
UNIT 1 DEFINITION, DESCRIPTION AND CONCEPT OF CRIMINAL PSYCHOLOGY AND FORENSIC PSYCHOLOGY

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1.0 INTRODUCTION

You are familiar with the terms psychology and crime. Perhaps you have heard also of Criminal Psychology and Forensic Psychology. But you may not be clear as to what exactly Criminal Psychology means. Nor perhaps you know what are the distinguishing features of forensic psychology.

Criminal Psychology and Forensic Psychology are actually the two branches of applied psychology. Police, Court and Prison are the terms closely associated with Forensic Psychology. These three i.e. Police, Court and Prison together constitute what is known as Criminal Justice System.

In this unit we will define both criminal and forensic psychology and indicate the functions of a forensic psychologist. The unit will also differentiate between

criminal and forensic psychology and what all are required to be come a forensic psychologist in terms of training etc. If you want to be a Forensic Psychologist you are to work in relation to the Criminal Justice System. As you go through the Unit you will understand what Forensic Psychology is.

1.1 OBJECTIVES

After reading this unit, you will be able to:

- Define forensic psychology and how it differs from criminal psychology;
- Describe what criminal psychology means;
- Explain what forensic psychology is;
- Distinguish between criminal psychology and forensic psychology;
- Describe forensic psychology as a branch of applied psychology; and
- Analyse what forensic psychologists need to do.

1.2 DEFINITION, DESCRIPTION AND CONCEPT OF CRIMINAL PSYCHOLOGY

Before saying anything about Criminal Psychology we should say something about what is criminal behaviour. Criminal behaviour is behaviour in violation of criminal law. Perhaps you have noticed in some restricted areas it is written 'Trespassers shall be prosecuted'. If you enter that area, your behaviour would be considered as criminal behaviour. Your behaviour is then in violation of criminal law. And you have committed a crime and so you are a criminal.

Now let us focus on Criminal Psychology. Criminal Psychology is that branch of Applied Psychology which is primarily used to determine the criminal's reasons for committing a crime. Criminal Psychology studies criminal's thoughts, intentions and reactions to the crimes they have committed. It assists police investigators to create profiles of a potential criminal. That is, it assists to create character sketches of a criminal in order to narrow down the search for the offender. It focuses on the criminal mind before, during and after the commission of a crime. It delves into the offender's personal history, searching his or her past for explanations of criminal behaviour. It then analyses factors surrounding the crime itself. Later, the Criminal Psychologists can follow the progress of the individual once he or she has been sentenced or assigned a treatment plan.

1.3 DEFINITION, DESCRIPTION AND CONCEPT OF FORENSIC PSYCHOLOGY

Forensic Psychology is the application of psychology to the criminal justice system. Criminal justice system includes three parts viz. police, court and prison. Forensic Psychology is the intersection between psychology and the criminal justice system. It involves understanding criminal law in the relevant jurisdictions in order to be able to interact appropriately with judges, attorneys and the legal professionals. An important aspect of Forensic Psychology is the ability to testify in court, reformulating psychological findings into the legal language of the courtroom, providing information to legal personnel in a way that can be understood. Further, in order to be credible witness, the forensic psychologist must understand the philosophy, rules and standards of the judicial system.

Questions asked by the court of a forensic psychologist are generally not questions regarding psychology but are legal questions and the response must be in language the court understands. For example, a forensic psychologist is frequently appointed by the court to assess a defendant's competency to stand trial. The court also frequently appoints a forensic psychologist to assess the state of mind of the defendant at the time of the offense. This is referred to as an evaluation of the defendant's sanity or insanity (which relates to criminal responsibility) at the time of the offense. These are not primarily psychological questions but rather legal ones. Thus, a forensic psychologist must be able to translate psychological information into a legal framework.

Forensic psychologists provide sentencing recommendations, treatment recommendations and any other information the judge requests. Forensic psychology also involves training and evaluating police or other law enforcement personnel. Forensic psychologists may also help with jury selection.

You have been presented with a general description and conception of what Forensic Psychology means. We defined Forensic Psychology as the application of the psychological knowledge to the criminal justice system. Let us now explain what has already been discussed by breaking down the criminal justice system into its own sub-components and see how psychological knowledge can be applied.

1.3.1 Criminal Investigation

Forensic Psychologists can play a number of key roles in a criminal investigation. Immediately following a crime, a forensic psychologist may be asked to act as a criminal profiler. Most of us have an idea of what profiling is. It has over the years become the love child of numerous television programmes, movies and crime novels. Criminal profiling involves the psychologist (though all profilers are not psychologists) using his understanding of human behaviour, motivation and pathology so that he can create a psychological profile of the offender. The profiles can be surprisingly accurate.

From observations of the crime scene one can infer the behavioural characteristics of the individual who created it. To a profiler everyone is slave to their psychological make up. In turn, profilers use their knowledge of whom the typical offender is that bears these characteristics and then predicts not only how the investigators can expect the offender to behave in the future, but also what their physical appearance will likely be. While profiling may seem very exciting, few psychologists are ever involved in this field. Once the suspect has been apprehended there are more opportunities for psychological intervention.

Psychological knowledge has been applied to many more areas of investigative police work, from the police investigation to the police lineup. Both of these areas have prospered greatly from psychological research. While those studying in these areas do not typically work within the police station (they will often do their research from an academic institution) they will often act in a consulting capacity and will perform teaching projects with the department. One may also find a Police Psychologist working with the officers. While this individual may perform a number of the above jobs, they will also be on hand to provide counselling for officers, aid in the evaluation of prospective applicants, and provide crisis counselling for crime victims. Now we must leave the police station and enter the courtroom.

1.3.2 The Court System

In the court system, Forensic Psychologists are frequently used for both the criminal and civil cases. In the criminal arena, the forensic psychologist is often asked to assess competency. Competency assessments can serve a number of purposes. First, a defendant can be assessed for the ability to stand trial and/or make legal decisions on their own behalf. These evaluations are carried out when the defendant appears to suffer from a mental defect, such as an acute psychiatric disorder (viz. schizophrenia) or a mental disability like mental retardation. Secondly, Psychologists may also be asked to make an evaluation regarding the defendant’s mental state at the time of the offence. The entire “not guilty by reason of insanity” defense relies on the psychological evaluation of a defendant’s inability to form criminal intent.

Frequently, people forget about the applications of forensic psychology to civil law. Often a forensic psychologist is asked to make evaluations of defendant’s disability or level of trauma. From these evaluations the court can decide whether compensatory damages should be provided. Civil-Forensic Psychologists also work on child custody, sexual harassment, and immigration cases. Virtually any civil matter that requires psychological evaluation may include the work of Forensic Psychologist. It is important to remember that not all Forensic Psychologists work with violent criminals. Many psychologists are also experts at how to psychologically motivate witness.

1.3.3 Corrections and Forensic Psychiatric Facilities

Most Forensic Psychologists work in a correctional institution (i.e. prison or juvenile home) or in psychological hospital. In this environment they will perform a number of important roles. One of the most important roles is therapeutic intervention. The forensic Psychologists in these institutions often provide a range of therapies in order to control or eliminate the psychiatric disorder which has led to crime on the part of the offender. Certain disorders (viz., obsessions, schizophrenia, addictions) that can be correlated to criminal behaviour can often be treated satisfactorily. Other disorders like sociopathy and psychopathy cannot be controlled satisfactorily. Before and after treatment, the Forensic Psychologist may perform diagnosis through psychometric testing in order to evaluate the client’s risk of violence. Apart from this, the Forensic Psychologist also predicts the client’s risk of recidivism (the likelihood that the criminal will recommit the crime) through psychiatric evaluation.

<p>Self Assessment Questions</p> <p>1) What is criminal behaviour? Bring out its characteristics.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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2) What is criminal psychology? Define and elucidate its characteristic features.

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3) Define forensic psychology and indicate its important features.

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4) What are the organs of criminal justice system? Elucidate.

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5) Say True or False to the following statements

- i) When a person violates criminal law he is a criminal. ()
- ii) Criminal psychology is mainly concerned with the treatment of criminals for correction. ()
- iii) An important aspect of forensic psychology is the ability to testify in the court. ()
- iv) Forensic psychology cannot provide sentencing recommendations. ()

1.4 PRACTISE OF FORENSIC PSYCHOLOGY

The typical day of Forensic Psychologist can vary. In general, it is oriented towards research activities. However, a psychologist may do other things as well, such as helping with jury selection. In this case the psychologist would wake up fairly early and gather information on studies done on juries especially relevant to a pending case. They would then go to a courthouse or to an attorney's office to sift through papers or conduct interviews of possible jurors. The psychologist might also help attorneys narrow down the juror pool by eliminating people whose views may affect the outcome of the trial in an undesirable way. This process can sometimes last several weeks or even longer.

1.4.1 Pros and Cons of a Career in Forensic Psychology

There are both potentially rewarding and frustrating aspects to working in Forensic Psychology that need to be carefully considered before pursuing a career in this field. Listed below are some potential pros and cons.

1.4.2 Some Potential Attractions of Careers in Forensic Psychology

There are certain very special attractions in being in the field of forensic psychology and working as forensic psychologist. For instance, if a person enjoys working with others, then this will be good profession to take up. Forensic psychologists usually work with a team of other professionals in addition to working directly with clients or criminal offenders. A person who loves challenging assignments would find forensic psychologist's job quite attractive. A person who is interested in psychology and the law subjects would find forensic psychology a very interesting subject. Some of the attractions of the area of forensic psychology are given in the table below.

Table: Advantages of forensic psychology as a career

Helping others	Forensic psychology can be very rewarding when you make a difference to someone's life.
Opportunities	There are many different specialties within the field of forensic psychology.
Changing environment	When working in prisons and with juvenile delinquents every day can be challenging and very different providing opportunities for applying varying skills and techniques.
Recognition	Those who act as expert witnesses are usually well known.
Personal fulfillment	When conducting research, psychologists findings are often beneficial to society.

1.4.3 Some Potential Drawbacks of Careers in Forensic Psychology

While there are great attractions in the field of forensic psychology, there are equally a few unattractive or disadvantageous aspects in the field of forensic psychology. For instance, a forensic psychologist has to devote a substantial time commitment (5-7 years of graduate study.) Pay is usually low in relation to the amount of education and work required. Frustration, stress, and burnout can occur.

These are explained in the table given below.

Table: Potential drawbacks in career in forensic psychology

Continuing education	Attending seminars and conferences throughout one's professional life is important for keeping with the current trends and discoveries in the field. Also, it is not easy to get a job directly out of the doctoral programme without additional training.
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Risk of injury	The people that Forensic Psychologists work with in prison settings are sometimes very violent and the chances of getting hurt or injured is quite high when working with such violent persons.
Teamwork	Some people would rather work independently. In this field, people are constantly working with the courts, police and variety of other professionals.
Pay	The pay range of someone in this field does not always compensate for the hard work and long hours.
Burnout risk	Forensic Psychology can be very stressful job. Often, people and situations cannot be changed easily.

1.4.4 Distinction between Forensic and Therapeutic Evaluation

You have learned that the Forensic Psychologist is asked to make evaluation of defendant's mental state. Now if you study the distinction between forensic and therapeutic evaluation, your concept of forensic psychology will be better.

A forensic psychologist's interactions with the ethical responsibilities to the client differ widely from those of a psychologist dealing with a client in clinical setting.

- i) **Scope:** Rather than the broad set of issues a psychologist addresses in clinical setting, a forensic psychologist addresses a narrowly defined set of events or interactions of a non-clinical nature.
- ii) **Importance of client's perspective:** A clinician places primary importance on understanding the client's unique point of view, while the forensic psychologist is interested in accuracy, and the client's view point is secondary.
- iii) **Voluntariness:** Usually in clinical setting a psychologist is dealing with a voluntary client. A forensic psychologist evaluates clients by order of a judge or at behest of an attorney.
- iv) **Autonomy:** Voluntary clients have more latitude and autonomy regarding the assessment objectives. Any assessment usually takes their concerns into account. The objectives of a forensic examination are confined by the applicable statutes or common law elements that pertain to the legal issue in question.
- v) **Threats to validity:** While the client and therapist are working toward a common goal, although unconscious distortion may occur, in the forensic context there is a substantially greater likelihood of intentional and conscious distortion.
- vi) **Relationship and dynamics:** Therapeutic interactions work toward developing a trusting, empathic therapeutic alliance, a forensic psychologist may not ethically nurture the client or act in a "helping" role, as the forensic evaluator had divided loyalties and there are substantial limits on confidentiality he can guarantee the client. A forensic evaluator must always be aware of manipulation in the adversary context of a legal setting. These concerns mandate an emotional distance that is unlike a therapeutic interaction.

- vii) **Pace and setting:** Unlike therapeutic interactions which may be guided by many factors, place great time constraints on the evaluation without opportunities for reevaluation. The forensic examiner focuses on the importance of accuracy and the finality of legal dispositions.

1.5 DIFFERENCE BETWEEN CRIMINAL AND FORENSIC PSYCHOLOGY

Historically, the terms **criminal psychology** and **forensic psychology** have been used interchangeably. But there are several acceptable definitions of criminal psychology. For instance, it can be considered a sub-field within the larger category of forensic psychology. This particular definition of criminal psychology is derived from its specific focus on the criminal mind before, during and after the commission of a crime. It delves into the individual personal history, searching his or her past for explanations of criminal behaviour. It then analyses factors surrounding the crime itself. Later, the criminal psychologist can follow the progress of the individual once he or she has been sentenced or assigned a treatment plan.

According to some experts, forensic psychology is quite different. It focuses primarily on the connection between psychology and the judicial system. Forensic psychologists work with judges, and they assist lawyers with jury selection and sentencing recommendations. Additional examples of forensic psychologists functioning more as legal consultants include testifying in court regarding a defendant's competency to stand trial, or determining criminal responsibility based on an assessment of the defendant's mental state at the time he or she committed the crime.

Another difference between forensic psychology and criminal psychology is that the former concentrates mainly on crime investigations and the **judicial process**. It centres on the circumstances of the specific crime committed. The criminal psychologist, on the other hand, spends a great deal of time on offender assessment and treatment. He studies the defendant's history and its effect on criminal behaviour. Like forensic psychologist, he observes the offender and uses scientific methods to determine the criminal's mindset during the commission of the crime. Going a step further, he might then use the accumulated information to propose appropriate treatment and to evaluate the success of the chosen treatment. A professional background in criminal psychology has numerous applications, and experts have identified several professional roles that criminal psychologists can play.

In a nut-shell criminal psychology is primarily used to determine the criminal's reason for committing a crime while Forensic Psychology analyses the effect of the crime on victims and the mental condition of the offender.

1.6 FUNCTIONS OF FORENSIC PSYCHOLOGISTS

The forensic psychologist views the client or defendant from a different point of view than does a traditional clinical psychologist. Seeing the situation from the client's point of view or "empathizing" is not the forensic psychologist's task. Traditional psychological tests and interview procedure are not sufficient when

applied to the forensic situation. In forensic evaluations, it is important to assess the consistency of factual information across multiple sources.

Forensic evaluators must be able to provide the source on which any information is based. Unlike more traditional applications of clinical psychology, informed consent is not required when the assessment is ordered by the court. Instead, the defendant simply needs to be notified regarding the purpose of the evaluation and the fact that he or she will have no control over how the information obtained is used. While psychologists infrequently have to be concerned about the malingering or feigning illness in non-criminal clinical setting, a forensic psychologist must be able to recognise exaggerated or faked symptoms. Malingering exists on a continuum so that forensic psychologist must be skilled in recognising varying degrees of feigned symptoms.

Forensic psychologists perform a wide range of tasks within the criminal justice system. By far the largest is that of preparing for and providing testimony in the court room. This task has become increasingly difficult as attorneys have become sophisticated at undermining psychological testimony. Evaluating the client, preparing for testimony, and the testimony itself require the forensic psychologist to have a firm grasp of the law and the legal situation at issue in the courtroom, using the Crime Classification Manual and other sources.

1.6.1 Malingering

An overriding issue in any type of forensic assessment is the issue of malingering and deception. A defendant may be intentionally faking a mental illness or may be exaggerating the degree of symptomatology. The forensic psychologist must always keep this possibility in mind. It is important if malingering is suspected to observe the defendant in other settings as it is difficult to maintain false symptoms consistently over time. In some cases, the court views malingering or feigning illness as obstruction of justice and sentences the defendant accordingly. Malingering or feigning illness during a competency evaluation was held to be obstruction of justice and led to an enhanced sentence. As such fabricating mental illness in a competency-to-stand-trial assessment now can be raised to enhance the sentencing level following a guilty plea.

1.6.2 Competency Evaluations

If there is a question of the accused's competency to stand trial, a forensic psychologist is appointed by the court to examine and assess the individual. The individual may be in custody or may have been released on bail. Based on the forensic assessment, a recommendation is made to the court whether or not the defendant is competent to proceed to trial. If the defendant is considered incompetent to proceed, the report or testimony will include recommendations for the interim period during which an attempt at restoring the individual's competency to understand the court and legal proceedings, as well as participate appropriately in their defense will be made. Often, this is an issue of committed, on the advice of a forensic psychologist, to a psychiatric treatment facility until such time as the individual is deemed competent.

1.6.3 Sanity Evaluations

The forensic psychologist may also be appointed by the court to evaluate the defendant's state of mind at the time of the offence. These are defendants who

the judge, prosecutor or public defenders believe, through personal interaction with the defendant or through reading the police report, may have been significantly impaired at the time of the offense. In other situations, the defense attorney may decide to have defendant plead not guilty by reason of insanity. In this case, usually the court appoints forensic evaluators and the defense may hire their own forensic expert. In actual practice, this is rarely a plea in a trial. Usually any judgements about the defendant's state of mind at the time of the offense are made by the court before the trial process begins.

1.6.4 Sentence Mitigation

Even in situation where the defendant's mental disorder does not meet the criteria for a not guilty by reason of insanity defense, the defendant's state of mind at the time, as well as relevant past history of mental disorder and psychological abuse can be used to attempt a mitigation of sentence. The forensic psychologist's evaluation and report is an important element in presenting evidence for sentence mitigation.

1.6.5 Other Evaluations

Forensic psychologists are frequently asked to make an assessment of an individual's dangerousness or risk of re-offending. They may provide information and recommendations necessary for sentencing purposes, grants of probation, and the formulation of conditions of parole, which often involves an assessment of the offender's ability to be rehabilitated. They are also asked questions of witness credibility and malingering. Occasionally, they may also provide criminal profiles to law enforcement.

1.7 ETHICAL IMPLICATIONS

A forensic psychologist generally practices within the confines of the courtroom, incarceration facilities, and other legal setting. It is important to remember that the forensic psychologist is equally likely to be testifying for the prosecution as for the defense attorney. A forensic psychologist does not take a side, as do the psychologists. The ethical standards for a forensic psychologist differ for those of a clinical psychologist or other practicing psychologist because the forensic psychologist is not an advocate for the client and nothing the client says is guaranteed to be kept confidential. This makes evaluation of the client difficult, as the forensic psychologist needs and wants to obtain certain information while it is often not in the client's best interest to provide it. The client has no control over how that information is used. Despite the signing of a waiver of confidentiality, most clients do not realise the nature of the evaluative situation. Furthermore, the interview techniques differ from those typical of a clinical psychologist and require an understanding of the criminal mind and criminal and violent behaviour. For example, even indicating to a defendant being interviewed that an effort will be made to get the defendant professional help may be grounds for excluding the expert's testimony.

