authority**

#### *Psychiatry and law*

Mental health services and law meet at many points. There are even separate laws to handle the care of mentally ill patients, which is not there in any other medical specialty branch. There are quite a few legislations related to psychiatry directly or indirectly. To name a few, Mental Health Act 1987, Persons with Disability Act, National Trust Act, Juvenile Justice Act, Protection of Children from Sexual Offences Act, and different acts related to marriage and divorce; these legislations can be grossly divided into civil laws and criminal laws. The 2 weeks allotted during postgraduate training period is highly insufficient to get well versed in handling the legal issues of psychiatry.<sup>[5]</sup> There are many gray areas in these fields. Mental Health Act 1987 takes more of a paternalistic approach and gives lot of decision-making power to the judiciary, with psychiatrists and other mental health professionals allowed to make only recommendations. Even though the Mental Health Act has made provisions for free legal aid to mentally ill persons, the final authority is with the magistrate and legal aid is only given in “deserving” cases. There are very minimal provisions made for the independent tribunals, and consent to treatment and second opinions which reflect that patient autonomy and human rights have not been given the paramount importance.<sup>[6]</sup> Mental Health Care Bill 2013 addresses these issues of patient autonomy and right to some extent, but again this comes with its own disadvantages such as marginalization of families of persons with mental illness and mental healthcare decisions in the hands of nonexperts.<sup>[7]</sup>

#### *Protection of children from sexual offences act (POCSO)*

Child sexual abuse has reached epidemic proportions in India. A study by the government of India conducted

on 17,220 children showed that every second child has been sexually assaulted.<sup>[8]</sup> To combat these increasing incidences of child sexual abuses, a separate law, that is POCSO Act, was formulated. This act is gender neutral, providing protection to children of both sexes. As per this act, it is mandatory to register a medical legal case in all cases of sexual assault, but most of the times parents oppose it. In this act, the procedure of reporting has not been clearly described. Is it sufficient only if medicolegal case (MLC) has been registered or if the information has to be formally forwarded to police personnel? If the child does not give consent for examination, then how to go about this issue has not been clearly defined in the POCSO Act. If there is no female doctor, then the examination of a female child becomes complicated due to conflicting statements given in Section 166A of IPC and POCSO Act. Sexual assault on a child inflicts lot of psychological trauma, so psychiatrists have a special role to play in the evaluation and management of victims of sexual abuse. However, this has not been clearly addressed in the act. As per POCSO Act, child marriage is illegal but under certain personal laws it is allowed, so this is again a controversial area. In clinical practice, many of the times, the parents of the child (victim) insist the treating doctor not to report it fearing stigma and other social reasons. There is also a conflict of “confidentiality” and “duties of the doctor” in this situation. Reporting the incident will break the confidentiality with the patient and not reporting is against POCSO Act. There are no clear guidelines of how to go about the issue in such situations. Is it sufficient to take a written consent from parents not to report the issue to police? Will that written consent protect the treating psychiatrist from legal hassles? To give another example, suppose an adult patient during the interview reveals to the doctor about his pedophilic adventures in the past, should that be reported or not? Most of the times, we do not have corroborating information to make sure that the offences he reported to us have been done in reality. Here again, there is dilemma between choosing confidentiality and duties of doctor. One more controversial issue to be addressed in POCSO Act is consensual sex between two adolescents. The POCSO Act has criminalized the act of sex by not making any special provisions for the above situation. These are the issues that need to be addressed in POCSO Act.<sup>[9]</sup>

#### *Mentally ill offenders*

Prison-based mental health services are in a very rudimentary state in India, although most prisons do have facilities to address minor health issues. At some prisons, there are facilities of a visiting psychiatrist. A psychiatrist is called upon for the evaluation of a criminal if there any signs of mental illness or if there was a history of mental illness. The mental condition

of the offender is of concern for judicial system in two situations, one at the time of committing the crime and other at the time of standing for trial. When a psychiatrist is called upon for such evaluation, the patient may be admitted in the psychiatric inpatient facility or he might be treated in outpatient facility. If such a patient gets admitted in the hospital then there is an issue of dual custodians, one is jail superintendent and the other being medical superintendent of the hospital. When such a patient is in inpatient care, the decision on whether to allow the relative to speak to the patient poses a lot of dilemma for the treating psychiatrist. Allowing the relatives to speak to the patient might be of therapeutic value in a way, but the prison manual might have different rules regarding the frequency at which the relatives can meet a prisoner. If the patient was ill at the time of committing crime, he can plead for insanity defense under Section 84 IPC, and this plea has to be raised at the time of commencement of trial. In many cases, the offender is sent for evaluation many years after the event of crime, so it becomes difficult to exactly tell about his mental status at the time of committing offence. Many a times offenders try to feign insanity, and lack of any objective tests in psychiatry makes it all the more difficult to exactly comment on the mental status of the patient. Hence, to stop the patients from trying to feign insanity, they should be kept totally isolated from the rest of psychiatric patients. This can be implemented only by creating a dedicated infrastructure and workforce for forensic psychiatry. In some courts, noncriminal mentally ill patients are judged to have done the crime and are detained in prisons, and these mentally ill patients are kept in a very bad condition violating all human rights. A study in 1982 done in different jails of West Bengal reveals that among the mentally ill prisoners, 98% were noncriminals.<sup>[10]</sup> Another study done by Chadda and Amarjeeth in Tihar jail of Delhi in 1998 revealed that the prevalence of psychiatric illness in prisoners was 3.4%. They also found that depression and schizophrenia were the most common diagnosis in patients involved in major crimes, and majority of the patients with schizophrenia were implicated in homicide case. The above findings indicate an urgent need to divert mentally ill prisoners to mental health setups.<sup>[11]</sup>

