

A CRITICAL ANALYSIS: INTERPLAY BETWEEN LAW AND PSYCHOLOGY

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“The profession of law and psychology share little regarding how they conceptualize their subject matter – people”.¹ Multiple opinions which tend to disagree with this statement would come forth, suggesting that psychology’s goal is to understand behaviour and law’s goal to regulate it, with both fields making assumptions about what causes people to act the way they do. The causes and motivations of behaviour are central to both, and nevertheless, the two professions are essentially split by the way they construe human nature, and this often causes tension between the two disciplines.

Law in its working throughout the world is constructed and implemented on the idea of the psychologically desired “ideal society”. The main motive of Law is to establish an ideal Society and then implement the rules and regulations and then safeguard it, which is done by the three major wings of the State. The Legislation frames the Law as in accordance with the need of the Society. One such example, which is glorified in the History of India is the Sati (Prevention) Act, 1987, wherein the Legislation took a step forward towards enabling a better society for the citizens of the country.

Legal psychology uses applied and empirical research methods to study a range of issues of importance to the legal system (e.g., eyewitness accuracy, police selection, procedural justice, jury decision making, and legal assumptions about human behaviour relevant to the rights of defendants, victims, children, and people with a mental health condition). Finally, psychological jurisprudence is that area of the field in which the primary focus involves efforts to develop a philosophy of law and justice based on psychological values².

¹ Howitt, D., 2006. *Introduction to forensic and criminal psychology*. Pearson Education.

² Roesch & Zapf, 1999.

Psychology, always limited to be viewed as the study of the mind, was until late in the nineteenth century considered part of philosophy. An important factor in it gaining independence was when researchers in the field began adopting the experimental methods of the natural sciences. came what is now known as the cognitive revolution. Psychologists returned to the human mind and have revolutionised our understanding of human nature. It took some time, but the impact of this revolution is now visible all over the social sciences. Law has not been spared. Discussions of legal reasoning, judicial fact-finding, and decision-making have all been the subject of studies that incorporated the new psychological literature. Over time, many things have been included under the ambit of psychology. In the legal realm, it is helpful in determining the integrity of witnesses, men's rea of a criminal while committing the crime and above all, what punishment should be granted to a person keeping in mind his psychological frame of mind.

A legal system is necessary for the proper functioning of society since it tries to solve numerous problems existing in the community in today's times. Though some judicial authorities do not consider psychology as a discipline relevant to law, it is applicable as law embodies the theories of behavior. The legal rules, procedures, and doctrines reflect the underlying assumptions of human nature. Extending to this view, the first and foremost contact of most citizens. The attitudes and approach of agencies operating under the norms of law, and as a constituency of those practicing the law, is critical as it symbolizes the Institute of Law, Justice, and Order which is imperative for any society to function.

At first glance, police are the primary contact of any citizen with the justice system. Also being known as the "gatekeepers of the justice system," their Behavior, attitude, and discretion will impact multiple layers in the criminal justice system as well as the society. Police, in any country and especially such a diverse one like India, have massive amount of discretionary powers at their disposal along with the unique option of not exposing one further into the workings of the justice system. These very discretionary power are subjective in operation and furthermore are based upon the psychology of the official individually, such not adhering to an objective order. Discretion is heavily based on personal judgment and is the opposite of routine and habitual obedience. It brings knowledge, skill, and insight to bear in unpredictable ways. Policing must not adhere to blindly following orders but instead must be more than competent than applying the rules; they must adapt those practices to local circumstances in a rule-bound way as the society is dynamic and so to comply, so have to be the arms of the justice system. The effect of psychology on operational policing extends on more fields except for the discretionary

powers. With the sense of democracy and voicing opinions, a more complex role of a policeman as a counsellor, advisor and an officer of the law has come forth.

For instance, Community policing is cited as one factor responsible for the dramatic decrease in crime and the current adapted style of policing in most countries, is based on establishing effective problem-solving partnerships with the community to prevent crime and disorder while improving the quality of life. As such, community policing promotes behavioural change.³

Therefore, this significant criminal justice initiative has a psychological component. At the core of the philosophy of community policing is the idea that active policing depends on reliable and confident relationships between officers and the people in the communities they serve. Police officers across the country cultivate such relationships every day by using operational procedures aimed at building legitimacy and fostering cooperation with the police and compliance with the law.