In addition, the forensic psychologist deals with a range of clients unlike those of the average practicing psychologist. Because the client base is by and large criminal, the forensic psychologist is immersed in an abnormal world. As such, the population evaluated by the forensic psychologist is heavily weighted with specific personality disorders.

The typical grounds for malpractice suits also apply to the forensic psychologist, such as wrongful commitment, inadequate informed consent, duty and breach of duty, and standards of care issues. Some situations are more clear cut for forensic psychologist. The duty to warn, which is mandated by many states, is generally not a problem because the client or defendant has already signed a release of information, unless the victim is not clearly identified and the issue of identifiability of the victim arises. However, in general the forensic psychologist is less likely to encounter malpractice suits than a clinical psychologist. The forensic psychologist does have some additional professional liability issues. As mentioned above, confidentiality in a forensic setting is more complicated than in a clinical setting as the client or defendant is apt to misinterpret the limits of confidentiality despite being warned and signing a release.

Self Assessment Questions 2

- 1) Answers True (✓) or False (×).
 - a) Criminal Psychology can be considered as a sub-field of Forensic Psychology. ()
 - b) Forensic Psychologist determines criminal responsibility based on an assessment of the defendant's mental state at the time he or she committed the crime. ()
 - c) Criminal Psychologists generally do not focus on the criminal mind during the commission of a crime. ()
 - d) According to some experts Forensic Psychology primarily focuses on the connection between psychology and the judicial system. ()
 - e) Forensic Psychology does not delve into criminal investigation. ()

1.8 EDUCATION AND TRAINING FOR CAREERS IN FORENSIC PSYCHOLOGY

Needed Skills, Abilities and Knowledge: Those with a desire to work in Forensic Psychology must be patient, adaptable, comfortable working with others, and enjoy doing research. Often, one must be a good speaker because many people who do work in this field work as expert witnesses at some point during their career. An expertise in abnormal, motivational, clinical, and social psychology is also key to being successful in this field.

1.9 LET US SUM UP

In this unit you have read that Criminal Psychology is the branch of the Applied Psychology which is primarily used to determine the criminal's reason for committing a crime. You also learnt the following points:

- that Forensic Psychology is the application of psychology to the criminal justice system.
- that criminal justice system includes three organs viz. police, court and prison.

- that the difference between Criminal Psychology and Forensic Psychology is that while the former primarily focuses on determining the criminal's reason for committing the crime the latter focuses on analysing the effect of crime on victims and the mental condition of the offender that the Forensic Psychologist can play a role in criminal investigation.
- that the Forensic Psychologist play a key role in determining competency of a criminal to stand trial.
- that the Forensic Psychologist is asked to determine whether a defendant had a criminal intention while committing the crime.
- that the Forensic Psychologist offer therapies for the insane criminals in the prisons (correctional homes).
- that those with a desire to work in Forensic Psychology must have expertise in abnormal, motivational, clinical and social psychology.

1.10 UNIT END QUESTIONS

- 1) Discuss any two salient points of distinction between forensic and therapeutic evaluation.
- 2) What is the malingering and point out its consequences?
- 3) Write what you know about competency evaluations.
- 4) Why the ethical standards for a Forensic Psychologist differ from those of a Clinical Psychologist?

1.11 GLOSSARY

- Competency** : The mental condition of the defendant at the time of trial is brought up every now and then by the defendant. If a defendant is found to be incompetent, our justice system will not usually punish him/her.
- Insanity** : Sometimes forensic psychologists are asked to determine whether a defendant was mentally capable at the time an offense was committed, commonly by employing the *McNaughton rule* and/or the *substantial capacity rule*.
- Expert Witness** : The majority of forensic psychologists testify in court for both the defense and also for prosecuting attorneys about the sanity and competency of defendants, the accuracy of the eye witness, in child custody cases, and also a variety of other things.
- Criminal Profiling** : With a lot of experience and schooling, one could work closely with local police and also federal agencies to create psychological profiles of defendants.
- Jury Consulting** : Many forensic psychologists work with attorneys in selecting jurors, analysing the potential verdicts of juries, and explaining actual trial verdicts.

- Probation** : Conditional suspension of a sentence on submission of a bond by the offender. The offender does not require to enter the prison.
- Parole** : Conditional premature release from the prison on certain conditions. Conditions are that the offender will lead a law-abiding life.

1.12 SUGGESTED READINGS

Bartol, C.R. and Bartol, A.M. (2008). *Introduction to Forensic Psychology: Research and Applications*. (2nd edition) Sage Publications, New Delhi

Veeraraghavan, Vimala (Ed) (2009) *Handbook of Forensic Psychology*. Select Scientific Publishers, New Delhi.

1.13 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

- 1) a) True, b) False, c) True, d) False,
- 2) a) True, b) True, c) False, d) True, and e) False,

UNIT 2 HISTORICAL PERSPECTIVE OF FORENSIC PSYCHOLOGY

Structure

- 2.0 Introduction
- 2.1 Objectives
- 2.2 Key People in the History of Forensic Psychology
- 2.3 Early Research in Forensic Psychology
- 2.4 Forensic Psychology in The Courts
 - 2.4.1 Forensic Psychology in the Armed Forces Services
- 2.5 Development of Forensic Psychology in the UK
 - 2.5.1 Hearsay Problem
 - 2.5.2 Changes in Forensic Psychology Practice
 - 2.5.3 The Pornography Phase
 - 2.5.4 The Phase of Investigative Hypnosis
 - 2.5.5 Cognitive Interview
- 2.6 Post-World War – II Growth in USA
 - 2.6.1 Current State
- 2.7 Let Us Sum Up
- 2.8 Unit End Questions
- 2.9 Glossary
- 2.10 Suggested Readings
- 2.11 Answer to Self Assessment Questions

2.0 INTRODUCTION

You are already familiar with the definition of the Forensic Psychology and you have read in Unit 1 how knowledge of Forensic Psychology can be applied to criminal investigation, courtroom and prison (Correctional Home). These applications refer to the current status of Forensic Psychology. But this status was not gained within a day or two. It took a long time to gain this present day status. So in this Unit 2 we will make you familiar with the history of growth and development of Forensic Psychology, in order to understand how it attained the present day status. In doing so, we will mainly concentrate on the contributions of key persons in this field. Thus in this unit we will be dealing with early research in forensic psychology, and what was the role of forensic psychology in the courts, how did the armed forces use forensic psychology, what were the developments in forensic psychology after world war II and we would also deal with the current status of forensic psychology in the present day.

2.1 OBJECTIVES

After reading this unit, you will be able to:

- Describe the history of forensic psychology;

- Elucidate the many personalities who were associated with the development of forensic psychology;
- Explain the significance of experimental findings that led to the growth and development of Forensic Psychology;
- Analyse the application of Forensic Psychology was made possible in the Criminal Justice System; and
- Compare the contributions of different key persons in giving present day shape to Forensic Psychology.

2.2 KEY PEOPLE IN THE HISTORY OF FORENSIC PSYCHOLOGY

J. McKeen Cattell – Studied the psychology of testimony.

In 1893, Columbia University Professor J. McKeen Cattell conducted informal studies about the nature of witness testimony. During these experiments, he asked 56 students a series of questions that are similar to the types commonly used in a trial setting. After giving respondents 30 seconds to think about their answers, Cattell asked them how confident they were about their answers. Despite the fact that eyewitness testimony was already believed to be unreliable, Cattell admitted that he was surprised by the amount of inaccuracies there were among participating students

Hugo Munsterburg – Often called the first Forensic Psychologist.

Professor Hugo Münsterberg, in this book “On the Witness Stand,” in which is collected a series of magazine articles previously published by him, pointed the way to rational and scientific means for probing facts attested by human witnesses, by the application of Experimental Psychology to the administration of law. Psychology had been classified as a pure science. Experimental methods, to the development of which Münsterberg, made notable contribution, have lifted this branch of knowledge into the classification of applied sciences. Applied Psychology can be employed in various fields of practical life — education, medicine, art, economics, and law.

Experience has demonstrated that “certain chapters of Applied Psychology” are sources of help and strength for workers in various practical fields, but, says Professor Münsterberg — “The lawyer alone is obdurate. The lawyer and the judge and the jurymen are sure that they do not need the experimental psychologist . . . They go on thinking that their legal instinct and their common sense supplies them with all that is needed and somewhat more . . . Just in the line of the law it therefore seems necessary not to rely simply on the technical statements of scholarly treatises, but to carry the discussion in the most popular form possible before the wider tribunal of the general reader.”

Alfred Bient – His work in psychological testing served as a basis of many modern assessments.

Inspired by Cattell’s work, Alfred Binet replicated Cattell’s research and studied the results of other psychology experiments that applied to law and criminal justice (Bartol, 2005). His work in intelligence testing was also important to the development of forensic psychology, as many future assessment tools were based on his work.

William Stern

Psychologist William Stern also studied witness recall. In one experiment, students were asked to summarize a dispute they witnessed between two classmates. Stern discovered that errors were common among the witnesses, concluding that emotions decrease the accuracy of witness recall (Stern, 1939). Stern continued to study issues surrounding testimony and later established the first academic journal devoted to applied psychology.

William Marston

William Marston created not only her lasso of truth but also the systolic blood pressure test, that is the predecessor to the modern lie detector. Marston was a graduate in psychology and a law degree holder . He got the idea for a lie detection machine based upon blood pressure after his wife, Elisabeth, suggested to him that “When she got mad or excited, her blood pressure seemed to climb.”

Marston eventually created his systolic blood pressure test, and according to Marston, he and his colleagues tested a total of 100 criminal cases in Boston criminal court, and his systolic blood pressure test led to correct determinations in 97 of them. Dr. Marston soon thereafter either coined the phrase “lie detector” himself or adopted it from a reporter to whom he described the wonders of his device.

After World War I, Marston pursued an academic career, and he appeared as an expert witness in the now famous 1923 *Frye* case, in which the defense unsuccessfully attempted to introduce his expert testimony as to the innocence of the defendant on the basis of his systolic blood pressure test. Frye was accused of murder in the District of Columbia and, after first denying all knowledge of the event, confessed and provided police with correct details of the killing. A few days later, Frye recanted the confession, claiming that he admitted to the crime because he had been promised a share of the reward for his own conviction.

Marston then gave Frye his deception test in a D.C. jail and found his claim of innocence to be entirely truthful. When Marston was introduced as an expert witness at trial, the presiding judge excluded the evidence on the grounds that the test had been administered in jail 10 days before Frye testified in court and that it was irrelevant to the veracity of his testimony. Frye was convicted of murder. The case was appealed on the ground that the trial judge erroneously excluded Marston’s testimony.

2.3 EARLY RESEARCH IN FORENSIC PSYCHOLOGY

The birth place of Forensic Psychology is the Leipzig in Germany. The world’s first psychological laboratory was founded in Leipzig by Wilhelm Wundt. At Leipzig laboratory sensory and behavioural phenomena were both measured and subjected to experimental manipulation. Wundt developed experimental psychology in his laboratory with both theory oriented and applied goals. His refined techniques and the instruments that he devised helped his students a lot. His students spread through Europe and equipped with his techniques and instruments began to demonstrate the applications of psychology to day to day life including matters affecting the law. Other students came from the Old and

New Worlds to study under Wundt and on return they made lasting contributions of relevance to jurists. Cattell as mentioned earlier examined experimentally the nature of testimony and revealed the effects of situational and individual differences. Cattell's early experimental work into human testimony in 1893 generated considerable interest among researchers including Binet.

Cattell posed a series of questions to students at Colombia University, asking them to provide a response and rate their degree of confidence in their answer (1895). Cattell's results indicated a surprising degree of inaccuracy, which generated interest among other psychologists who went on to conduct experiments on eyewitness testimony.

Inspired by Cattell's work, Alfred Binet replicated Cattell's research in France and studied the results of other psychology experiments that applied to law and criminal justice. His work in intelligence testing was also important to the development of Forensic Psychology, as many further assessment tools were based on his work.

Alfred Binet (1857 – 1911) helped to found the first psychological laboratory in France at Sorbonne, Paris in 1889. Having studied both medicine and law, he was well placed to apply psychology to legal problems, and his work greatly influenced French legal thinking.

Like Cattell he was initially interested in the psychological nature of testimony, but later turned to the study of intellectual assessment for which he is better known. In collaboration with Theodore Simon he is credited with developing the world's first intelligence test as psychometric instrument. This was designed specifically for identifying children of "defective intelligence", a purpose which gained considerable forensic importance in the UK in the second half of the 19th century. The undoubted value of the Binet-Simon Test for many educational purposes created a wide spread demand through out the Western world and had wide-reaching forensic implications.

One of the first people to study Forensic Psychology was William Stern in 1901. He conducted the study with his students examining memory and how much a person could recall at different time intervals after observing a photo.

This study was the foundation for research into the reliability of eyewitness testimony in court cases. Stern determined from his study that in general, recall memories are inaccurate; the more time between seeing the picture and being asked to recall it, the more errors were made.

People especially recalled false information when the experimenter gave them a leading question such as, "Did you see the man with knife?" The person would answer "yes", even if there was no knife present. Leading questions are often used in police interrogations and in questioning witnesses. Stern continued to study issues surrounding testimony and later established the first academic journal devoted to applied psychology.

Self Assessment Questions 1

- 1) Answer briefly
 - i) Who is called the first Forensic Psychologist?

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ii) Which place is called the birthplace of forensic psychology?
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iii) Discuss briefly Cattell’s experimental work.
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2) Fill in the blanks:
i) The world’s first psychological laboratory was founded by
ii) Alfred Binet replicated Cattell’s research in
iii) Binet-Simon Test was designed specifically for identifying children of
iv) One of the first people to study Forensic Psychology in 1901 was

2.4 FORENSIC PSYCHOLOGY IN THE COURTS

During this time, psychologists were also beginning to act as expert witnesses in criminal trials throughout Europe. In 1896, a psychologist by the name Albert von Schrenck-Notzing testified at a murder trial about the effects of suggestibility on witness testimony.

Hugo Munsterberg’s ardent belief that psychology had practical applications in everyday life also contributed to the development of Forensic Psychology. In 1908, Munsterberg published his book ‘*On The Witness Stand*’, advocating the use of psychology in legal matters. Munsterberg was generally disliked by many of his peers in psychology and by much of the legal community.

Despite these dislikes, Munsterberg continued to advance the frontiers of Forensic Psychology, introducing hypnosis into the courtroom, and conducting experimental work directed at contemporary problems of evidence.

Munsterberg followed Cattell back to the USA in 1892. He setup a psychological laboratory at Harvard and actually attempted to introduce applied psychology into the American courtrooms.

After Munstueberg's death in 1916, his place in experimental psychology was taken by Judd, a student of Wundt. He established a laboratory at Yale and invented refined experimental techniques and devised instruments for contributing to Forensic Psychology.

In 1911 another of Wundt's pupils, Professor Karl Marbe, created legal history by demonstrating in court the phenomenon of reaction time in a civil action, proving to the court's satisfaction that the engine driver assumed to be responsible for a railway accident could not have stopped train in time to avert disaster. Marbe was the first psychologist to testify at a civil trial. He also testified in a criminal trial.

The first published case where an American psychologist qualified as an expert witness was in 1921. The psychologist had been conducting research into the juvenile delinquency and concluded that the twelve year old attempted rape victim in the case was a '*moron*' and could not be believed. The psychologist testimony was rejected by the court which noted, 'It is yet to be demonstrated that psychological and medical tests are practical, and will detect lies on the witness stand'.

This court rejection of the psychological evidence may have discouraged other psychologists from testifying. It was not until the date 1940s or early 1950s that psychologist began to testify regularly in the American courts. However, according to Valciukas, psychologists in the USA were not admitted as expert witnesses on mental disorder until 1962 and on issues of competency until two decades later.

An American version of the Binet-Simon test was prepared and issued as the Stanford-Binet test, and later updated by the Terman and Merrill (1937) version of that test. Translated into many other languages, it became the standard test of juvenile intelligence until the introduction of the Wechsler Intelligence Scale for Children (WISC, Wechsler, 1955). The latter was based on a completely different system and was easier both to use and to explain to the juvenile courts. But in the UK, school medical officers continued to use the Terman-Merrill version of the Stanford-Binet Test in carrying out their legal responsibilities under the 1944 Education Act for several decades of the post-war period.

The usefulness of Binet-type psychometrics was so well established that the American Psychological Association (APA) was asked to device tests for use in recruitment for the armed forces. The result was that there emerged the first group tests of intelligence, the Alpha for literates and Beta for both literates and persons unable to understand English language. The Alpha Test alone was used on nearly 2 million recruits, and retained for Army use postwar.

Gray cites the many benefits which accrued to applied psychology from the use of the so called Army Tests (Alpha & Beta). They enabled the practical usefulness of psychological tests to become widely known to the general public. Because group testing was so economical compared with individual testing, many of the private schools, smaller institutions, commercial companies, and other organisations could afford to adopt them for their particular use. They initiated a

rapid growth of new group tests. The group tests were devised by those who contributed to the original APA test items. The need for the standardisation and validation of the new tests required new statistical techniques. This established statistics as a necessary subject in all psychology courses.

Although Munsterberg had introduced the first vocational test as early as 1910, it was the success of the Army Tests (Army Alpha & Army Beta) in selecting men and women for specific functions within the armed services which expanded group testing nationwide. Such a national test movement made the judiciary to become aware of it. Ultimately this awareness made it possible in due course to introduce test results into the courtroom with an acceptance.

One other pioneer of Forensic Psychology who deserves mention is William Marston. He was a student of Munsterberg. In 1922 he became the first American Professor of legal psychology. As a student of Munsterberg, he maintained the tradition established by Wundt. He continued Wundt's experimental work on the physiological effects of deception. In 1917, Marston found the systolic blood pressure had strong correlation to lying. This discovery later led to the design of the modern polygraph detector. In lie detection this polygraph is used even today.

Marston testified in 1923 in the case of Frye vs. United States.: This case is significant because it established the precedent for the use of expert witness in Courts. The Federal Court of Appeals determined that a procedure, technique, or assessment must be generally accepted within its field in order to be used as evidence.

2.4.1 Forensic Psychology in the Armed Force Services

During the interwar years no significant advance in Western Forensic Psychology appears to have taken place. But the Second World War created an unprecedented demand for applied psychologists. (A special innovation was the development of military psychology). The military psychologists were needed for selection programmes as well as for operational research. They were also engaged in criminal investigation for ultimate purpose of prosecution of war criminals. This wartime experience made the courts more favourably inclined to see the relevance of psychological evidence.

<p>Self Assessment Questions 2</p> <p>1) Who testified at the murder trial in 1896?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

2) Name the book that Munsterberg published in 1908.