#### **Section 84 IPC**

This has been adopted straight from McNaughten rule according to which “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 an act, or that he is doing what is either wrong or contrary to the law.” Two very important terms here are legal insanity and medical insanity among which only legal insanity can be used for insanity defense. It

should be established that the person who committed the crime was legally insane at the time when he committed crime to obtain insanity defense, and this is usually established by assessing the circumstances before the crime, at the time of crime, and following crime. Even with all these advancements, it is difficult to exactly comment about the mental status of the offender at the time of committing the crime, because in India more often than not the offender will be brought for psychiatric evaluation many years after the crime has been committed. One way to mitigate this problem is to have dedicated forensic psychiatrists in prisons, who are going to conduct mandatory pretrial observation in suspected offences by the mentally ill. By doing so, the offender can be screened as near to the event of crime as possible, and the necessary evaluations can be undertaken. Such system is in place in Norwegian legal system where the suspected mentally ill are screened and are labeled as either (1) evaluation recommended or (2) evaluation not recommended or as (3) undecided. This screening system helps in saving money and time of procedure.<sup>[12,13]</sup>

#### **Interphase between forensic psychiatry and social situations**

##### *Marriage and mental illness*

Marriage is a social institution which sets out rules and regulations defining the rights, duties, and privileges of husband and wife.<sup>[14]</sup> It is also a type of contract which stabilizes family and sanctifies role of procreation. When a marriage becomes stressful, psychiatrist and legal experts are called to give their opinion. There are two important terms which are defined in relation to ending the contract of marriage: (1) divorce – legal dissolution of valid marriage when it cannot be continued anymore, (2) nullity of marriage – marriage is legally nonexistent and a valid marriage did not occur. There are different laws regulating marriage and separation. Five important acts are as follows:

1. Hindu Marriage Act 1955
2. Special Marriage Act (1954)
3. Indian Divorce Act (1869) for Christians (Amended in 2001)
4. Dissolution of Muslim Marriage Act (1939) and Muslim Personal Law
5. Parsi Marriage Act (1936).

In these acts, unsoundness of mind is a ground for null and void marriage, but the position of intellectually disabled people has not been clearly addressed. There is also one more clause that is “when the consent is obtained by fraud or force” marriage can be considered null and void. Moreover, the term “Fraud” has not been clearly defined, and many people file divorce case just for concealment of mental illness that was there before marriage. Hence, some authors have even

expressed that given the stigma of the mental illness, the mere presence of a history of psychiatric illness and concealment of this fact should not be a ground terming it as “fraud.”<sup>[15]</sup> Psychiatrist needs to be very well versed with the sections of the above acts as he might be called upon for the evaluation of the mental status of a person anytime in his career. The training that the MD student receives is grossly inadequate.

#### ***Testamentary capacity***

Testamentary capacity is the ability to make a will, which is a legal document signed by the person making a will in the presence of at least two witnesses. Any person who has reached majority and having sound mind can make a will under Section 95 of Indian Succession Act (1925).<sup>[16]</sup> Many a times, a psychiatrist is called upon to assess the mental state of the person who is making a will. The mere presence of psychiatric illness will not make a person incapable of making a will, but if the person is in such a state of mind due to his mental illness that he does not know what he is doing, then he might be considered incapable of making a valid will, so a person having psychiatric illness is allowed to make a will if his judgment is intact. The psychiatrist will have to assess if there is any coercion, compulsion to make a will. The person making the will should be well aware of what he is doing. Testator should be aware of the properties he has got. He should be aware of the beneficiaries of the will. Testator should also be aware of the consequences of the will he making.<sup>[17]</sup>

#### ***Legal guardianship***

Legal guardianship is another issue wherein services of forensic psychiatrist are sought after. A small proportion of persons with major mental illnesses end up having severe forms of the illness, and then they lose the capacity to take care of themselves and lose the ability to make proper decisions with regard to themselves and their property. In such situations, an application can be put to court for the appointment of a legal guardian after which the person is sent to a psychiatrist for assessment of his mental condition. Assessment in such cases is more detailed than the routine psychiatric evaluation. The issue that needs to be addressed in such cases is not just mere presence or absence of psychiatric illness but the severity of psychiatric illness and if it is making a person incapable of taking care of self or/and managing his/her property. After making the complete evaluations, forensic psychiatrist needs to prepare a certificate as well which will be used as evidence in court of law.<sup>[18]</sup>

#### ***Fitness to work***

Many a times, people from workplace are referred to psychiatry for expert opinion on the person's fitness to continue in the job. Usual reasons for referring a

person are odd behaviors at workplace or a history of psychiatric illness in the past. There was an infamous case which occurred in Pune, India, where a bus driver of state transport all of a sudden one fine day he took a government bus and went on a rampage killing 9 and injuring 30 others. On inquiry, it was found that he was suffering from schizophrenia and his lawyer unsuccessfully pleaded not guilty on the grounds of unsoundness of mind.<sup>[19]</sup> After the above case, state transport stated to send more drivers for psychiatric evaluations. The above case illustrates the role of forensic psychiatrist in the evaluation of fitness to work.