The trial is the most visible piece of our justice system. Human rights embodied in this legislation include the right to be treated equally, despite the alterations in one's gender, age, social standings and racial background. One of the several crucial and structural steps of the trial procedure is evidence examination and consideration. Under the Common Law of Evidence, the rules and legal principles that govern the proof of facts in a judicial proceeding come forth. Evidence, during a trial, can be admitted in the form of eyewitnesses, ear witnesses, confessions, forensic evidence, etc. and have a high chance of being inaccurate. Therefore, evidence may be excluded because it is more likely to inhibit rather than help the fact-finding task. All fields of psychology, ranging from cognitive to abnormal, social to discovery are tested and observed upon when considering and gathering evidence.

In some cases, evidence may be of doubtful reliability or the court may give some types of evidence too much weight. For example, police often neglect ear witnesses due to the involvement of hearsay and subjective opinions. Moreover, a prevalent phenomenon known as the CSI Effect has come into new consideration, where the presence of any forensic evidence causes a psychological sway in the opinion of the court. Under a study conducted by the Australian Institute of Criminology, it was found that Juries were 23 times more likely to vote guilty in a homicide case without giving it a second thought.⁴

³ (Wing, 1998)

⁴ (Delahunty & Hewson, 2010)

However, despite certain limitations, psychology plays an important factor in understanding the evidence and the nature of the crime, victim and alleged offender. Legal psychologists are well trained to handle legal issues even though they have no formal training. They are helpful in testifying the witnesses. They also test the memory of eyewitnesses whereas the forensic psychologist mainly proves the competency of the defendant. Elements such as Forensic psychology, which is growing globally today, helps in analysing the mental condition with regards to the insanity plea, which is a tactic adapted by people to avoid death sentence and imprisonment. Hence, forensic psychology helps in determining whether a person has any mental disorder or not.

Throughout the trial process, there is persuasion—lawyers and witnesses attempt to influence a judge or jury and, during deliberations, jurors attempt to control each other. Perceptual and cognitive psychological processes come into play—eyewitnesses must remember and report what they saw, jurors must sift through evidence to reach conclusions. Finally, there is decision-making: The goal is to reach a decision, a verdict. And, if the judgment is guilty, there is a choice about what punishment the defendant deserves. As it is evident enough, there is a tremendous amount of sway for subjective opinion and influence throughout the judicial procedure. Working with the jury can be tested and understood easily by the psychological phenomenon of “group-think.” Groupthink is a psychological phenomenon that occurs within a group of people in which the desire for harmony or conformity in the group results in an irrational or dysfunctional decision-making outcome. Group members try to minimize conflict and reach a consensus decision without critical evaluation of alternative viewpoints by actively suppressing dissenting positions, and by isolating themselves from outside influences. Psychological influence and persuasion within the jury in two situations that is the person being the foreperson and the person being in the majority and minority (Nemeth, 1981) Furthermore, As a small working group, juries have the potential to produce either good or poor decisions, depending on the outcome of the characteristics of the individual members as well as the group process. Furthermore, most importantly, conformity pressures have a substantial impact on jury decision making. Conformity, by definition, is psychological of social influence that results in a change of behavior or belief to fit in with a group.

Since, it is in the hands of the jury to evaluate the arguments put up by both the prosecution and the defendant to their observation and discretion, the role of both social and abnormal

psychology is of critical weight in the justice system. Law stands for facts over assumptions, and with the jury being exposed the colossal amount of psychological sway present, the grave chance of error and wrong verdict comes forth. Therefore, it is safe to say that law and psychology are entwined on complex and multi-dimensional levels and must be handled throughout the numerous stages of judiciary proceedings.

Extending to jury's decision, sentencing must balance between achieving justice for the victim and showing understanding towards the circumstances of the offense and the offender. Upon careful examination of the evidence and arguments put forth, the role of the judge of Pronouncing judgments after considering the psychological aspects of the accused's mind and the jury's decision ensures justice in its real meaning is considered of utmost importance. Like the police, the judge has discretionary powers at hand, thus, making even sentencing a more subjective than objective decision. Here, the role of law as a reform mechanism or the part of the law as a cautionary and consequential mechanism comes forth.

Furthermore, even when it comes to the "victim" status, social psychological influences come to play. Victim status, in the society, depends on various level even though the situation may not be the same on paper. The funnel of deserving or undeserving victim, the ideal v/s non- ideal victim characteristics or even the personal characteristics cause barriers to justice for the victim or even towards the attainment of the victim label. Moreover, the heavy sway of media cannot be separated as it causes a psychological impact on both the victim and the society. However, victim involvement and protection is becoming one of the key aspects of the trial and thus, the psychological impact of trial and exposure to the trauma caused is being given due importance in the legal system today.