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3) Who was Judd and where did he establish the laboratory of experimental psychology?

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4) Who was Karl Marbe and how did he create legal history?

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5) What led to the design of modern polygraph detector?

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6) Fill in the blanks:

- a) The first published case where an American psychologist qualified as an expert witness was in
- b) It was not until the late 1940's or early 1950's that psychologist began to testify regularly in the
- c) According to Valciukas, psychologists in the USA were not admitted as expert witness on mental disorder until
- d) In 1922 became the first American professor of Legal psychology.
- e) Wartime experience made the courts more favourably inclined to see the relevance of

2.5 DEVELOPMENT OF FORENSIC PSYCHOLOGY IN THE UK

Two statutes of performed social significance made a great impact upon the development of Forensic Psychology in the UK. These were the Education Act, 1944 and the National Health Service Act, 1946. The Education Act 1944 provided school medical officers with the services of educational psychologists while the National Health Service Act, 1946 provided consultant psychiatrists with the services of clinical psychologists.

Since both types of medical practitioners had statutory duties regarding court proceedings, clinical and educational psychologists found themselves frequently providing evidence for courts albeit vicariously, as part of their routine duties. The psychologist's quantitative data on persons appearing in court, commonly embodied in a subjective report by the medical witness, added a new dimension on which judicial decision were made.

2.5.1 Hearsay Problems

Initially psychologists were not allowed to present their reports to the court separately and independently. Psychologist's report was embodied in the subjective report by the medical witness. Medical reports tended to include only those facts selected from the psychologist's findings that supported the medical view of the case. But sometimes the psychological findings were inconsistent with medical opinion and in those cases psychological reports were misrepresented. This really needed that psychologists present their report independently. And after a long struggle early in 1958, psychologist was called as a 'medical witness' in his own rights in UK.

2.5.2 Changes in Forensic Psychology Practice

The postwar years have seen a number of significant changes in Forensic Psychology practice. The expansion of Forensic work, the introduction of specialised and forensic training courses, the recognition of a career structure etc. prove the changes. Of particular professional significance, however, is the widening of the problems presented by particular cases and the techniques adopted in findings solutions for them. Last few decades have seen a number of forensic issues, which have exercised the mind of both lawyers and psychologists, come into prominence. These issues include problems arising from recovered memories of child sexual abuse, disputed confessions, and post-traumatic stress disorders (PTSD).

2.5.3 The Pornography Phase

The sexually permissive attitudes which evolved after the Second World War resulted in a rapid increase in pornographic material. The proposition that explicit sexual material was corrupting was unchallengeable in the court, making any evidence to the contrary inadmissible. However, British Parliament acknowledged that in some cases the assumed corruption could be mitigated by the material having some artistic, literary or scientific merit. Effective use was made of this Section 4 defense in Penguin Book Case (1961), when twenty-three expert witnesses testified on the literary merits of *Lady Chatterley's Lover* and secured an acquittal. The 'public good' defence enabled psychologists to be brought in

as expert witnesses. At first there were clinicians who used sexual materials for therapeutic purposes for treating sexual disorders. Later, psychological expertise was widened as more bases for the public good defence became apparent.

The public good defence enabled psychologists to dispel sexual ignorance, to some extent, by educating the court from the witness box. The effective lowering of sexual prejudice did much to boost the acquittal rate.

2.5.4 The Phase of Investigative Hypnosis

The clinicians had been using hypnosis routinely as part of their forensic activities since the early 1950s. In the beginning, there were requests from medical practitioners to reduce anxiety of witnesses by hypnosis. These were the cases where reducing anxiety by medication deemed inappropriate for the medical condition of the witnesses. This followed an already established practice of anxiety-reduction by hypnosis, using post-hypnosis suggestions, for candidates taking the driving test or other types of examination. From this developed the notion of using hypnosis with other witness to assist recall of significant facts.

This was later extended to victims, accused persons and parties to civil action. Bryan gives a general account of the use of forensic hypnosis, which aroused much controversy within the profession. At the peak of its popularity with the UK constabularies, Howard hypnotised seventeen potential witnesses in one week. Reiser and Udolf refer to a large number of USA cases which involved the use of hypnosis, and McConkey and Sheehan showed that there was a substantial increase in the use of hypnosis in Australia between 1981 and 1987.

By the late 1980s police interest in hypnosis had dissipated. This was due to a number of factors which came to prominence at about the same time. In the USA, evidence derived by hypnosis was being barred by its failure to meet the Frye Rule. This Rule stated that the evidence derived from scientific tests is inadmissible unless generally recognised as reliable for the purpose by the appropriate scientific community.

Hypnosis is not generally recognised as a reliable means of retrieving information. More importantly, the use of the hypnosis has in the USA resulted in a number of cases of miscarriage of justice. This led to many states of USA prohibiting its use for evidential purposes. In the UK, the Home Office issued guidelines concerning the use of hypnosis by the police which effectively discouraged its use by constabularies.

Wagstaff gives a well-reasoned discussion of the Home Office Circular. More recently, McConkey and Sheehan discuss some of the dangers of using hypnosis in police investigation and provide detailed and helpful guidelines for practitioners about its use. A consistent view among the scientific community is that hypnosis should only be practiced by clinical psychologists and medical practitioners. They, in addition to their professional qualifications, have had specific training and experience in the use of hypnosis and are knowledgeable about police procedures and investigative interviewing.

For formal investigations and enquiries where those involved are not required to testify in a criminal court, less objection to the use of investigative hypnosis has been made. The technique has proved to be of value in selected cases, although forensic application of hypnosis is limited.

2.5.5 Cognitive Interview

About twelve years ago, new interviewing techniques have been developed which overcome the legal and practical problems encountered with investigative hypnosis. Known as the 'Cognitive Interview', the techniques can also be used with children and persons with learning disability. This is a considerable advantage over the use of investigative hypnosis.

The Cognitive Interview is now commonly being used by police forces in the UK to elicit memory recall of witness and victims. Sometimes this is also used in case of cooperative suspects. There are fewer objections to police officers utilising the technique than has been the case with hypnosis. It is likely that in the future the Cognitive Interview will replace the need for investigative hypnosis, except in cases of psychogenic amnesia. In future, Forensic Psychologists may be increasingly called upon to train police officers in Cognitive Interview techniques. In complicated cases, they may be requested by the police to conduct the interview themselves.

2.6 POST WORLD WAR II GROWTH IN USA

Significant growth in American Forensic Psychology did not happen until World War II. Psychologists served as expert witnesses, but only in trials that were not perceived as infringing on medical specialists, who were seen as more credible witnesses. In the 1940 case of the People vs. Hawthorne, the courts ruled that the standard for expert witness was in the extent of knowledge of a subject, not in whether or not the witness had a medical degree.

In the landmark 1954 case of Brown vs. Board of Education, several psychologists testified for both the plaintiffs and the defendants. Later, the courts gave support to psychologists serving as mental illness experts in the case of Jenkins vs. United States (1962).

2.6.1 Current State

Forensic psychology has grown and evolved along with the development of new technologies, precedents and assessments. Forensic Psychology is in growing demand among graduate students, and several colleges and universities in USA offer dual degree programmes in law and psychology. In 2001, Forensic Psychology was recognised as a specialisation within psychology by the American Psychological Association.

Self Assessment Questions 3

Read the following statements and mark right (✓) or wrong (×)

- 1) By the late 1980s police interest in hypnosis dissipated. ()
- 2) The cognitive Interview is now commonly being used by police forces in the UK. ()
- 3) Significant growth in American Forensic Psychology did not happen until World War II. ()
- 4) Forensic Psychology has not yet been recognised as specialisation within psychology by the APA. ()

2.7 LET US SUM UP

Early Research in Forensic Psychology

J. McKeen Cattell conducted some of the earliest research on the Psychology of testimony. Inspired by Cattell's work, Alfred Binet replicated Cattell's research and studied the results of other psychological experiments that applied to law and criminal justice. His work in intelligence testing was also important to the development of Forensic Psychology, as many future assessment tools were based on his work. Psychologist William Stern also studied witness recall. Stern continued to study issues surrounding testimony and later established the first academic journal devoted to applied psychology.

Forensic Psychology in the courts

During this time, psychologists were also beginning to act as expert witnesses in criminal trials throughout Europe. In 1896, a psychologist by the name of Albert von Schrenck-Notzing testified at a murder trial about the effects of suggestibility on witness testimony. Hugo Munsterberg's ardent belief that psychology had practical applications in everyday life also contributed to the development of forensic psychology. In 1908, Munsterberg published his book *On the Witness Stand*, advocating the use of psychology in legal matters. Despite the contributions, Munsterberg was generally disliked by many of his peers in psychology and by much of the legal community.

Stanford psychologist Lewis Terman began applying psychology to law enforcement in 1916. After revising Binet's intelligence test, the new Stanford-Binet test was used to assess the intelligence of job candidates for law enforcement positions.

In 1917, psychologist William Marston (a student of Munsterberg) found that systolic blood pressure had a strong correlation to lying. This discovery would later lead to the design of the modern polygraph detector.

Marston testified in 1923 in the case of *Frye vs. United States*. This case is significant because it established the precedent for the use of expert witnesses in courts. The Federal Court of Appeals determined that a procedure, techniques or assessment must be generally accepted within the field in order to be used as evidence.

Post-world War II Growth

Significant growth in American forensic Psychology did not happen until after World War II. Psychologist served as expert witnesses, but only in trials that weren't perceived as infringing on medical specialists, who were seen as more credible witnesses. In the 1940 case of the *People vs. Hawthron*, the courts ruled that the standard for expert witnesses was in the extent of knowledge of a subject, not in whether or not the witness had a medical degree.

In the landmark 1954 case of *Brown vs. Board of Education*, several psychologists testified for both the plaintiffs and defendants. Later, the courts gave support to psychologists serving as mental illness experts in the case of *Jenkins vs. United States (1962)*.

Forensic Psychology has continued to grow and evolve during the past three decades. Increasing number of graduate programmes offer dual degrees in psychology and law, while other offer specialised degrees emphasised Forensic Psychology. In 2001, the American Psychological Association officially recognised Forensic Psychology as a specialisation within psychology.

2.8 UNIT END QUESTIONS

- 1) What were the two statutes of profound social significance that made a great impact upon the development of Forensic Psychology in the UK?
- 2) When was it that a psychologist was called as a 'medical witness' in his own right in UK?
- 3) What led to a rapid increase in pornographic material?
- 4) What is Frye Rule?

2.9 GLOSSARY

Hypnosis	:	An artificially introduced passive state in which there is increased amenability and responsiveness to suggestions and commands.
Moron	:	Adult with IQ range 50 - 69
Pornography	:	Explicit description or exhibition of sexual activity in literature, films etc., intended to stimulate erotic rather than aesthetic feelings.
Post Traumatic Stress Disorder	:	It is a severe anxiety disorder that can develop after exposure to any event that results in psychological trauma.
Standardisation	:	Standardisation implies finding out reliability and validity of a psychological test along with stating objective procedure of administering and scoring the test as well as setting norms for the test.
Testimony	:	Oral or written statement under oath or affirmation

2.10 SUGGESTED READINGS

Rieber, R.W. and Vetter, Harold J (Eds) (1978). *The Psychological Foundations of Criminal Justice: Historical Perspectives on Forensic Psychology*. John Jay Pr. NY

Veeraraghavan, Vimala (2009). *Handbook of Forensic Psychology*, Select Scientific Publishers, New Delhi.

2.11 ANSWERS TO SELF ASSESSMENT QUESTIONS

Self Assessment Question 1

4) a) Wilhelm Wundt, b) France, c) defective intelligence and d) William Stern

Self Assessment Question 2

5) a) 1921, b) American Courts, c) 1962, d) William Marston, e) psychological evidence

Self Assessment Question 3

6) (i) ✓, (ii) ✓, (iii) ✓, (iv) ×



UNIT 3 FORENSIC PSYCHOLOGY AND RELATED FIELDS

Structure

- 3.0 Introduction
- 3.1 Objectives
- 3.2 Clinical Psychology and Its Relation to Forensic Psychology
 - 3.2.1 Clinical Psychology and Forensic Psychology
 - 3.2.2 Clinical Forensic Psychology
- 3.3 Cognitive Psychology and Its Relation to Forensic Psychology
- 3.4 Developmental Psychology and Its Relation to Forensic Psychology
- 3.5 Social Psychology and Its Relation to Forensic Psychology
- 3.6 Let Us Sum Up
- 3.7 Unit End Questions
- 3.8 Glossary
- 3.9 Suggested Readings
- 3.10 Answer to Self Assessment Questions

3.0 INTRODUCTION

In Unit 2 you have become familiar with the historical perspective of Forensic Psychology. You have read in the Unit how Forensic Psychology originated and how it grew and developed and attained the present status. In this Unit 3 you will read about Forensic Psychology and its related fields. These related fields are many. But we will mainly concentrate on Clinical, Cognitive, Developmental and Social Psychology. As you go through this unit you will see how these fields are intimately connected with Forensic Psychology. Thus in this unit you will learn about clinical psychology and its relation to forensic psychology, and developmental psychology and its relation to forensic psychology etc. You will also learn about clinical forensic psychology and what are all the functions of this branch in criminal justice system. This unit also deliberates on the relationship between social psychology and forensic psychology as well as cognitive psychology and its relation to forensic psychology.

3.1 OBJECTIVES

After reading this unit, you will be able to:

- Define Forensic Psychology;
- Relate Cognitive Psychology to Forensic Psychology;
- Explain how Developmental Psychology is related to Forensic Psychology;
- Describe how Social Psychology is related to Forensic Psychology; and
- Compare the relative contributions of these fields to Forensic Psychology.

3.2 CLINICAL PSYCHOLOGY AND ITS RELATION TO FORENSIC PSYCHOLOGY

Clinical Psychology is an integration of science, theory and clinical knowledge for the purpose of understanding, preventing, and relieving psychologically based distress or *dysfunction* and to promote subjective *well-being* and personal development. Central to its practice are *psychological assessment* and *psychotherapy*, although clinical psychologists also engage in research, teaching, consultation, forensic testimony, and programme development and administration. In many countries, clinical psychology is a regulated *mental health profession*.

The field is often considered to have begun in 1896 with the opening of the first psychological *clinic* at the *University of Pennsylvania* by *Lightner Witmer*. In the first half of the 20th century, clinical psychology was focused on psychological assessment, with little attention given to treatment. This changed after the 1940s when World War II resulted in the need for a large increase in the number of trained clinicians. Since that time, two main educational models have developed – the *Ph.D. science-practitioners model* (focusing on research) and the *Psy.D. practitioner-scholar model* (focusing on clinical practice). Clinical psychologists are now considered experts in providing psychotherapy, and generally train within four primary theoretical orientations – *psychodynamic*, *humanistic*, *behaviour therapy / cognitive behavioural*, and *systems or family therapy*.

3.2.1 Clinical Psychology and Forensic Psychology

Within the general field of psychology there are a wide range of different disciplines. Two such disciplines are Clinical Psychology and Forensic Psychology. *Clinical Psychology* differs from *Forensic Psychology* in that the general purpose of *Clinical Psychology* is to diagnose and treat psychological dysfunction, whereas the purpose of *Forensic Psychology* is to provide the psychological assessments in legal situations. A clinical psychologist is bound by an oath of confidentiality to the patients that he sees and is motivated by a desire to help those patients find accurate diagnosis and appropriate treatment for any emotional or mental issue that is disrupting their lives. A *Forensic Psychologist* acts in the capacity of an expert witness in psychological matters as they relate to criminal proceedings.

Clinical Psychology and *Forensic Psychology* both got their start in the same general time period, the late 1800s. The first true clinical psychologist was *Lightner Witmer*, who was a former student of *Wilhelm Wundt*, the ‘Father of Psychology’. *Witmer* was the head of the *Psychology Department* at the *University of Pennsylvania* when he began this ground breaking work with a boy that had trouble spelling. His tireless work was the first time that psychological research was applied in the therapeutic setting, and led to him opening the first psychological clinic in 1896 as has already been mentioned.

The first known use of the *Forensic Psychology* came when *Albert von Schrenk-Notzing* testified at a murder trial on the negative impact of publicity on the memories of the witness accounts. He was the first to suggest, in court, that too much press surrounding an event could lead to a “retroactive memory falsification”. Essentially, his view was that the witness would have a hard time distinguishing what they actually seen from what had been reported in the press.

This very issue is still at the heart of many legal battles today. It is interesting to note that Hugo Munsterberg, who was another student of Wundt, opened a clinic in 1892 with the goal of introducing psychology to the courtroom. He was largely laughed at but continued championing his cause for many, many years.

In order to practice either form of psychology, one must *obtain a graduate degree in psychology* from an accredited university. A clinical psychologist will work to obtain either a Ph.D., which is geared more toward research or a PsyD, which is geared toward treatment of patients. A Forensic Psychologist would also pursue a Ph.D. but would need to augment this education with a legal background in order to become an expert witness.

3.2.2 Clinical-Forensic Psychology

Clinical forensic psychology is the subfield that most people are familiar with, even though they are not even aware of it. There are a variety of things to do with this area. Just like a clinical psychologist, *Clinical-forensic Psychologists* are mainly interested in assessing and treating people suffering from some form of mental illness. The difference is that the people being treated are also being assessed because they are somehow involved in the criminal justice system, mainly because of conviction for some offense. Most people in the subfield decide to make treatment and assessment the focus of their career in life. Offenders can be forcibly treated while in prisons, corrections facilities, as a requirement of parole/probation, or in a hospital. Alternatively, offenders could see a Clinical-forensic Psychologist who operates in private practice.

This type of psychologist can work as an expert witness in both criminal and civil court cases for the defendant and /or the party filing the civil lawsuit. Many people in American society look down upon expert witnesses. People often believe expert witnesses are saying what is demanded to receive compensation, especially when testifying about *competency* to stand trial and *sanity* of defendants. Clinical-forensic Psychologist may be involved in evaluating jury selections, the mental health of persons in criminal and civil cases, or the validity of an insanity defense, police confessions or eyewitness testimony.

In the civil arena, expert witnesses often testify about whether a person was competent in making some decision, such as in writing his/her will. As witnesses, psychologists can also give their opinion in workman's compensation cases (e.g., to establish if a defendant was really harmed psychologically from a work injury). Child custody is a major issue in the civil arena. The Clinical-forensic Psychologist can give his/her opinion on which parent should be the legal guardian and on parental visitation guidelines.

Psychologist here can also choose to make a career out of doing research. This is a very lucrative field if one is successful; it is mainly available in universities and colleges to those with the doctoral degree. One of the interesting topics frequently researched is the effectiveness of different types of therapies for convicted criminals. There is constant advancement in this area.

Before a Clinical-forensic Psychologist can actually pursue his/her desired specialty, additional training and volunteer work may be needed, even after receiving a doctoral degree. The best way to do this is through externships and mentoring programmes. Working closely with others teaches a person how to go about working in a field.