## **CONCLUSION**

Forensic psychiatry in India is limited to few above-mentioned sections even in higher centers. We have not even touched the forensic aspects of many other less frequent issues such as shoplifting, arson, stalking, and juvenile crimes. All these are predominantly dealt by the legal system, so many of them who really needed treatment got ignored totally due to our poor knowledge. Even in civil issues such as assessing testamentary capacity, fitness to give witness, entering into contract and transfer of property of mentally ill, the right to vote or stand for election by mentally ill, marriage and mental health, Indian psychiatrists are not adequately trained. Postgraduate psychiatry course should be modified to the extent that they should have proper forensic psychiatry training, and if not available in their center then they must be posted in a higher center like NIMHANS, Bengaluru, where structured course is available. There is very little Continuing medical education programs (CMEs) happening in forensic psychiatry in comparison to adult psychiatry, so it can be improved by Indian psychiatric associations. Being on the verge of developing to developed country, we still lag behind many underdeveloped countries in the interphase of legal and healthcare system. Although we are already late, it is time to think and modify the ways we are running our academic for the betterment of the society.

#### **Financial support and sponsorship**

Nil.

#### **Conflicts of interest**

There are no conflicts of interest.

## **REFERENCES**

1. National Human Rights Commission. Care and Treatment in Mental Health Institutions. New Delhi: Dolphin Printo-Graphics;2012.
2. Pollack S. Forensic psychiatry – A specialty. Bull Am Acad Psychiatry Law 1974;11:1-6.

3. Sharma S. Postgraduate training in psychiatry in India. *Indian J Psychiatry* 2010;52, Suppl S3:89-94
4. Royal College of Psychiatrists. Royal College of Psychiatrists. Available from: [http://www.rcpsych.ac.uk/pdf/Forensic\\_Psychiatry\\_Curriculum\\_August\\_2016.pdf](http://www.rcpsych.ac.uk/pdf/Forensic_Psychiatry_Curriculum_August_2016.pdf). [Last accessed on 2016 Nov 16].
5. Das M, Gupta N, Dutta K. Psychiatric Training in India. *Psychiatr Bull* 2002;26:70-2.
6. Sarkar J, Dutta AB. Forensic psychiatry in India: Time to wake up. *J Forensic Psychiatry Psychol* 2006;17:121-30.
7. Narayan CL, Shekhar S. The mental health care bill 2013: A critical appraisal. *Indian J Psychol Med* 2015;37:215-9.
8. Moirangthem S, Kumar NC, Math SB. Child sexual abuse: Issues and concerns. *The Indian Journal of Medical Research* 2015;142:1-3. doi:10.4103/0971-5916.162084.
9. Moirangthem S, Kumar NC, Math SB. Child sexual abuse: Issues and concerns. *Indian J Med Res* 2015;142:1-3.
10. Shah LP. Forensic psychiatry in India current status and future development. *Indian J Psychiatry* 1999;41:179-85.
11. Chadda RK, Amarjeet. Clinical profile of patients attending a prison psychiatric clinic. *Indian J Psychiatry* 1998;40:260-5.
12. Slobogin C. Proving the unprovable : The role of law, science, and speculation in adjudicating culpability and dangerousness [Internet]. Oxford University Press; 2007 (ISBN0198040962)
13. Asokan TV. Forensic psychiatry in India: The road ahead. *Indian J Psychiatry* 2014;56:121-7.
14. Nambi S. Marriage, mental health and the Indian legislation. *Indian J Psychiatry* 2005;47:3-14.
15. Nambi S, Sarkar S. Mental illness and nullity of marriage: Indian perspective. *Indian J Psychol Med* 2015;37:366-9.
16. Indian Succession Act, 1925. Delhi, India: Commercial Law Publishers; 2007.
17. Jiloha RC. Mental Capacity/ Testamentary Capacity. In: Gautam S, Avasthi A, editors. *Clinical Practice Guidelines on Forensic Psychiatry*. Indian Psychiatric Society; 2009. pp. 20–34.
18. Chadda RK. Forensic evaluations in psychiatry. *Indian J Psychiatry* 2013;55:393-9.
19. NDTV. Santosh Mane, Pune Bus Driver who Went on Rampage, Gets Death; 2013. Available from: <http://www.ndtv.com/cheat-sheet/santosh-mane-pune-bus-driver-who-went-on-rampage-gets-death-518413>. [Last accessed on 2016 Nov 17].