Even though the two fields are dynamic and intangibly entwined, the most important and frequent criticism is that psychology is a science and science cannot grant certainty, whereas law requires confidence. Psychology's attempts to influence the legal system have produced mixed results. In some cases, it appears that there has been a substantial impact and in others, psychological sway affects wrongful convictions rather than empathy and humanization. However, psychology is a step towards making a legal system perfect. As reflected above, legal procedures have an throughout use of psychology applied and empirically researched methods to study a range of issues of importance to the legal system (e.g., eyewitness accuracy, police selection, procedural justice, jury decision making, and legal assumptions about human

behaviour relevant to the rights of defendants, victims, children, and mental patients.) Since the right to a fair trial and justice is a fundamental human right for all, the relevance of psychology as a critical aspect of the law is legitimate as law embodies the theories of behaviour and psychology evaluates and explains the same. Hence, the role which psychology plays in the legal system modifies our legal system and helps in maintaining justice, equity and good conscience.

On a nutshell, it can be seen that there are 3 major interplays as between Law and Psychology:

- a. Psychology AND Law
- b. Psychology IN Law
- c. Psychology OF Law

Psychology AND Law:

This aspect of psychology deals with the aspect of considering the reaction of the jury or reading the jury and the judge as to a particular circumstantial evidence or as to a particular sentencing, whether a jury or a judge, will consider a particular evidence to be a relevant piece of evidence and further, as to whether a particular crime, the way it is presented, can amount to a punishment being equivalent to capital punishment or the same, will the same only result in being a normal imprisonment. The psychology of the judge and the jury is analysed, which clearly will impact the final decision making in a particular ongoing case or trial.

Psychology IN Law:

The aspect wherein, a particular witness is cross examined or examination-in-chief, is carried out by the lawyers of either side. Whether, as to whether a particular witness is telling the truth or is a victim of false-memory syndrome, i.e., whether unknowingly certain minute information, which may affect the ongoing case/ trial may be stored in the witness's mind, such as: there was a board where the car was speeding of 'accident prone area', which the witness may not think is an important thing, would accept the same as the truth and further would testify the same assuming the same to be true.

Psychology OF Law:

This aspect of Psychology can actually also be traced as between the Hart-Fuller Debate. The entire concept as to:

A. Why do humans follow the Law?

B. How do the humans affect the Law?

The same can always be answered if we see the psychology of the humans. The aspect as to why do the humans follow a law made by the legislation or the State? Is the same because of the sanction attached or is the same because of the sense of duty that is felt by the citizens towards the State and fellow beings?

The psychology of the citizens is important to be studied here so as to impose punishments. If the citizens are affected by sanction more than the aspect that they feel that they have a sense of duty towards their State or their fellow citizens, then aspects and theories such as '*Bad Man Theory*' as proposed by J. Oliver Holmes can be taken into consideration, wherein, he proposed that every punishment of an offence shall be decided in such a manner or rather in such a way, wherein, after analysing the cost-benefit analysis between the gain from that crime is always much less than the cost, i.e., the punishment that the criminal may have to undergo in case if the criminal is caught. The same will always reduce the crime rate and will further give a sense of higher cost, resulting in reduction of overall crimes in the society.

Thus, it is very important to decide as to why is it that a human or rather a citizen of a society follows the laws, rules and regulations imposed upon that citizen. The same will help the State's legislature wing to frame the laws as to what are the aspects on which laws shall be made and what laws shall be made. Is it necessary for laws to be made or rather is it necessary to conduct the regulation of the citizens in every aspect as they follow the Law because of a sense of threat because of the punishment or is the same because of the duty that the citizens have towards the society and their State at large.

Further, the psychology of a citizen also helps in identifying as to how the collective interest or collective conduct of a society, through its citizens, help in changing or framing of a law. Like in India, since the overall society is now ready to accept the rights of LGBT Community, so shall the State strike down Section 377 of the Indian Penal Code, 1860 (IPC) or shall the same be read down the the judiciary or is it that the society at large is still not ready to accept such a drastic change and that such a barbaric law, should still prevail because of the fact that the citizens are not ready, psychologically to accept the same?

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