When a clinical psychologist conduct psychotherapy, he does not accept managed care, and so he always assume that client paying him out of their own pockets really want help and therefore are not deliberately lying to him. Psychotherapy, after all, depends on honesty. Nevertheless people do lie, for a variety of reasons – shame, guilt, fear, etc. – and the lies have to be dealt with as therapeutic issues. In such cases, clients essentially pay him for the privilege of resisting treatment.

But everything changes if a person commits a crime and then wants to make a legal defense based on his/her mental condition; is ordered by the judicial system to be psychologically evaluated, tested, or diagnosed; is ordered by the judicial system to receive psychotherapy; sues someone on the grounds of psychological damages.

In cases such as these, there are strong motives for deception which can cast the shadow of doubt on everything that is said in psychotherapy. Here are some points to consider.

Insanity: Pleading “*not guilty due to a mental condition*” is known as an insanity defense. *Insanity* is a legal term, not a psychiatric term, and so it doesn’t imply anything about the nature of the underlying disorder. Just about any major psychiatric disorder – a psychotic disorder (e.g. schizophrenia), a mood disorder (e.g. major depression) or an anxiety disorder (e.g. PTSD) – could be used as the basis for an insanity defense.

In years past, drunk drivers who caused major vehicle crashes used to argue that they were not responsible for their behaviour because they were under the influence of alcohol. But eventually the legal system saw through the foolishness of this argument. If the person drinks willingly, and gets into a car willingly, then the resulting crash is not an “accident”, it is the final event in a long string of international behaviours.

Therefore, just as the “*under the influence of alcohol*” excuse was abused in the past, the insanity defense is often abused today as a way to “*wiggle out*” of *personal responsibility* for one’s behaviour.

In its most charitable purpose, the insanity defense should simply be a way to recognise when a person’s judgement is impaired by psychological factors beyond his or her personal intention. In such a case, the person can be sent to mandated mental health treatment, rather than to prison.

Faking: Some people will go to any lengths to avoid responsibility – and punishment – for their behaviour. Some people will also do just about anything to get rich quickly. Whenever a crime has been committed, or compensation is sought for psychological damages, a clinician would be a total fool not to consider the possibility that a mental disorder could be out right fakery – clinically known as *malingering*.

Exaggeration and Lying: Even in cases involving genuine mental disorders, things may not be as simple as they seem on the surface.

Symptoms can be consciously *exaggerated* in order to get extra attention, special privileges, momentary compensation, or sympathy.

Just because a person has mental disorder does not mean that he or she is always telling the truth. This can really complicate things, even to the point of making it seem that the entire disorder is faked. For example, a person may have a genuine case of Dissociative Identity Disorder (DID), also known as multiple personalities, but if one of the personalities lies about just one aspect of the case, it might arouse enough suspicion that all the other facts about the case lose credibility.

Complications to Psychotherapy: If a person who has been victimized attempts to find healing through psychotherapy while litigation is still in process, there will always be some part of the person that unconsciously desires to remain disabled in order to “prove” the legal case. For this reason, true psychotherapy will be hindered, if not impossible. Vengeance may feel satisfying, but real psychological healing can happen only if the person gives up the pride of victim anger.

What is “Truth” anyway?

With so much of our lives influenced by unconscious motivation, it can be nearly impossible to determine just why a person did anything. Whatever conscious reason a person gives for his or her actions, a dozen unconscious reasons could be in the background. So who is to say what is the legal “truth”? Considering all this, it can be said psychologically that *no matter how much we try to tell the truth, we are always lying*. In fact, as long as anyone has something to gain there is reason for deception. In effect, the legal presentation of evidence amounts to nothing more than a person *showing* the court what he/she *wants* the court to see.

Self Assessment Questions 1

1) What is clinical Psychology?
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2) What are the main things that are evaluated by clinical forensic psychologist?
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3) What is an insanity defense?
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4) Differentiate between clinical and forensic psychology.

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5) Fill in the blanks:

- a) The first true clinical psychologist was
- b) Hugo Munsterberg opened a clinic in 1892 with the goal of introducing psychology into the
- c) Clinical forensic psychologists can work as in both criminal and civil cases.
- d) The legal presentation of the evidence amounts to nothing more than a person showing the court what he or she wants the court

3.3 COGNITIVE PSYCHOLOGY AND ITS RELATION TO FORENSIC PSYCHOLOGY

Cognitive Psychology is a discipline within *psychology* that investigates the internal mental processes of thought such as visual processing, memory, thinking, learning, feeling, problem solving, and language.

The school of thought arising from this approach is known as *cognitive* which is interested in how people mentally represent *information processing*. It had its foundations in the work of *Wilhelm Wundt*, Gestalt Psychology of *Max Wertheimer*, *Wolfgang Köhler*, and *Kurt Kofka*, and in the work of *Jean Piaget*, who provided a theory of stages/phases that described children's cognitive development.

Cognitive psychologists use *psychophysical* and experimental approaches to understand, diagnose and solve problems, concerning themselves with the mental processes which mediate between stimulus and response. Cognitive theory contends that solutions to problems take the form of *algorithms – rules* that are not necessarily understood but promise a solution, *heuristics – rules* that are understood but that do not always guarantee solutions. In other instances, solutions may be found through insight, a sudden awareness of relationships. Modern cognitive psychology has been deeply influenced by the work of *Noam Chomsky*, *Albert Bandura*, and *Ulric Neisser*.

Forensic Psychology is tied closest to the cognitive perspective. The cognitive perspective was developed by George Miller, Jerome Bruner, and Ulrich Neisser throughout the 1990s. It focused on identifying the process of thinking, language, and dreams, with the main idea that perceptions and thoughts influence behaviour. Forensic psychologists not only offer their expert opinion at trials, but can also be found helping a witness identifying a murderer in a line of suspects. They sometimes hypnotize subjects to help them remember things or interview potential

jury members to eliminate those who may be biased. These tasks relate to the cognitive activities of thinking, memory and perceptions. Other times, they give their own expert testimony at trials which could result in an individual being confined to a mental institution, receive huge monetary awards, obtain custody of a child, or lose his or her life. Legal psychologists play a big role in the justice system.

Forensic psychologists often work within the judicial system in such diverse areas as determining an inmate's readiness for parole; evaluation of rehabilitation programmes; clinical competency; tort liability and damages; evidence; jury selection; and police training. The evaluations of the mental state of individuals also communicate the cognitive perspective. They may also be employed in other areas of jurisprudence, including patent and trademark disputes, divorce and custody cases, product liability, and taxation. Psychologists advise their clients in several ways, including diagnostic appraisals, which may determine the capability of the client to stand trial. They are also called to provide clinically-based opinions on a wide variety of issues arising from their diagnoses. Sometimes they obtain hospital records, police reports, witness statements, and provide relevant research. Beside submitting these and other findings, they are often required to testify in court. Forensic Psychologist may be hired by a defense attorney to evaluate the defendant's mental processes. They administer personality and intelligence tests after being briefed on the circumstances of the crime and examining records detailing the mental or emotional problems and treatment. Forensic psychology can also be tied to ideas of structuralism. That is, structure of conscious experience (such as witnessing a crime); objective sensation – seeing, touching, testing, hearing; and subjective feelings like memories and thoughts.

Legal psychologists are regularly consulted in child custody cases. Both parents must be evaluated along with the children and other relevant family members. It may involve visits to the home of each parent to find out additional information on the relationship between the parent and child and the living environment. They want to determine the best interests of the child. They may train police officers to handle diverse situations like domestic abuse, suicide threats, hostage crisis, and how to control crowds. If the police have an idea of the mental processes of those they are involved with, they can do their jobs better. Clinicians who enter the forensic areas seek to uncover truth whatever the implications may be.

Forensic Psychologists determine whether or not people are telling the truth with the use of polygraph machines. The machine records a person's physical response to questions. The lie detector measures blood pressure, breathing, electrical conductivity of the skin, pulse and perspiration in order to tell if a person is lying or not. This aspect of forensics especially ties back to the cognitive perspective and conscious thoughts. If the enquired party does not provide accurate answers, then their body's reaction gives them away.

Forensic or legal psychology is most directly related to the cognitive perspective because most of this profession deals with mentality, memories and conscious thoughts. Psychologists assess witnesses and suspects for accuracy in objective thoughts and help enhance memories to uncover the truth and put away the bad guys.

Self Assessment Questions 2

1) Define Cognitive Psychology?

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2) What are algorithms?

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3) Name the psychologists who deeply influenced modern cognitive psychology?

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4) What is a polygraph machine?

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5) Read the following statements and mark right (✓) or wrong (×)

- a) Rule that are understood but that do not always guarantee solutions are heuristics. ()
- b) Cognitive Psychology had its foundations in the work of Wundt, Wertheimer, Köhler and Koffka. ()
- c) Forensic Psychology is not tied closest to the cognitive perspective. ()
- d) Forensic Psychologists not only offer their expert opinion at trials, but can also be found helping a witness identify a murderer in a line of suspects. ()

3.4 DEVELOPMENTAL PSYCHOLOGY AND ITS RELATION TO FORENSIC PSYCHOLOGY

Developmental Psychology, also known as *human development*, is the *scientific* study of systematic *psychological* changes that occur in *human* beings over the course of their life span. Originally concerned with *infants* and *children*, the field has expanded to include *adolescence*, *adult development*, *aging* and the entire life span. This field examines change across a broad range of topics including *motor skills* and other psycho-physiological processes; cognitive development involving areas such as *problem solving*, *moral understanding*, and *conceptual understanding*; *language acquisition*; social, personality, and emotional development; and self-concept and *identity formation*.

Developmental psychology includes issues such as the extent to which development occurs through the gradual accumulation of *knowledge* versus stage-like development, or the extent to which children are born with innate mental structures versus learning through *experience*. Many researchers are interested in the interaction between personal characteristics, the individual's behaviour, and environmental factors including *social context*, and their impact on development; others take a more narrowly focused approach.

Developmental Psychology informs several applied fields, including: *educational psychology*, *child psychopathology*, and *forensic developmental psychology*. Developmental Psychology complements several other basic research fields in *psychology* including *social psychology*, *cognitive psychology*, *ecological psychology*, and *comparative psychology*.

Recent developments in the field of forensic developmental psychology challenge traditional conceptions about the reliability of children's reports. The areas covered involve the disclosure patterns of sexually abused children, the nature of suggestive interviews, developmental differences in suggestibility, and the amount of suggestion required to produce false reports and beliefs.

Forensic Developmental Psychology is a field that has emerged over the past two decades. The term was developed by Brooke and Poole (2002) and includes autobiographical memory, memory distortion, eyewitness identification, narrative construction, personality, and attachment as topics covered by this field of research.

Forensic Developmental Psychology is oriented toward children's actions and reactions in forensic contexts. The research is grounded in a developmental framework, and is emerging either from previous studies in basic developmental science or from related research in the adult literature.

The major topics in this field of research include the conditions that precipitate false reports, the psychological status of false reports, and developmental trends in false reports.

There are four misconceptions about children's disclosures. (i) sexually abused children do not disclose their abuse because of shame, guilt and fear. (ii) The second misconception is that suggestive interviews can be indexed by the number of leading questions. (iii) Suggestibility is primarily a problem for preschoolers

and (iv) Multiple suggestive interviews are needed to taint a report. Research in regard to these indicate that there should be greater concern that interviews with possible victims of child abuse are conducted using scientifically validated methods and less concern that true victims will deny that they were abused.

3.5 SOCIAL PSYCHOLOGY AND ITS RELATION TO FORENSIC PSYCHOLOGY

Social Psychology studies the nature and causes of social behaviour. *Social Psychology* is the study of social behaviour and mental processes, with an emphasis on how humans think about each other and how they relate to each other. Social psychologists are especially interested in how people react to social situations. They study such topics as the influence of others on an individual's behaviour (e.g. *conformity, persuasion*), and the formation of beliefs, *attitudes*, and *stereotypes* about other people. *Social cognition* fuses elements of social and cognitive psychology in order to understand how people process, remember, and distort social information. The study of *group dynamics* reveals information about the nature and potential optimisation of leadership, communication, and other phenomena that emerge at least at the *micro-social* level. In recent years, many social psychologists have become increasingly interested in *implicit* measures, mediational models, and the interaction of both person and social variables in accounting for behaviour.

Social Psychology is the *scientific study* of how people's *thoughts, feelings, and behaviours* are influenced by the actual, imagined, or implied presence of others. By this definition, *scientific* refers to the *empirical* method of investigation. The terms *thoughts, feelings, and behaviours* include all of the *psychological* variables that are *measurable* in a human being. The statement that others may be *imagined* or *implied* suggests that we are prone to social influence even when no other people are present, such as when watching television, or following internalised *cultural norms*.

Social psychologists typically explain human behaviour as a result of the interaction of *mental states* and immediate social *situations*. In *Kurt Lewin's* famous heuristic formula, behaviour can be viewed as a function of the person and the environment, $B = f(P, E)$. In general, social psychologists have a preference for *laboratory* based, empirical findings. *Social Psychology Theories* tend to be specific and focused, rather than global and general.

Social Psychology is an interdisciplinary domain that bridges the gap between *psychology* and *sociology*. During the years immediately following World War II, there was frequent collaboration between psychologists and sociologists. However, the two disciplines have become increasingly specialised and isolated from each other in recent years, with sociologists focusing on "macro variables" (e.g. social structure) to a much greater extent. Nevertheless, *sociological approaches* to social psychology remain an important counterpart to psychological research in this area.

In addition to the split between psychology and sociology, there has been a somewhat less pronounced difference in emphasis between *American* Social Psychologists and *European* Social Psychologists. As a broad generalisation,

American researchers traditionally have focused more on individual, whereas Europeans have paid more attention to group level phenomena.

A psychology degree in Social Psychology will enable you to study how society influences the way people behave. You may advise lawyers and courts on matters of witness credibility, jury selection and how external factors can affect eyewitness memory. Periodically, social psychologists act as trial consultants or offer counsel regarding legal policy.

Social psychologists have learned that persons who confess or who provide information as a result of being subjected to abuse do not necessarily provide reliable information. The psychology of the false confessions has attracted considerable research interest in recent years, with the realisation that a surprising number of suspects confess to crimes they did not commit. Forensic Psychologists consulting with law enforcement may be able to offer interrogation strategies that will protect the rights of suspects and minimise the likelihood that a false confession will occur.

Self Assessment Questions 3

Read the following statements and mark right (✓) or wrong (✗)

- 1) Developmental Psychology is also known as human development. ()
- 2) Developmental Psychology informs several applied fields, including Educational Psychology, Child Psychology and Forensic Psychology. ()
- 3) Recent developments in the field of Forensic Developmental Psychology do not challenge traditional conceptions about reliability of children's reports. ()
- 4) Social Psychologists have learned that persons who confess or who provide information as a result of being subjected to abuse do not necessarily provide reliable information. ()

3.6 LET US SUM UP

Clinical Psychology: As a *clinical psychologist*, you generally focus on assessing and treating individuals with mental disorders. In the context of law, *clinical forensic psychologists* study a wide range of issues and often work with those convicted of a crime within the criminal justice system. You may be involved in evaluating jury selections, the mental health of persons in a criminal or civil case, or the validity of an insanity defense, police confession or eyewitness testimony. Like many who work in one of the subfields of forensic psychology, you would likely serve often as an expert witness in court.

Cognitive Psychology: If you enjoy studying how the mind works, then you might consider a *cognitive psychology* degree. Within the legal system, you would examine the mental processes of criminals, witnesses, as well as the judge and jury. Cognitive psychologists analyse what motivates criminal behaviour, the most effective methods of detecting deception, and how perception and memory is influenced in eyewitness testimony.

Developmental Psychology: In the legal realm, *developmental psychologists* regularly assess the competency of children and the elderly in decision-making ability, understanding legal proceedings and the validity of testimony. They may also help in custody cases by appraising the needs of children and families due to divorce or separation. Like clinical psychologists, developmental psychologists typically teach and conduct research in academic and medical schools.

Social Psychology: A psychology degree in *social psychology* will enable you to study how society influences the way people behave. You may advise lawyers and courts on matters of witness credibility, jury selection, and how external factors can affect eyewitness memory. Periodically, social psychologists act as trial consultants or offer counsel regarding legal policy.

3.7 UNIT END QUESTIONS

- 1) Define Developmental Psychology.
- 2) What is Forensic Developmental Psychology?
- 3) Define Social Psychology.
- 4) State the Kurt Lewin's famous heuristics formula.

3.8 GLOSSARY

Behaviour therapy	:	It is an approach to psychotherapy based on learning theory which aims to treat psychopathology, through techniques designed to reinforce desired and extinguished undesired behaviours.
Cognitive behaviour therapy	:	It is a psychotherapeutic approach that aims to solve problems concerning dysfunctional emotions, behaviours and cognitions through a goal-oriented, systematic procedure.
Dissociative identity disorder:		Commonly known as multiple personality disorder. Persons with dissociative identity disorder has two or more distinct personalities, each of which determines behaviour and attitudes during any period when it is the dominant personality.
Family therapy	:	Also referred to as couple and family therapy and family systems therapy, is a branch of psychotherapy that works with families and couples in intimate relationships to nurture change and development.
Humanistic therapy	:	It is a method therapist use to focus on client's subjective, conscious experiences.
Jury	:	A body of usually twelve persons sworn to render a verdict on the basis of evidence submitted to them in a court of justice.

- Litigation** : A suit at law.
- Psychodynamic therapy** : It is a form of depth psychology, the primary focus of which is to reveal the unconscious contents of a client's psyche in an effort to alleviate psychic tension.
- Self-concept** : It is a multidimensional construct that refers to an individual's perception of "self" in relation to any number of characteristics, such as academics (and non-academics), gender role and sexuality, racial identity, and many others.
- Tort** : A tort is an act that injures someone in some way, and for which the injured person may sue the wrongdoer for damages.
- Jurisprudence** : The philosophy or science of law.

3.9 SUGGESTED READINGS

Bartol, C.R. and Bartol, A.M. (2008). *Introduction to Forensic Psychology: Research and Applications*. (2nd edition) Sage Publications, New Delhi

Veeraraghavan, Vimala (Ed) (2009). *Handbook of Forensic Psychology*. Select Scientific Publishers, New Delhi.

3.10 ANSWERS TO SELF ASSESSMENT QUESTIONS

- 1) a) Lightner Witmer, b) courtroom, c) expert witness, d) to see
- 2) (i) ✓ (ii) ✓ (iii) × (iv) ✓
- 3) (i) ✓ (ii) ✓ (iii) × (iv) ✓

UNIT 4 ROLES AND FUNCTIONS OF A FORENSIC PSYCHOLOGY

Structure

- 4.0 Introduction
- 4.1 Objectives
- 4.2 Role of a Forensic Psychologist
 - 4.2.1 Criminal Investigations
 - 4.2.2 Crime Analysis
 - 4.2.3 Offender Profiling or Criminal Investigative Analysis
 - 4.2.4 Interviewing, Detecting Deception and Eye Witness Research
 - 4.2.5 Police Psychology
 - 4.2.6 Expert Witness
 - 4.2.7 Forensic Psychologists and Assessment and Treatment of Offenders
 - 4.2.8 Forensic Psychologists and Academia / Research
- 4.3 Some Specific Functions of a Forensic Psychologist
- 4.4 Let Us Sum Up
- 4.5 Unit End Questions
- 4.6 Glossary
- 4.7 Suggested Readings
- 4.8 Answer to Self Assessment Questions

4.0 INTRODUCTION

The work of a forensic Psychologist is varied and wide reaching. He assists the police in investigation, provides advice on interviewing of suspects or witnesses, works as expert witness in court cases, works in the rehabilitation of offenders, conducts Forensic Psychology Research or work in academia. This Unit aims to present a balanced view of profession of the Forensic Psychologist and to introduce you to the variety of roles within which the Forensic Psychologist can, and does work. You will also be introduced to the specific functions that a Forensic Psychologist performs within these roles.

4.1 OBJECTIVES

After reading this unit, you will be able to:

- Describe the roles of Forensic Psychologist;
- Explain the functions of the Forensic Psychologist; and
- Compare the roles played by the Forensic Psychologist vis a vis other experts in the court Analyse the importance of these roles and functions to the Criminal Justice System.

4.2 ROLES OF A FORENSIC PSYCHOLOGIST

In 1981 Professor Lionel Haward, one of the UK's founding fathers of Criminal Psychology, described the four roles that psychologists may perform when they become professionally involved in criminal proceedings. These are given below.

Clinical

In this situation the Forensic Psychologist will usually be involved in the assessment of an individual in order to provide a clinical judgement. The psychologist could use interviews, assessment tools or psychometric tests (i.e. special questionnaires) to aid in his or her assessment. These assessments can inform the police, the courts, or the prison and probation services about the psychological functioning of an individual and can therefore influence how the different sections of the criminal justice system process the individual in question. For example, a Forensic Psychologist may be asked to assess individuals in order to determine whether they are fit to stand trial or whether they have a mental illness which means that they would not understand the proceedings.

Experimental

This may involve the Forensic Psychologist performing research in order to inform a case. This can involve carrying out experimental tests in order to illustrate a point or provide further information to the courts (for example, how likely it is that someone can correctly identify an object in the hand of an individual from a distance of 100 metres at twilight). Alternatively it can involve psychologists providing the court with a summary of current research findings which may be relevant to the case in question.

Actuarial

In this context the word 'actuarial' relates to the use of statistics in order to inform a case. One example of how a Forensic Psychologist may act in an actuarial role is if they are required to present actuarial information relating to the probability of an event occurring to the court. For example, a court may wish to know how likely an offender is to reoffend before the sentence is decided. In such a case, a Forensic Psychologist could be called upon in order to inform the pre-sentence report to the court.

Advisory

In this role the psychologist may provide advice to the police about how to proceed with an investigation. For example, an offender's profile could inform the investigation, or advice could be provided about how best to interview a particular suspect. Alternatively a prosecution or defense lawyer may ask for advice on how best to cross examine a vulnerable witness or another expert witness. This role involves the use of the psychologist's expertise in order to advise the police, courts or prison and probation services.

As you can see, psychologists thus can be used in a variety of different scenarios within the criminal justice system and for a number of different reasons. The next few sub-sections will examine in more detail how psychologists can and do contribute their expertise to aid the work of the criminal justice system. This list of role, however, does not claim to be exhaustive, as there are many more ways in which psychologists play their part. We have therefore chosen the most well known roles in order to give an indication of what kinds of roles and functions Forensic Psychology involves.

4.2.1 Criminal Investigations

The role of a Forensic Psychologist in *Criminal Investigations* can take a variety of forms. Professor Laurence Alison of the University of Liverpool has suggested

a number of ways in which the expertise of psychologist could aid the police and support the work that they do. According to him,

“It is important to appreciate that the ways in which psychologists can contribute extends well beyond the process of profiling offenders. Indeed the apprehension of the offender would be assisted by enhancing police decision-making and leadership-skills, improving methods of interviewing witnesses and victims, developing accurate methods of recording, collating and analysing data on pre-convictions of offenders, developing suspect prioritisation system based on empirical research and enhancing intelligence-led policing and the use of informations.” (Alison 2005)

From the list of functions within the quote above, it may be seen that the role of the psychologist in assisting the police can be wide-ranging.

4.2.2 Crime Analysis

Crime Analysis (sometimes also called intelligence analysis) is one field of work which draws upon Forensic Psychological methods. Crime analysts are generally employed by the police (or policing agencies, for example in the UK the National Crime and Operations Faculty and the National Crime Squad) in order to analyse crime data to aid the police carry out their roles.

One of the most common roles of crime analysts is that of case linkage. This process involves the linkage of crime based on the similarities in the behaviours of the offenders as reported by the victim or as inferred from the crime scene. For example, let us examine a rape case committed by a stranger on a woman walking home alone after a night out with her friends. Crime analysts could use the details of this case – the fact that she had just left a night club, that the rapist took some of her clothing away from the scene with him, the contents of the threats used towards the woman – in order to check against an already established database of similar crimes to see whether there are any similarities to past crimes. If matches are found – the same threats were used, similar items of clothing taken by a rapist, and it was in a close geographical location to another rape – then this information can be used by the police to investigate the potential that the same individual offender has committed both crimes. This allows the focusing of the resources of the investigation in order to avoid duplication of work.

4.2.3 Offenders Profiling or Criminal Investigative Analysis

Offender Profiling has received a great deal of attention from the media in recent years. Media reporting of the utilisation of Forensic Psychologists in high profile cases has introduced the general public to the notion of offender profiling. While this has raised the profile of the field, it could be argued that the (largely) sensationalist portrayal of profiling resulted in a general confusion of what profiling actually is, how often it is done and who does it. This uncertainty amongst the general public is not altogether surprising however, as there is an absence of an agreed definition of the term ‘profiling’, even in academic circles.

What we can be clear about is that profiling uses information gleaned from the crime scene relating to the offender’s behaviour during the crime. This can be pooled with other information, such as victim statements (if available), in order to draw conclusions about the nature of the person who committed the crime.

Was the crime planned meticulously or was it impulsive? Does the offender live locally to the crime scene? What age range is the offender likely to fall into? What gender is the offender? This information can then be used to aid the police in investigations and in targeting resources.

But how exactly is a profiler able to look at the scene and use this to specify the characteristics of the offender? The answer to this question is not entirely clear mainly because different people involved in offender profiling can, and do, use a variety of techniques in order to reach their conclusions. Even those individuals who claim to be working from the same theoretical standpoint can still vary in how the theory is applied to any given case.

4.2.4 Interviewing, Detecting Deception and Eye Witness Research

One of the most important tasks during investigation is collecting reliable evidence in order to put together a case of what happened during the event in question. One of the main sources of this evidence is the people who were eyewitnesses to the event. In order to gain this information, an interview needs to be conducted by the investigating police officers with the aim of gaining as much accurate information from the witness as possible. In addition, once the suspect has been identified, he or she too is interviewed in order to gain his or her view of events and to possibly extract a confession to the crime. Hence the interview (whether with a witness or suspect) and the manner in which it is conducted can be crucial to a case.

It is not surprising, therefore, when you think of the processes (those relating to memory and the retrieval of memory) that are involved in the interview situation, the psychologists have been interested in this area for years. Given research findings such as those that state that the recall of events by witness can be manipulated by the interviewer (either intentionally or unintentionally – for example, by the type of questions asked), it is clear that those carrying out the interviews need to receive training in how to conduct the interviews appropriately.

Psychologists have been instrumental in developing guidance and advice on how best to interview witnesses and suspects and have also provided training to various police forces on these techniques. The police can also use psychologists in order to gain advice on how to interview particular types of witnesses or suspects. For example, psychologists have conducted research into interviews with vulnerable witnesses such as the young, the elderly and learning disabled witnesses. This research can be used to inform the police on how best to retrieve the information that they require from such witnesses without causing them too much stress while at the same time ensuring that the information received is as accurate as possible.

Research performed by Forensic psychologists investigating the detection of deception also has useful applications for the police when interviewing witnesses and in particular suspects.

4.2.5 Police Psychology

The information here, thus far, been concerned with the application of psychological knowledge to assist in police investigation. However, there is

another field within which the work of Forensic Psychologists, and the application of their knowledge, is useful to the police. Like many organisations, the police force itself presents its own challenges – what type of person makes a good police officer? What is the best way to train police officers? How might the attendance at unpleasant scenes of crime, or repeated exposure to negative events, impact on an individual and how are those affected in this way best treated?

This area of work is not a new one – psychologists, both Occupational and Forensic, have been advising the police on such matters for the last twenty-five years or so. Psychologists have contributed their knowledge to the process of police officer recruitment through the introduction of psychometric tests which measure psychological characteristics that may be important in relation to such work. These could assess, for example, whether a person is an assertive individual, open to persuasion, and conscious of detail. Psychologists have also provided advice on the composition of interviews and assessment centres which will eliminate those who do not have the necessary qualities for the role as well as providing an indication of those who will prosper in such a role.

Another important area of police interest where psychologists have an ongoing input is the moderation of police stress. The stress faced by police officers is somewhat different from that in other types of employment. Whereas stress can be elevated in most jobs through organisational change, such as decreased workload or a pay rise, the police can be faced with unexpected, perhaps threatening, situations at any time during their daily work. These events, due to their unpredictable nature, cannot necessarily be mediated by organisational change. So the police also need stress management measures that can assist at an individual level, as and when they are needed. Psychologists have been instrumental in advising the police on what mechanisms would be beneficial (such as peer counselling and self-help programmes), but will also provide professional services to police officers who require more intensive stress management.

4.2.6 Expert Witness

Court cases can involve complex issues including the presentation of information that is judged to be beyond the knowledge of the average layperson who may sit on a jury. In such situations, the court permits the calling of an expert witness who, by definition, has an expertise relating to the issue in question. Under the circumstances expert witnesses are permitted to provide their opinion (rather than the facts) on the issue being discussed.

The way the expert witnesses are called to the court, however, varies from one jurisdiction to another. For example, in some countries within Europe, an expert witness is called by the court itself in order to provide information as and when it is needed. However, in the UK and USA, the expert is instructed by either the defence or prosecution in order to provide extra strength to their version of events.

The use of the psychologist as an expert witness has, in the past, been constricted by the notion of the expert having to provide information that is beyond the knowledge of the average person. Historically then, the admissibility of a psychologist's opinion was often limited to provide evidence relating to mental impairment or the psychological functioning of an individual. However, in recent years, the psychologists' expertise has been increasingly recognised and they are

now being called upon as evidence in relation to a wide variety of issues. Some examples of these are the impact that the interviewing techniques have on a suspect or witness, the reliability of eyewitness testimony, the clinical assessment of suspect or witness, or the use of profiling techniques during an investigation.

4.2.7 Forensic Psychologists and Assessment and Treatment of Offenders

Forensic Psychologists, especially within Australia, Canada and the UK, are heavily involved in work concerning the assessment, rehabilitation and management of offenders, either in the community or when held in incarceration. This role can involve working with the offenders to reduce their likelihood for reoffending in the future or a more clinical role addressing the psychological needs of offenders. These psychological needs may (or may not) result from the effects of crime they committed (for example the development of post traumatic stress disorder or realisation of the impact of their offence on their victim) or the environment within which they are held (for example developing depression due to being away from the family or anxiety brought on by respective bullying from other prisoners). This work can be both varied and challenging in nature.

One of the first and ongoing concerns of a Forensic Psychologist working with offenders post-sentence is the assessment of the offenders. This encompasses an in-depth analysis of their risk of reoffending, their risk of harm (to others as well as themselves) and their needs (such as accommodation, finances and mental health, for example).

These assessments can be used in the management of the offenders' highlighted risks and needs, informing the planning of the activities that the offenders will undertake during their sentence. This could include the provision of basic skills courses, treatment programmes, one to one work on the particular issues, and so on.

In addition, if an offender is on a community sentence and has been assessed to be high risk to the public, then it may be the case that the offender becomes subject to the monitoring arrangements in order to reduce the risk that he or she poses. The forensic psychologist can provide an input to each of these arrangements on an operational level but can also provide managerial and advisory support to those delivering such interventions.

In the recent years there has been a growth in the use of treatment programmes with the offenders. Forensic Psychologists have been active in this development contributing to the design, delivery and management of programmes which attempt to address the offenders' thoughts, attitudes and behaviours that contribute to their offending behaviour, and prevent further offending.

Psychologists are also involved in the management of these programmes, ensuring that the right offenders are placed on such programmes and that the programmes are delivered in the manner in which the designer intended. Research has shown that badly delivered programmes can be ineffective but at worst be damaging.

However, the role of the prison or probation psychologist is not limited to rehabilitation related work. Forensic psychologists within these settings can also be involved in undertaking research, overseeing training of prison or probation

staff, preparing reports for the courts detailing the risk level, needs and other information relating to the individual offender, attending court, attending team and area meetings and the inevitable administration!

4.2.8 Forensic Psychologists and Academia / Research

With the growth of interest in Forensic Psychology in the recent years, there has been an increased demand for courses which teach the theory and practice of Forensic Psychology. With the inevitable growth in Forensic Psychology courses, there has been a corresponding increase in the number of Forensic Psychologists working within academia.

So what do those people actually do? Well, the obvious answer is that they teach students about Forensic Psychology: about the psychology of criminal behaviour, of the courtroom, psychology and investigation, the assessment and treatment of offenders and also about how to carry out criminal psychological research. This teaching can be at undergraduate or postgraduate level and can be delivered in a variety of different ways.

However, the role of academic Forensic Psychologist is not only limited to teaching. The other main role of academics is to carry out research within their field of interest. Most academics have their own research interests that develop over time and they are usually encouraged by their employers to expand their knowledge of these specialisms by researching them further. The ability to do this can often be dependent on a variety of outside forces, however, such as the availability of funding and access to privileged data or to imprisoned individuals. From a personal point of view, while at times this work can be frustrating, tedious and time consuming, it is also very interesting and hugely rewarding. Most Forensic Psychologists who work in universities also are required to be involved in professional practice such as giving advice in some of the many ways outlined in this Unit.

Self Assessment Questions 1

1) What do you mean by the clinical role of the Forensic Psychologist?

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2) Describe the experimental role played by the Forensic Psychologist?

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3) What is the actuarial role of the Forensic Psychologist?
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4) Discuss the advisory role of the Forensic Psychologist?
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5) Write true (✓) or false (×) as answer:

- a) The ways in which psychologists can contribute extends well beyond the process of profiling offenders. ()
- b) One of the most common roles of crime analysts is that of case linkage. ()
- c) Offender profiling has not received attention from the media upto now. ()
- d) Reliable evidence can be collected from eyewitness. ()
- e) Expert witnesses are permitted to provide their opinion on the issue being discussed. ()

4.3 SOME SPECIFIC FUNCTIONS OF A FORENSIC PSYCHOLOGIST

For our purposes following Bartol and Bartol (2008) Forensic Psychology can be divided into five subspecialties and these are:

- 1) Police psychology
- 2) Psychology of crime and delinquency
- 3) Victimology and victim services,
- 4) Legal psychology, and
- 5) Correctional psychology.

Specific examples of the functions that Forensic Psychologists may be asked to perform include the following:

- 1) *Police Psychology (Also discussed in subsection 4.2.5)*
 - Assist police department in determining optimal shift schedules for their employers.

- Assist police in developing psychological profiles of serial offenders.
- Establish reliable and valid screening procedures for law enforcement officer positions at various police and sheriff departments.
- Train police officers on how to deal with mentally ill persons.
- Provide counselling services to officers after a shooting incident.

2) *Psychology of Crime and Delinquency*

- Evaluate the effectiveness of preschool intervention strategies designed to prevent violent behaviour during adolescence.
- Conduct research on the development of psychopathy.
- Consult with legislators and governmental agencies as a research policy adviser on prevention of stalking.
- Consult with school personnel on identifying troubled youth who are potentially dangerous.
- Develop a psychological test for assessing risk among the mentally ill.

3) *Victimology and Victim Services*

- Evaluate and treat persons who are the victims of crime or witness of crime.
- Conduct psychological assessments for personal injury matters having to do with such things as auto accidents, product liability, sexual harassment and discrimination, and medical negligence or workers' compensation.
- Educate and train victim service providers on psychological reactions to criminal victimisation, such as posttraumatic stress disorder.
- Assess, support, and counsel those who provide death notification services.
- Educate service providers on the impact of multiculturalism when victims seek mental health and support services.

4) *Legal Psychology*

- Conduct child custody evaluations, visitation risk assessments, and child abuse evaluations.
- Assist attorneys in jury selection through community surveys and other research methods.
- Perform evaluations of a defendant's competency to stand trial.
- Consult with attorneys and the courts concerning custody decisions, conflict resolution, and the validity of assessment procedures used in the evaluation of various psychological conditions.
- Conduct competency evaluations for the civil court.

5) *Correctional Psychology*

- Establish reliable and valid screening procedures for correctional officer positions at correctional facilities.
- Evaluate the effectiveness of a variety of existing programmes (a process called programme evaluation) for juvenile and adult offenders, such as victim-offender reconciliation programmes, sex offender treatment, or health education programmes.

- Develop a stress management for correctional personnel.
- Assess the development of a system for classifying prison inmates for placement within a correctional facility.

4.4 LET US SUM UP

You have learned in this Unit about the roles and functions of the Forensic Psychologists. The roles assigned to the Forensic Psychologist are the clinical role, the experimental role, the actuarial role, and the advisory role. The clinical role focuses primarily upon a scientific determination of the mental state of the offender. In their experimental role, Forensic Psychologists apply established experimental data to the events of a case to produce an authoritative interpretation of what transpired. The actuary role involves the Forensic Psychologist providing information on the probabilities of certain events occurring or in conjunction with one another. The advisory role involves the use of the Forensic Psychologist's expertise in order to advise the police, courts and prison and probation services.

As you have read in this Unit the functions of the Forensic Psychologist with the criminal justice system take many routes depending on the specialism of the particular Forensic Psychologist. From aiding the police in their investigations advising in the selection of police officers, providing expert evidence to the court, working with offenders, conducting assessments and interventions, carrying out research or imparting their knowledge to future Forensic Psychologists, the functions are varied and challenging.

4.5 UNIT END QUESTIONS

- 1) Mention two functions of the Forensic Psychologist in the subspecialty 'police psychology'.
- 2) Mention three functions of the Forensic Psychologist in the subspecialty 'psychology of crime and delinquency'.
- 3) In your opinion what are the two most significant functions of the Forensic Psychologist in the subspecialty 'victimology and victim services'?
- 4) State any two functions of the Forensic Psychologist in the subspecialty 'legal psychology'.
- 5) According to you what are the two most vital functions of a Forensic Psychologist in the subspecialty 'correctional psychology'?

4.6 GLOSSARY

Academia	: Academic world
Bullying	: Using strength or power to coerce others by fear
Collating	: Analysing and comparing (texts, statements etc.) to identify points of agreement and difference
Empirical Research	: Research based on experiment
Eyewitness	: A person who has personally seen a thing done or happen and can give evidence of it

Incarceration	: The state of being imprisoned
Rape	: The act of forcing a woman to have sexual intercourse against her will
Reconciliation	: Restoration to harmony
Suspect	: A person suspected of crime

4.7 SUGGESTED READINGS AND REFERENCES

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4.8 ANSWERS TO SELF ASSESSMENT QUESTIONS

- 1) a) ✓
- b) ✓
- c) ×
- d) ✓
- e) ✓

UNIT 1 YOUNG AND ADULT OFFENDERS

Structure

- 1.0 Introduction
- 1.1 Objectives
- 1.2 Meaning and Definition of Offenders/Criminal
 - 1.2.1 Classification of Offenders
 - 1.2.2 Theories of Classification
 - 1.2.3 Other Approaches to Classification
- 1.3 Young and Adult Offenders
 - 1.3.1 Social Disorganisation
 - 1.3.2 Other Causative Conditions Leading to Criminal Behaviour
 - 1.3.3 Differential Association
 - 1.3.4 Labelling
 - 1.3.5 Male Phenomenon
- 1.4 Risk Factors
 - 1.4.1 Individual Risk Factors
 - 1.4.2 Mental Disorders
 - 1.4.3 Family Environmental and Societal Factors
 - 1.4.4 Prevention
- 1.5 Adult Offenders
 - 1.5.1 Types of Crimes by Adult Offenders
 - 1.5.2 Crime Committed by Adult Offenders
- 1.6 The Crime Law
 - 1.6.1 Trends
 - 1.6.2 Violent Crimes
- 1.7 Let Us Sum Up
- 1.8 Unit End Questions
- 1.9 Glossary
- 1.10 Suggested Readings

1.0 INTRODUCTION

In this unit you will be learning about the meaning and definitions of young offenders and adult offenders. You will also learn about the description of these offenders and the various causative factors leading to youngsters taking to criminal activities and behaving in deviant manner. We will classify the offenders and indicate the different kinds of offenders within young offenders. We will also deal with the various consequences these deviant behaviours will have on the society. We will also present the laws relating to dealing with such offenses. While laws will help to control crime and deviance, it is equally important to prevent such crimes and deviance from arising. For this we will present in this unit the various preventive measures to help youngster avoid deviant behaviours and criminal activities. This is followed by dealing with the adult offenders and the types of crimes that they commit and the various laws related to the same. The latest trends in regard to these crimes will also be presented.

1.1 OBJECTIVES

After completing this unit, you will be able to:

- Define young offenders;
- Describe the characteristic features of the young offenders;
- Elucidate the causes for such offenses in the youngsters;
- Analyse the laws related to such youngsters offenses;
- Explain the preventive measures to restrain youngsters taking to deviance;
- Define adult offenders;
- Describe the types of offenders in this category of adult offenders;
- Analyse the causes related to the criminal activities of adult offenders; and
- Explain the laws related the adult crimes.

1.2 MEANING AND DEFINITION OF OFFENDER/ CRIMINAL

According to the Webster's Revised Unabridged Dictionary, offender is one who violates any law, divine or human; a wrongdoer. Crime is the breach of rules or laws for which some governing authority (via mechanisms such as legal systems) can ultimately prescribe a conviction. Individual human societies may each define crime and crimes differently. While every crime violates the law, not every violation of the law counts as a crime. For example: breaches of contract and of other civil laws may rank as "offences" or as "infractions".

Modern societies generally regard crimes as offences against the public or the state, distinguished from torts. The latter are offences against private parties that can give rise to a civil cause of action. When informal relationships and sanctions prove insufficient to establish and maintain a desired social order, a government or a state may impose more formalised or stricter systems of social control. With institutional and legal machinery at their disposal, agents of the State can compel populations to conform to codes, and can opt to punish or attempt to reform those who do not conform.

1.2.1 Classification of Offenders

A method for classifying offenders has to be based upon personal or psychiatric or psychological factors, or situational environmental factors, or a combination of both psychological and situational elements. Besides the above, there are also the personality involvement in every criminal act and the presence of a certain situation or set of circumstances. The issue that should be considered here is that when classifying any offender one must take the history of the individual's criminal behaviour.

A person who commits only a single crime differs in personality make up from the one who repeats a criminal act several times or commits various crimes. The classification must reflect this, and the history of the offender's antisocial and criminal behaviour will indicate whether the person should be labeled an acute (momentary) or a chronic (habitual) offender.

Any classification, be it of plants, animals, or human beings, is to some extent artificial because there will always be individual characteristics or a set of characteristics which can properly be placed in more than one group. In our own attempt at classification, dealing as we often do with emotionally and mentally abnormal offenders, it is frequently difficult to distinguish between a criminal who is neurotic and one who suffers from a character disorder. Yet in spite of the shortcomings inherent in classification, we must attempt to categorise offenders if we are going to be successful in dealing with them. If we can classify them in a rational way, we can diagnose their characteristics, treat them, and predict their future behaviour. However, such classification means that we will have to examine carefully each criminal to be able to find the characteristic and predominant traits that will tell us in which particular category the individual (offender) belongs.

In trying to arrive at a system of classification in the field of criminology, we are faced with two problems — classifying the crimes and classifying the criminals. The first classification is a legal one, having its origin in criminal law. The law differentiates between crimes committed against the person (that is, crimes of violence, such as assault, murder, or sexual attacks), those committed against property (burglary or robbery), and crimes against the State. The law thus attempts to classify the criminal according to his act. This legally and sociologically colored method of classification is imperfect and unrealistic in the great majority of cases because an offender may very easily fit into two or all three of the categories. For example, he may kill and commit a burglary, thus committing crimes against person and property.

One way of classifying offenders is to divide them according to those who commit crimes which are primarily directed against society (manifest criminals, such as gangsters), and those who commit crimes which primarily express their inner conflicts which are symptomatic or reactive criminals, such as the kleptomaniac, pyromaniac, sex offender, and a certain type of murderer. On the whole, individuals suffering from a neurotic or psychotic condition or from a character disturbance can also commit crimes which are mainly due to their mental condition. However, the drawback to such a classification is that the overwhelming majority of all offenders manifest inner conflicts.

1.2.2 Theories of Classification

Theories of classification have been many Lombroso expounded a type of classification based upon different criminal types. He divided criminals into:

- 1) The born criminal
- 2) The epileptic criminal
- 3) The criminal of irresistible passion
- 4) The insane and the feeble-minded criminal, including those of border-line mentality
- 5) The occasional criminal.

The last group, that is the occasional criminal was subdivided into (i) pseudocriminal, (ii) the criminaloid, and the (iii) persistent offender of nonabnormal type.

Enrico Ferri divided criminals into occasional offenders and habitual offenders. To the first group belonged those whose criminal acts were due to external circumstances and who were driven to commit crimes because of a special passion. To the second group belonged those who were obviously insane or mentally defective, and those mental deviates with inborn criminal tendencies (the so-called psychopaths), and finally the persistent early offenders whose criminal behaviour was caused by environmental elements.

Franz von Liszt criticized the classification based upon the motivation of the criminal and instead followed a penological and sociological viewpoint, distinguishing between momentary offenders and corrigible and incorrigible permanent offenders. Although this classification is clear-cut, it neglects to include offenders who are legally insane and is therefore incomplete and inaccurate.

In order to avoid such a pitfall, Charles Goring classified criminals into physical, mental, and moral types.

An interesting method of classification was proposed by Ernst Kretschmer, who was the first to try to correlate the physical appearance of a person with his mental condition. Kretschmer's constitutional classification is based upon the study of people as psychobiological, or mental-physiological, entities.

He established three types of personalities

- i) the athletic
- ii) the asthenic-schizothymic-leptosomic, and
- iii) the pyknic.

He stated that there exists a clear biological connection between mental disposition toward schizophrenia and the asthenic-schizothymic-leptosomic and the athletic body builds and also between mental disposition toward a manic-depressive condition and the pyknic body type.

His theory was applied to the classification of criminals, noting in particular that offenders who committed serious crimes were of the asthenic-schizothymic-leptosomic body build, while those offenders who committed less serious crimes had a pyknic body build.

While Kretschmer's idea of constitution is limited to a person's hereditary qualities, Olof Kinberg includes a person's reactions if they are the result of his predisposition or of his environment. Kinberg, in collaboration with Sjobring, gives a psychological classification wherein psychobiological correlation is not so predominant as in Kretschmer's hypothesis.

Classification of criminals, it must be noted that can only be valid on a causative or on an etiological basis. To classify according to the crime committed is untenable because the cause or causes of the crime are interrelated with the perpetrator and the person's environmental situation. Therefore, we can classify an offender only if we see the seriousness of the individuals' crime in relation to that person's personality make up. This is as true for the momentary offender as for the habitual one.

1.2.3 Other Approaches to Classification

While classifying the crime one must also consider the frequency of the commission of the crime as it reflects the degree of inclination toward crime and of abnormality present in the offender. Such classification, however, presupposes that criminals be carefully examined, particularly to determine how much of the ego participated in the criminal act.

Also, to ascertain the causative factors responsible for criminal activities in the offender, we must examine each person individually and give each case a special consideration. Sometimes an offender manifests signs of a character disturbance and yet still may have anxieties and feelings of guilt. Or, on the surface the offender may show signs indicating a neurosis, while deep within, the individual may have a character deformation, which will put the offender into another group altogether. Also it must be kept in mind that a criminal may appear to be suffering from an anxiety hysteria, which may very well cover up a schizophrenic condition. The latter condition will place the offender in the psychotic classification, and not the neurotic one.

Another important point to consider is whether or not a criminal's aggressive drive, which has become antisocial and which is the product of the offender's distorted emotional and mental condition. Only a careful examination of, the offender, including his psychobiological development and the person's own personality reaction, will determine the causative factors responsible for the crime and the offender's place in the classification system.

A system of classification which is methodologically sound may be limited in scope. The purpose of the formation of categories in criminology is to determine how to deal with the offender in a rational way, be it by the court, the district attorney, the prison official, the probation officer, or the psychiatrist. An operational approach is therefore necessary, which must take into consideration the offender's environmental background, immediate situation, and personality make up.

The classification will also have to be based on both sociological and psychological factors, the division of physical and mental diseases into acute and chronic ones and the degree of severity of the disorder. This division can also be used to great advantage in classifying offenders because it connotes at once the degree of criminal involvement of the personality of the perpetrator. Therefore, offenders can be divided into two groups viz., (i) acute or momentary offenders and (ii) chronic or habitual, offenders.

In designating a criminal as acute or chronic, we must take into consideration the seriousness of the crime or crimes committed, as well as the frequency and time factor. Otherwise, an individual who commits one premeditated murder would be considered simply an acute criminal, while another individual who repeatedly commits harmless or nuisance thefts would be considered a chronic offender. Obviously, this is wrong because the first individual is more dangerous than the second, even though the latter may have a personality defect. While such a personality defect may also be true of the murderer, the person might display definitely some emotional or mental imbalance. Such a person's personality make up will be involved too much with the person's act to put him or her into the category of an acute offender.

The offenders can also be classified as given below:

- 1) Opportunist: An opportunist offender seeks out his victim's regularly until caught.
- 2) Experimenter: This type of offenders abuses as a part of sexual exploitation.
- 3) Inadequate and opportunistic: This type of offender is mentally inadequate or has a stunned mental development.
- 4) Pedophile: A pedophile has no sexual interest in adults and is sexually attracted to only prepubescent children, under the age of thirteen.
- 5) Ephebophile: An ephebophile is sexually attracted to only post-pubescent children, adolescents between the ages of fourteen and eighteen.
- 6) Pederast : This type of offender engages in anal intercourse with boys under the age of eighteen.
- 7) Non exclusive: This type of offender is married or in a relationship with another adult but clearly desires children sexually and uses every opportunity to find situations where sexual contact with a child can happen.
- 8) Exclusive offender: This type of offender is attracted only to children.
- 9) Sex offenders: A sex offender is an individual who is either an ephebophile or a pedophile.

Self Assessment Questions

- 1) What do you understand by Offenders? Describe the characteristic of offenders.
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- 2) How will you classify the offenders?
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- 3) What are the different theories of classification?
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- 4) Explain with suitable examples the various offenders as discussed by the criminologists in the above text?

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- 5) Name the various kinds of Offenders? Elaborate with examples.

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1.3 YOUNG AND ADULT OFFENDERS

A young offender or juvenile offender is a person who has been convicted or cautioned for a criminal offence. Criminal justice systems often deal with young offenders differently from adult offenders, but different countries apply the term 'young offender' to different age groups depending on the age of criminal responsibility in that country. The United Kingdom has three separate and distinct criminal justice systems: England & Wales, Northern Ireland, and Scotland. Young offenders are often dealt with by the Youth Offending Team.

A Juvenile Delinquent is one who repeatedly commits crime. These juvenile delinquents sometimes have mental disorders/behavioural issues such as post traumatic stress disorder or bipolar disorder, and are sometimes diagnosed with conduct disorder partially as a result of their delinquent behaviours.

In England & Wales the age of criminal responsibility is set at 10. Young offenders aged 10 to 17 (i.e. up to their eighteenth birthday) are classed as a juvenile offender. Between the ages of 18 and 21 (i.e. up to their twenty-first birthday) they are classed as young offenders. Offenders aged 21 and over are known as adult offenders. In Northern Ireland it is 10, and in Scotland the age of criminal responsibility is set at 8, one of the lowest ages of criminal responsibility in Europe.

Minors who commit sexual crimes are adjudicated in a criminal court as sexual crimes are defined as sexually abusive behaviour committed by a person under the age of 18 that is perpetrated "against the victim's will, without consent, and in an aggressive, exploitative, manipulative, or threatening manner.

It is important to examine the prevalence data and the characteristics of juvenile sex offenders, in order to obtain a precise understanding of this heterogeneous group. In the Europe and other advanced countries, there is a mandatory reporting of such offences and this mandatory reporting laws makes it a necessity for the law enforcement agency to report any incidents of disclosed sexual abuse.

Criminal youths or young offenders may further be classified as:

- i) Pseudo criminals: Those who may commit a criminal act but are not seriously out of social control. Their criminality is only incidental to the central problem they represent, namely, failure of society at large.
- ii) Amoral criminals: Those who have somehow failed to internalise and fully accept the moral principles of their socially-oriented families and sub-culture.
- iii) Real criminals: Those who have imbibed criminal values and do not suffer from any guilt-feeling when violating the law.

It is important to find out the various causes for youth crimes or crimes committed by young offenders. These causes are presented below.

1.3.1 Social disorganisation

Social disorganisation is one of the important causes. Current positivist approaches generally focus on the culture. A type of criminological theory attributes variation in crime and delinquency over time and among territories, to the absence or breakdown of communal institutions (e.g. family, school, church and social groups.) and communal relationships that traditionally encouraged cooperative relationships among people.

Merton, a sociologist suggested five adaptations to the above approach based on his Strain theory, and these are (i) Innovation (ii) Retreatism (iii) Ritualism (iv) Conformity (v) Rebellion. Let us elaborate each of these below.

- i) *Innovation*: Individuals who accept socially approved goals, but not necessarily the socially approved means.
- ii) *Retreatism*: Those who reject socially approved goals and the means for acquiring them.
- iii) *Ritualism*: Those who buy into a system of socially approved means, but lose sight of the goals. Merton believed that drug users are in this category.
- iv) *Conformity*: Those who conform to the system's means and goals.
- v) *Rebellion*: People who negate socially approved goals and means by creating a new system of acceptable goals and means.

A difficulty with strain theory is that it does not explore why children of low income families would have poor educational attainment in the first place. More importantly is the fact that much youth crime does not have an economic motivation. Strain theory fails to explain violent crime, the type of youth crime which causes most anxiety to the public.

1.3.2 Other Causative Conditions Leading to Criminal Behaviour

There are many reasons why young people may get into trouble. These may stem from reasons including:

- Lack of discipline at home and in school;
- Bad communication between parents and teenagers;
- Peer pressure;
- Violence at home;

- Money problems;
- Poor housing;
- Instability;
- Low grades at school;
- Availability of drugs and alcohol;
- Bullying and alienation;
- Hyperactivity;
- Learning problems;
- Mental health problems.

1.3.3 Differential Association

The theory of Differential association also deals with young people in a group context, and looks at how peer pressure and the existence of gangs could lead them into crime. It suggests that young people are motivated to commit crimes by delinquent peers, and also they learn criminal skills from them. The diminished influence of peers after men marry has also been cited as a factor in desisting from offending. There is strong evidence that young people with criminal friends are more likely to commit crimes themselves. However it can also be that the offenders prefer to associate with one another, rather than delinquent peers causing someone to start offending. Furthermore there is the question of how the delinquent peer group became delinquent initially.

1.3.4 Labeling

Labeling theory states that once young people have been labeled as criminal they are more likely to offend. (Eadie & Morley: 2003 p. 552) The idea is that once labeled as deviant a young person may accept that role, and be more likely to associate with others who have been similarly labeled. (Eadie & Morley: 2003 p. 552). Labeling theorists say that male children from poor families are more likely to be labeled deviant, and that this may partially explain why there are more lower-class young male offenders. (Walklate: 2003 p. 24)

1.3.5 Male Phenomenon

Youth crime is disproportionately male and theorists and others have examined why this is the case. One suggestion is that ideas of masculinity may make young men more likely to offend. Being tough, and reckless may be a way young men attempt to express their masculinity. Acting out these ideals may make young men more likely to engage in antisocial and criminal behaviour. Alternatively, rather than young men acting as they do because of societal pressure to conform to masculine ideals; young men may actually be naturally more aggressive, daring etc. As well as biological or psychological factors, the way young men are treated by their parents may make them more susceptible to offending. According to a study, adolescent males who possess a certain type of variation in a specific gene are more likely to flock to delinquent peers.

1.4 RISK FACTORS

There are many risk factors which contribute to a young person becoming a deviant or a criminal. These factors include the following:

- i) Individual risk factors
- ii) Mental disorders
- iii) Family and societal environment.

These are being discussed in detail below.

1.4.1 Individual Risk Factors

Individual psychological or behavioural risk factors that may make offending more likely include intelligence, impulsiveness or the inability to delay gratification, aggression, empathy, and restlessness (Farrington: 2002). Children with low intelligence are likely to do worse in school. This may increase the chances of offending because low educational attainment, a low attachment to school, and low educational aspirations are all risk factors for offending in themselves. Children who perform poorly at school are also more likely to truant, which is also linked to offending. If strain theory or sub cultural theory is valid poor educational attainment could lead to crime as children when they grow up are not in a position to take up a worthwhile job, earn and have wealth to spend on essentials. However it must be born in mind that defining and measuring intelligence is troublesome. Young males with a certain deficient background are especially likely to be impulsive which could mean they disregard the long-term consequences of their actions, have a lack of self-control, and are unable to postpone immediate gratification.

1.4.2 Mental Disorders

Conduct disorder usually develops during childhood and manifests itself during an adolescent life. Some juvenile behaviour is attributed to the diagnosable disorder known as conduct disorder. Juvenile delinquents who have recurring encounters with the criminal justice system are sometimes diagnosed with conduct disorders because they show a continuous disregard for their own and others safety and property. Once the juvenile continues to exhibit the same behavioural patterns and turns eighteen he is then at risk of being diagnosed with antisocial personality disorder and much more prone to become a serious criminal offender. One of the main components used in diagnosing an adult with antisocial personality disorder consists of presenting documented history of conduct disorder before the age of 15. These two personality disorders are analogous in their erratic and aggressive behaviour. This is why habitual juvenile offenders diagnosed with conduct disorder are likely to exhibit signs of antisocial personality disorder as they mature. Once the juveniles reach maturation their socially unacceptable behaviour will have grown into a life style and they develop into career criminals. "Career criminals begin committing antisocial behaviour before entering grade school and are versatile in that they engage in an array of destructive behaviours, offend at exceedingly high rates, and are less likely to quit committing crime as they age.

1.4.3 Family Environment and Societal Factors

Family factors which may have an influence on offending include; the level of parental supervision, the way parents discipline a child, parental conflict or separation, criminal parents or siblings, and the quality of the parent-child relationship. Children brought up by lone parents are more likely to start offending than those who live with two natural parents, however once the attachment a

child feels towards their parent(s) and the level of parental supervision are taken into account, children in single parent families are no more likely to offend than others. Conflict between a child's parents is also much more closely linked to offending than being raised by a lone parent. If a child has low parental supervision they are much more likely to offend. Many studies have found a strong correlation between a lack of supervision and offending, and it appears to be the most important family influence on offending. When parents commonly do not know where their children are, what their activities are, or who their friends are, children are more likely to truant from school and have delinquent friends, each of which are linked to offending. A lack of supervision is connected to poor relationships between children and parents, as children who are often in conflict with their parents may be less willing to discuss their activities with them. Children with a weak attachment to their parents are more likely to offend.

Similarly if the society itself is defective in some way, or that there is a disorganisation of the society, there is no rule of law and let us say that the particular society has always been at war with other societies, depriving its own people in many ways, or where a society (tribe for instance) could be a tribe that indulges in looting people and so on, children brought up in such societies will also tend to become so as they grow up.

1.4.4 Prevention

Delinquency Prevention is the broad term for all efforts aimed at preventing youth from becoming involved in criminal, or other antisocial, activity. Increasingly, governments are recognising the importance of allocating resources for the prevention of delinquency. Because it is often difficult for states to provide the fiscal resources necessary for effective prevention, organisations, communities, and governments are working more in collaboration with each other to prevent juvenile delinquency.

With the development of delinquency in youth being influenced by numerous factors, prevention efforts are comprehensive in scope. Prevention services include activities such as substance abuse education and treatment, family counseling, youth mentoring, parenting education, educational support, and youth sheltering.

Reductionism means over-simplifying complex experiences and circumstances by converting them to simple quantities, relying on a psychosocial focus whilst neglecting potential socio-structural and political influences.

Determinism means characterising young people as passive victims of risk experiences with no ability to construct, negotiate or resist risk;

Imputation means. assuming that risk factors and definitions of offending are homogenous across countries and cultures, assuming that statistical correlations between risk factors and offending actually represent causal relationships.

Also when the juvenile offender reaches maturation he or she is likely to continue exhibiting maladaptive behaviours and increase the risk of being cycled through the criminal justice system as an adult offender. Due to the small population of habitual adult and juvenile offenders attributing for the large percentage of violent crimes (i.e. murder and aggravated assault) the criminal justice system should supervise the small population of career criminals in an effort to prevent the spawning of serious violent offenders.

If mental disorders such as conduct disorder go undiagnosed and untreated the juvenile offender has the increased potential to later develop antisocial personality disorder and continue his life as a career criminal. Hence diagnosing and treating these youngsters at an early stage is very essential for prevention of delinquency.

The majority of violent offenders exhibit characteristics of antisocial personality disorder and exhibit it no later than age 15. Antisocial personality disorder is a common diagnosis for a serial killer. Authors Alvarez and Bachman found that one similarity among serial killers was their prior criminal convictions. In this case conduct disorder can become a probable constituent to serial murder if not diagnosed and treated before it fully develops in adulthood as antisocial personality disorder. Both conduct disorder and antisocial personality disorder are categorised as personality disorders under the DSM-IV-TR and share extremely similar definitions as explained above in ‘Mental Disorders’.

Some of the common characteristics include consistent violation of societal norms, aggressive behaviour towards people, and a disassociation to the emotion of empathy. These traits are also common amongst serial killers and if the maladaptive behaviours are not treated they have the potential to conceive a person that fantasizes about killing several victims and then fulfills their impulsivity when they are no longer capable of suppressing it.

Self Assessment Questions

1) What do you understand by young and adult offenders?

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2) Classify the various types of young offenders?

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3) What are the causative factors involved in shaping a young person into an offender?

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4) Define the following:

a) Prevention of crime

b) Societal consequences

c) Differential association

1.5 ADULT OFFENDERS

A normative definition views crime as deviant behaviour that violates prevailing norms. These are the cultural standards prescribing how humans ought to behave normally. This approach considers the complex realities surrounding the concept of crime and seeks to understand how changing social, political, psychological, and economic conditions may affect changing definitions of crime and the form of the legal, law-enforcement, and penal responses made by society

These structural realities remain fluid and often contentious. For example: as cultures change and the political environment shifts, societies may criminalise or decriminalise certain behaviours, which will directly affect the statistical crime rates, influence the allocation of resources for the enforcement of laws, and once again influence the general public opinion.

Similarly, changes in the collection and/or calculation of data on crime may affect the public perceptions of the extent of any given “crime problem”. All such adjustments to crime statistics, allied with the experience of people in their everyday lives, shape attitudes on the extent to which the State should use law or social engineering to enforce or encourage any particular social norm. Behaviour can be controlled and influenced in many ways without having to resort to the criminal justice system.

1.5.1 Types of Crimes Committed by Adult Offenders

Researchers and commentators may classify crime committed by adult offenders into categories, including the following:

- Property crime
- Public order crime
- Violent crime

Property crime

Property crime is a category of crime that includes, among other crimes, burglary, larceny, theft, motor vehicle theft, arson, shoplifting, and vandalism. Property crime only involves the taking of money or property from another person and does not involve force or threat of force against a victim.

Although robbery involves taking property, it is classified as a violent crime, as force or threat of force on an individual that is present is involved in contrast to burglary which is typically of an unoccupied dwelling or other unoccupied building.

Property crimes are high-volume crimes, with cash, electronics (e.g. televisions), power tools, cameras, and jewellery often targeted. "Hot products" tend to be items that are concealable, removable, available, valuable, and enjoyable, with an ease of "disposal" being the most important characteristic.

The various types of property crime include burglary, thefts etc. Let us see what is burglary.

Burglary

Burglary of residences, retail establishments, and other commercial facilities involves breaking and entering, and stealing property. Attempted forcible entry into a property is also classified as burglary.

In India, as of 2008, there were 93742 residential burglaries which was 36% less than the previous years. The clearance rate for burglary is around 36%..

In the United States, burglary rates are highest in August and lowest in February, with weather, length-of-day, and other factors having an effect on rates. There is no specific season for burglary. It happens through the year.

Theft

Theft of cash is most common, over everything else, followed by vehicle parts, clothing, and tools. In 2008, in India, there had been 316761 thefts, of which 38.8% have been convicted. In India theft had increased by 41.5%.

Motor vehicle theft

Motor vehicle theft is a common form of property crime, often perpetrated by youths for joyriding. In India in 2006, the number of motor vehicles stolen were 89880 of which 69447 were two-wheelers. In 2010, there had been 98930 motor vehicles theft. The percentage of cases in this category solved is far lesser and clear data are not available.

Arson

Arson involves any intentional fire setting or attempting to set fire. A frequent motive for arson is insurance fraud, with the fire staged to appear accidental. Other motives for arson include desire to commit vandalism or mischief, for thrill or excitement, for revenge, to conceal other crimes, or as a hate crime. In India according to the National Crime Records Bureau, in 2008 there had been a total of 9249 cases of arson. This about 1% of total IPC cases.

1.5.2 Crimes Committed by Adult Offenders

These may also be classified in terms of the following:

- Organised crime
- Serial crime
- Signal crime
- Verbal offence
- White-collar crime

Let us deal with each of these and elaborate upon the same.

Organised crime

There are two definitions of organised crime. One refers to organised crime any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency; (Maharashtra Control of Organised Crime Act).

Serial crime

A serial killer is typically defined as a person who murders three or more people over a period of more than 30 days, with a “cooling off” period between each murder, and whose motivation for killing is largely based on psychological gratification. Other sources define the term as “a series of two or more murders, committed as separate events, usually, but not always, by one offender acting alone” or, including the vital characteristics, a minimum of at least two murders. The murders may have been attempted or completed in a similar fashion and the victims may have had something in common; for example, occupation, race, appearance, sex, or age group.

Signal crime

Signal crime is a concept in reassurance policing. It centres around the theory that certain crimes or incidents of anti-social behaviour may act as a “signal” to a community that they are at risk. Examples commonly given are vandalism of phone boxes and bus shelters, and people dealing with drugs.

Verbal crime

Cruel words from another person do not necessarily constitute a verbal threat under the law. The difference between a criminal act and a lack of courtesy are the specific violent nature of the threat and the creation of fear in the threatened person. The proper word for such a crime is “assault,” which can be defined as an intended but unsuccessful battery or an act that creates the immediate apprehension of harm. The latter of these two includes a verbal threat. For a threat to be a crime, it must be a threat to do physical harm. Threats to murder or cause serious injury to a person are specific enough to be the basis of a crime.

White-collar crime

Within the field of criminology, white-collar crime has been defined as “a crime committed by a person of respectability and high social status in the course of

his occupation” (Sutherland, 1949). This is a non violent crime, generally for personal gain and often involving money. Basically these crimes are committed for financial gains. Cheating, fraud, and commercial offences committed by administrative or managerial employees, business persons, professionals, or public officials is called white-collar crimes.

1.6 THE CRIMINAL LAW

Criminal law is designed to maintain social order and to protect the authority of the state. In capitalist societies, criminal law is also important in protecting personal property and creating a positive environment for economic activity.

As for criminal law in India, under the constitution, criminal jurisdiction belongs concurrently to the central government and the states. The prevailing law on crime prevention and punishment is embodied in two principal statutes:

- i) The Indian Penal Code and
- ii) The Code of Criminal Procedure of 1973.

These laws take precedence over any state legislation, and the states cannot alter or amend them. Separate legislation enacted by both the states and the central government also has established criminal liability for acts such as smuggling, illegal use of arms and ammunition, and corruption. All legislation, however, remains subordinate to the constitution.

The Indian Penal Code came into force in 1862; as amended, it continued in force in 1993. Based on British criminal law, the code defines basic crimes and punishments, applies to resident foreigners and citizens alike, and recognises offenses committed abroad by Indian nationals.

The penal code classifies crimes under various categories: crimes against the state, the armed forces, public order, the human body, and property; and crimes relating to elections, religion, marriage, and health, safety, decency, and morals.

Crimes are cognisable or noncognisable, comparable to the distinction between felonies and misdemeanors in legal use in the United States. Six categories of punishment include fines, forfeiture of property, simple imprisonment, rigorous imprisonment with hard labour, life imprisonment, and death.

An individual can be imprisoned for failure to pay fines, and up to three months' solitary confinement can occur during rare rigorous imprisonment sentences. Commutation is possible for death and life sentences. Executions are by hanging and are rare—there were only three in 1993 and two in 1994—and are usually reserved for crimes such as political assassination and multiple murders.

Courts of law try cases under procedures that resemble the Anglo-American pattern. The machinery for prevention and punishment through the criminal court system rests on the Code of Criminal Procedure of 1973, which came into force on April 1, 1974, replacing a code dating from 1898. The code includes provisions to expedite the judicial process, increase efficiency, prevent abuses, and provide legal relief to the poor. The basic framework of the criminal justice system, however, was left unchanged.

1.6.1 Trends

A report published by the National Crime Records Bureau compared crime rate from 1953 to 2006. The report noted that burglary declined over a period of 53 years by 38% (from 1,47,379 in 1953 to 91,666 in 2006), whereas murder has increased by 231% (from 9,803 in 1953 to 32,481 in 2006). Kidnapping has increased by 356% (from 5,261 in 1953 to 23,991 in 2006), robbery by 120% (from 8,407 in 1953 to 18,456 in 2006) and riots by 176% (from 20,529 in 1953 to 56,641 in 2006).

In 2006, 51,02,460 cognisable crimes were committed including 18,78,293 Indian Penal Code (IPC) crimes and 32,24,167 Special & Local Laws (SLL) crimes, with an increase of 1.5% over 2005 (50,26,337). IPC crime rate in 2006 was 167.7 compared to 165.3 in 2005 showing an increase of 1.5% in 2006 over 2005. SLL crime rate in 2006 was 287.9 compared to 290.5 in 2005 showing a decline of 0.9% in 2006 over 2005.

Year	Total cog. crimes under IPC	Murder	Kidnapping	Robbery	Burglary	Riots
1953	6,01,964	9,802	5,261	8,407	147,379	20,529
2006	18,78,293	32,481	23,991	18,456	91,666	56,641
% Change in 2006 over 1953	212.0	231.0	356.0	120.0	-38.0	176.0

Source: National Crimes Records Bureau (2006).

1.6.2 Violent Crimes

A violent crime or crime of violence is a crime in which the offender uses or threatens to use violent force upon the victim. This entails both crimes in which the violent act is the objective, such as murder, as well as crimes in which violence is the means to an end, (including criminal ends) such as robbery. Violent crimes include crimes committed with and without weapons. With the exception of rape (which accounts for 6% of all reported violent crimes), males are the primary victims of all forms of violent crime.

Types

Below are some forms of violent crimes outlawed by governmental legal entities

Type	Meaning
Abuse	To use wrongly or improperly used; misuse
Child abuse	Cruelty to children (people under the age of 18)
Sexual abuse	The act of injuring a person during sexual activity without mutual consent for the gratification of the abuser.
Child sexual abuse	When an adult forces a minor to engage in sexual activity, especially without regard for the mental, emotional, and physical well-being of the child who, by government law, cannot consent since it is believed that anyone under the age of 18 years does not have a developed enough understanding of sexuality.

Child-on-child sexual abuse	When a minor abuses another child sexually. No adult is involved.
Assault and battery	An assault involving actual bodily contact
Assault	An unlawful physical attack upon another or threat to do violence to another
Aggravated assault	Assault with the use of weapons or in other circumstances beyond the realm of normal assault
Sexual assault	When a person—regardless of gender—forcefully engages another person in sexual activity without mutual consent.
Battery	An unlawful attack upon another person by beating or wounding, or by touching in an offensive manner
Cruelty to animals	A cruel act upon an animal
Domestic violence	Acts of violence against a person living in one's household or a member of one's immediate family
Homicide	The killing of another human being
Murder	Homicide in certain proscribed conditions
Property damage	Damage to another's property (i.e.: breaking of things, burning, or harming in a devastating manner)
Rape	The unlawful compelling of someone through physical force or duress to have sexual intercourse
Statutory rape	Consensual sexual relations between an adult and a person below the local age of consent.
Robbery	Use of force or threat of force in the commission of theft.

Indeed, in those cases where no clear consensus exists on a given norm, the drafting of criminal law by the group in power to prohibit the behaviour of another group may seem to some observers an improper limitation of the second group's freedom, and the ordinary members of society have less respect for the law or laws in general — whether the authorities actually enforce the disputed law or not.

Legislatures can pass laws (called *mala prohibita*) that define crimes which violate social norms. These laws vary from time to time and from place to place: note variations in gambling laws, for example, and the prohibition or encouragement of duelling in history. Other crimes, called *mala in se*, count as outlawed in almost all societies, (murder, theft and rape, for example). The direct concern of the criminal law is to protect society as a whole and to seek conformity to the rules by which it operates. Moreover, criminal law protects the rights of any given individual in society. Through the instrument of punishment, criminal law protects social values which are considered essential to the order and morale of a society.

1.7 LET US SUM UP

Crime is the breach of rules or laws for which some governing authority (via mechanisms such as legal systems) can ultimately prescribe a conviction.

Individual human societies may each define crime and crimes differently. While every crime violates the law, not every violation of the law counts as a crime; for example: breaches of contract and of other civil law may rank as “offences” or as “infractions”. A young offender or juvenile offender is a person who has been convicted or cautioned for a criminal offence. Criminal justice systems often deal with young offenders differently from adult offenders, but different countries apply the term ‘young offender’ to different age groups depending on the age of criminal responsibility in that country. Criminal law along with protecting the interests of society and the victim, it is equally essential to protect the interests of the criminal too. According to criminologists and sociologists a person commits crime because of the malfunctioning of subsystems and social structures in society rather than because of his personality characteristics. This is more true of youths than of adults. A number of factors have come to affect the thinking and behaviour of the youth today. Some of these are: expansion of education, increasing unemployment, reservation policy of the government, lack of proper care and guidance by the parents, tremendous influence of the mass media, the newly acquired affluence of the young, failure of educational institutions of the peer group in an intermediate stage between leaving the protection of the family, with the distinctive patterns of behaviour and entering the increasingly impersonal and competitive wider society.

1.8 UNIT END QUESTIONS

- 1) Define offenders and classify the same.
- 2) Do You agree that the malfunctioning of criminal law is responsible for the rise of crimes in the youth as well as adult offenders?
- 3) Define violent crimes? What are the various type of crimes associated with it. Explain.
- 4) Explain Adult Offenders? What are the various types of crimes committed by them?
- 5) Define the following:
 - a) Property crime
 - b) Arson
 - c) Burglary

1.9 GLOSSARY

Offender	: one who offends; one who violates any law divine or human; a wrong doer.
Conviction	<ol style="list-style-type: none"> 1) an unshakable belief in something without need for proof or evidence. 2) (criminal law) a final judgment of guilty in a criminal case and the punishment that is imposed; “the conviction came as no surprise”
Breaches	: an act of breaking a law, agreement or code of conduct.

- Acute or a chronic Offender** : high rate and serious offending.
- Neurotic disorder** : former name for a category of mental disorders characterised by anxiety and avoidance behaviour, with symptoms distressing to the patient, intact reality testing, no violations of gross social norms, and no apparent organic etiology.
- Character disorder** : a type of high-level personality disorder with some neurotic characteristics.
- Kleptomaniac** : an obsessive impulse to steal regardless of economic need, usually arising from an unconscious symbolic value associated with the stolen item.
- Pyromaniac** : an uncontrollable impulse to start fires.
- Psychopaths** : a person with an antisocial personality disorder, especially one manifested in perverted, criminal, or amoral behaviour.
- Momentary offenders** : the ones who commit the crime at the spree of the moment.
- Corrigible offenders** : capable of being corrected, reformed, or improved.

1.10 SUGGESTED READINGS

Ahuja Ram (1969). *Female Offenders in India*. Meerut. Meenakshi Publications.

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UNIT 2 CAUSES UNDERLYING CRIMINAL BEHAVIOUR

Structure

- 2.0 Introduction
- 2.1 Objectives
- 2.2 Introduction to Crime and Criminal Behaviour
 - 2.2.1 Crime
 - 2.2.2 Criminal Behaviour
- 2.3 Approaches to Causes of Criminal Behaviour
 - 2.3.1 Social Learning Approach
 - 2.3.2 Cognitive Approach of Bandura
 - 2.3.3 Perceptual Control Theory
 - 2.3.4 Sutherland's Differential Association Theory
 - 2.3.5 General Approach to Crime
- 2.4 Other Approaches to Criminal Behaviour
 - 2.4.1 Neurochemicals in Criminal and Anti- Social Behaviour
 - 2.4.2 Personality Disorders/ Traits and Criminal Behaviour
 - 2.4.3 Environment Influences
 - 2.4.4 Gene-Environment Interactions
 - 2.4.5 Parental Relations
 - 2.4.6 Hormones
 - 2.4.7 Education
 - 2.4.8 Peer Influence
 - 2.4.9 Drug and Alcohol
- 2.5 Controlling Criminal Behaviour
- 2.6 Let Us Sum Up
- 2.7 Unit End Questions
- 2.8 Glossary
- 2.9 Suggested Readings

2.0 INTRODUCTION

In this unit we will be dealing with causes underlying criminal behaviour. We will first define crime and introduce criminal behaviour in terms of what it is and what are its characteristic features etc. We will then deal with the various approaches to the understanding of the causes of criminal behaviour. Some of the theories in this regard which explain crime are the social learning theory, control theory, differential association theory etc. We will then critically examine how these theories are adequate or inadequate in explaining the causes of criminal behaviour. Other important causes such as the biological causes, neurochemical factors, personality disorders, and environmental influences will be taken up and discussed in regard to their causing criminal behaviour. Some of the important familial factors including the background history of the individual, the education level, the peer influence, and the effect of drugs and alcohol as factors influencing criminal behaviour will be discussed in detail. We will also touch upon how

these criminal behaviours could be controlled if we know the causes underlying these behaviours.

2.1 OBJECTIVES

After completing this unit, you will be able to:

- Define and describe Crime and criminal behaviour;
- Elucidate the different approaches to understand the causes of criminal behaviour;
- Explain the theories related to the causes of criminal behaviour;
- Describe the various biological factors causing criminal behaviour;
- Analyse the various psychological factors causing criminal behaviour;
- Elucidate the environmental factors that contribute to criminal behaviour;
- Explain how gene and environment interactions cause criminal behaviour; and
- Put forward certain strategies to control criminal behaviour based on the causes identified.

2.2 INTRODCUTION TO CRIME AND CRIMINAL BEHAVIOUR

As for the dictionary meaning of the word crime, it refers to a person who has committed a crime. A person who has been convicted of a crime. It also refers to some aspect of the penal code or its administration.

2.2.1 Crime

Crime is the breach of rules or laws for which some governing authority (via mechanisms such as legal systems) can ultimately prescribe a conviction. Individual human societies may each define crime and crimes differently. Modern societies generally regard crimes as offences against the public or the state, distinguished from offences against private parties that can give rise to a civil cause of action.

When informal relationships and sanctions prove insufficient to establish and maintain a desired social order, a government or a state may impose more formalised or stricter systems of social control. With institutional and legal machinery at their disposal, agents of the State can compel populations to conform to codes, and can opt to punish or attempt to reform those who do not conform.

Authorities employ various mechanisms to regulate (encouraging or discouraging) certain behaviours in general. Governing or administering agencies may for example codify rules into laws, police citizens and visitors to ensure that they comply with those laws, and implement other policies and practices which legislators or administrators have prescribed with the aim of discouraging or preventing crime.

In addition, authorities provide remedies and sanctions, and collectively these constitute a criminal justice system. Legal sanctions vary widely in their severity;

they may include (for example) incarceration of temporary character aimed at reforming the convict. Some jurisdictions have penal codes written to inflict permanent harsh punishments: legal mutilation, capital punishment or life without parole.

The label of “crime” and the accompanying social stigma normally confine their scope to those activities seen as injurious to the general population or to the State, including some that cause serious loss or damage to individuals. Those who apply the labels of “crime” or “criminal” intend to assert the hegemony of a dominant population, or to reflect a consensus of condemnation for the identified behaviour and to justify any punishments prescribed by the State.

2.2.2 Criminal Behaviour

Law in our society is defined by social and legal institutions, therefore determining what constitutes criminal behaviour can envelope a wide variety of activities and for that reason, researchers tend to focus on the wider context of antisocial behaviour. Authors Morley and Hall (2003), who have investigated the genetic influences on criminal behaviour, point out three different ways to define antisocial behaviour.

- i) First is equating it with criminality and delinquency, which both involve engaging in criminal acts. Criminality can lead to arrest, conviction, or incarceration for adults, while delinquency is related to juveniles committing unlawful acts (Rhee & Waldman, 2002). Information can be collected using court and criminal records, as well as self report surveys to analyse the influences that were present.
- ii) Secondly, define antisocial behaviour through criteria used to diagnose certain personality disorders. More specifically, they mean those personality disorders, such as Antisocial Personality Disorder, which is associated with an increased risk in criminal activity.
- iii) Thirdly, define antisocial behaviour by examining personality traits that may be influential in the criminal behaviour of individuals. Traits such as aggressiveness and impulsivity are two traits that have been investigated the most (Morley & Hall, 2003).

<p>Self Assessment Questions</p> <p>1) Define crime?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>2) What is criminal behaviour? Describe its characteristics.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

3) How does law define crime and criminal behaviour?
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2.3 APPROACHES TO CAUSES OF CRIMINAL BEHAVIOUR

There are certain important approaches which help understand the underlying causes of criminal behaviour. These include (i) Social learning approach (ii) Cognitive learning approach (iii) Control theory.

2.3.1 Social Learning Approach

This is an important approach to understand the causes of criminal behaviour and focuses on the fact that people learn new behaviours through observational learning of the social factors in their environment. If people observe positive, desired outcomes in the observed behaviour, then they are more likely to model, imitate, and adopt the positive behaviour themselves. Social learning theory is derived from the work of Cornell Montgomery (1843-1904) which proposed that social learning occurred through four main stages of imitation:, namely (i) close contact,(ii) imitation of superiors (iii) understanding of concepts, (iv) role model behaviour and all these together consist of three parts, viz. (i) *observing*, (ii) *imitating*, and (iii) *reinforcements*.

In *Social Learning and Clinical Psychology* (1954), Rotter suggested that the effect of behaviour has an impact on the motivation of people to engage in that specific behaviour. People wish to avoid negative consequences, while desiring positive results or effects. If one expects a positive outcome from a behaviour, or thinks there is a high probability of a positive outcome, then they will be more likely to engage in that behaviour. The behaviour thus is reinforced, with positive outcomes, leading a person to repeat that behaviour.

This social learning theory suggests that behaviour is influenced by these environmental stimuli, and not by psychological factors alone. Thus if a person is observing and imitating negative behaviours such as criminal behaviour, aggression, assaulting etc., and if these also provide the person some positive outcomes such as excitement, pleasure, a feeling of success, dominance, power etc., these behaviours will be repeated as these outcomes reinforce the negative behaviours.

2.3.2 Cognitive Approach of Bandura

Another approach is that of Albert Bandura (1977) who expanded on Rotter’s idea, as well as earlier work by Miller & Dollard (1941), and is related to social learning theories of Vygotsky and Lave. This approach incorporates aspects of behavioural and cognitive learning.

Behavioural learning assumes that people's environment (surroundings) cause people to behave in certain ways. Cognitive learning presumes that psychological factors are important for influencing how one behaves. Social learning suggests a combination of environmental (social) and psychological factors as influencing behaviour. Social learning theory outlines four requirements for people to learn and model behaviour. These are (i) attention (ii) retention (remembering what one observed) (iii) reproduction (ability to reproduce the behaviour), and (iv) motivation (good reason) to want to adopt the behaviour.

2.3.3 Perceptual Control Theory

Control theory eventhough is an interdisciplinary branch of engineering and mathematics, it deals with the behaviour of dynamical systems. The desired output of a system is called the *reference*. When one or more output variables of a system need to follow a certain reference over time, a controller manipulates the inputs to a system to obtain the desired effect on the output of the system. A related theory known as perceptual control theory has been used to model living systems on the premise that outputs are manipulated to obtain the desired effect on the input to the system.

According to perceptual control theory, behaviour is the control of perception rather than the response to a stimulus. Research involving various types of control systems that can be found in the brain demonstrates that control systems are not solely the domain of engineers. If the concepts of homeostasis and homeorhesis may be applied to internal environments, they can very effectively be applied to the external environment of an organism.

The brain is a means toward transferring perceptual signals derived from the external environment into the internal environment of billions of interconnected neurons. Control systems within the brain and body are responsible for keeping perceptual signals within survivable limits, regardless of the nature of the environment that they are derived from. By integrating perceptual control theory with research from the field of neuroscience, the future of human self awareness might be realised by individuals *willing* to do so.

Thus Control theory is an approach that deals with influencing the behaviour of dynamical systems. It is an interdisciplinary subfield of science, and over a period of time evolved into use by the social sciences, like psychology, sociology and criminology.

2.3.4 Sutherland's Differential Association Theory

In criminology, Differential Association is a theory developed by Edwin Sutherland proposing that through interaction with others, individuals learn the values, attitudes, techniques, and motives for criminal behaviour.

Differential Association theory states that criminal behaviour is a learned behaviour and learned via social interaction with others.

This theory focuses on how individuals learn to become criminals. It does not however, concern itself with why they become criminals. Individuals learn how to commit criminal acts, they learn motives, drives, rationale, and attitudes. It appears socially easier for the individuals to commit a crime. They get inspired in the processes of cultural transmission and construction. Sutherland had

developed the idea of the “self” as a social construct, that is a person’s self image is continuously being reconstructed especially when interacting with other people.

Phenomenology is a method of inquiry based on the premise that reality consists of objects and events as they are perceived or understood in human consciousness and not of anything independent of human consciousness. It originated in 1905 and put forward by Edmund Husserl. Phenomenology emphasises the immediacy of experience. It is an attempt to isolate the experience and set it off from all assumptions of existence or causal influence and lay bare its essential structure. Phenomenology restricts the psychologist’s attention to the pure data of consciousness, uncontaminated by metaphysical theories or scientific assumptions. It emphasises on immediacy.

Phenomenology also encouraged people to debate the certainty of knowledge and to make sense of their everyday experiences. People define their lives by reference to their experiences, and then generalise those definitions to provide a framework of reference for deciding on future action. From a researcher’s perspective, a subject will view the world very differently if the person is employed as opposed to unemployed. Similarly the person will view the world differently if the person is in a supportive family or in a family abused by parents or others close to the individual. However, individuals might respond differently to the same situation depending on how their experience predisposes them to define their current surroundings.

Differential association predicts that an individual will choose the criminal path when the balance of definitions for law-breaking exceeds those for law-abiding. This tendency will be reinforced if social association provides active people in the person’s life. The earlier in life an individual comes under the influence of those of high status within that group, the more likely the individual is to follow in their footsteps. This does not deny that there may be practical motives for crime. If a person is hungry but has no money, there is a temptation to steal. But, the use of “needs” and “values” is equivocal. To a greater or lesser extent, both non-criminal and criminal individuals are motivated by the need for money and social gain. Therefore, the principles of Sutherland’s Theory of Differential Association can be summarised into nine key points:

- 1) Criminal behaviour is learned.
- 2) Criminal behaviour is learned in interaction with other persons in a process of communication.
- 3) The principal part of the learning of criminal behaviour occurs within intimate personal groups.
- 4) When criminal behaviour is learned, the learning includes techniques of committing the crime, which are sometimes very complicated, sometimes simple and the specific direction of motives, drives, rationalisations, and attitudes.
- 5) The specific direction of motives and drives is learned from definitions of the legal codes as favourable or unfavourable.
- 6) A person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of the law.

- 7) Differential associations may vary in frequency, duration, priority, and intensity.
- 8) The process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.
- 9) While criminal behaviour is an expression of general needs and values, it is not explained by those needs and values, since non-criminal behaviour is an expression of the same needs and values.

2.3.5 General Approach to Crime

Introduction

Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but punishments. Punishment has the following features:

- 1) It involves the deprivation of certain normally recognised rights, or other measures considered unpleasant.
- 2) It is consequence of an offence.
- 3) It is applied against the perpetrator of the offence.
- 4) It is applied by an organ of the system that made the act an offence.

The kinds of punishment given are surely influenced by the kind of society one lives in. Though during ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment theories have become more tolerant to these criminals. Debunking the stringent theories of punishment the modern society is seen in loosening its hold on the criminals. The present scenario also witnesses the opposition of capital punishment as inhumane, though it was a major form of punishing the criminals earlier.

As punishment generally is provided in Criminal Law it becomes imperative on our part to know what crime or an offence really is. Crime is an act deemed by law to be harmful for the society as a whole though its immediate victim may be an individual. Let us say a murderer injures primarily a particular victim, but its blatant disregard of human life puts it beyond a matter of mere compensation between the murderer and the victim's family.

Thus it becomes very important on behalf of the society to punish the offenders. Punishment can be used as a method of reducing the incidence of criminal behaviour either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. Policies regarding theories of punishment are Deterrent, Retributive, Preventive and Reformative.

Punishment, whether legal or divine, needs justification. Many a time this punishment has been termed as a mode of social protection. The affinity of punishment with many other measures involving deprivation by the state morally recognised rights is generally evident. The justifiability of these measures in particular cases may well be controversial, but it is hardly under fire.

The attempt to give punishment the same justification for punishment as for other compulsory measures imposed by the state does not necessarily involve a particular standpoint on the issues of deterrence, reform or physical incapacitation. Obviously the justification in terms of protection commits us to holding that punishment may be effective in preventing social harms through one of these methods.

As punishments generally punish the guilty mind it becomes very important to know what crime really is. But it is quite difficult on the part of the researcher to say whether or not there must be any place for the traditional forms of punishment. In today's world the major question that is raised by most of the penologist is that how far are present 'humane' methods of punishment like the reformatory measures successful in their objective. It is observed that prisons have become a place for breeding criminals not as a place of reformation as it was meant to be.

It may be clearly said that the enactment of any law brings about two units in the society– the law abiders and the law breakers. It is purpose of these theories of punishment to transform or change these law breakers to the group of abiders.

Self Assessment Questions

1) What are the various approaches to understanding causes of human behaviour?

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2) What is meant by social learning approach?

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3) How does cognitive approach explain criminal behaviour?

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4) Describe perceptual control theory and how it explains criminal behaviour.

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5) Explain Sutherland's Differential Association theory and how it explains criminal behaviour.

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6) What is the general approach to understanding causes of criminal behaviour?

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2.4 OTHER APPROACHES TO CRIMINAL BEHAVIOUR

In addition to the many approaches mentioned above in order to understand the criminal behaviour and its causes, there are many other approaches which are biological, environmental etc. These are being mentioned below.

2.4.1 Neurochemicals in Criminal and Anti -Social Behaviour

Neurochemicals are responsible for the activation of behavioural patterns and tendencies in specific areas of the brain (Elliot, 2000). As seen in the Brunner et al. study, there have been attempts to determine the role of neurochemicals in influencing criminal or anti-social behaviour. Included in the list of neurochemicals already cited by researchers are monoamine oxidase (MOA), epinephrine, norepinephrine, serotonin, and dopamine.

Serotonin is a neurochemical that plays an important role in the personality traits of depression, anxiety, and bipolar disorder (Larsen & Buss, 2005). It is also involved with brain development and a disorder in this system which in turn could lead to an increase in aggressiveness and impulsivity. Low levels of

serotonin have been found to be associated with impulsive behaviour and emotional aggression. In addition, children who suffer from conduct disorder have also been shown to have low blood serotonin (Elliot, 2000). Needless to say, there is a great deal of evidence that shows serotonin is related to aggression, which can be further associated with antisocial or criminal behaviour.

Dopamine is a neurotransmitter in the brain that is associated with pleasure and is also one of the neurotransmitters that is chiefly associated with aggression. Activation of both affective (emotionally driven) and predatory aggression is accomplished by dopamine (Elliot, 2000). Genes in the dopaminergic pathway have also been found to be involved with Attention Deficit Hyperactivity Disorder (ADHD) (Morley & Hall, 2003). In one study cited by Morley and Hall (2003), a relationship was found between the genes in the dopaminergic pathway, impulsivity, ADHD, and violent offenders. Obviously, from this list of neurochemicals it seems plausible that there is a genetic component to antisocial or criminal behaviour.

2.4.2 Personality Disorders / Traits and Criminal Behaviour

Personality traits and disorders have recently become essential in the diagnosis of individuals with antisocial or criminal behaviour. These traits and disorders do not first become evident when an individual is an adult, rather these can be seen in children. For that reason it seems logical to discuss those personality disorders that first appear in childhood. Attention Deficit Hyperactivity Disorder (ADHD), Conduct Disorder (CD), and Oppositional Defiance Disorder (ODD) are three of the more prominent disorders that have been shown to have a relationship with later adult aggressive behaviours (Holmes, Slaughter, & Kashani, 2001).

Oppositional Defiant Disorder (ODD) is characterised by argumentativeness, noncompliance, and irritability, which can be found in early childhood (Holmes et al., 2001). When a child with ODD grows older, the characteristics of their behaviour also change and more often for the worse. They start to lie and steal, engage in vandalism, substance abuse, and show aggression towards peers. Frequently ODD is the first disorder that is identified in children and if sustained can lead to the diagnosis of Conduct Disorder (CD). It is important to note however that not all children who are diagnosed with ODD will develop CD.

Attention Deficit Hyperactivity Disorder (ADHD) is associated with hyperactivity, impulsivity and the inability to keep attention focused on one thing. Holmes et al. (2001) state that, "impulse control dysfunction and the presence of hyperactivity and inattention are the most highly related predisposing factors for presentation of antisocial behaviour" (p.184). They also point to the fact that children diagnosed with ADHD have the inability to analyse and anticipate consequences or learn from their past behaviour. Children with this disorder are at risk of developing ODD and CD, unless the child is only diagnosed with Attention Deficit Disorder (ADD), in which case their chances of developing ODD or CD are limited. The future for some children is made worse when ADHD and CD are co-occurring because they will be more likely to continue their antisocial tendencies into adulthood (Holmes et al., 2001).

Conduct Disorder (CD) is characterised with an individual's violation of societal rules and norms (Morley & Hall, 2003). As the tendencies or behaviours of those

children who are diagnosed with ODD or ADHD worsen and become more prevalent, the next logical diagnosis is CD. What is even more significant is the fact that ODD, ADHD, and CD are risk factors for developing Antisocial Personality Disorder (ASPD). This disorder can only be diagnosed when an individual is over the age of eighteen and at which point an individual shows persistent disregard for the rights of others. ASPD has been shown to be associated with an increased risk of criminal activity. Therefore, it is of great importance that these early childhood disorders are correctly diagnosed and effectively treated to prevent future problems.

Another critical aspect that must be examined regarding antisocial or criminal behaviour is the personality characteristics of individuals. Two of the most cited personality traits that can be shown to have an association with antisocial or criminal behaviour are impulsivity and aggression. According to the article written by Holmes et al. (2001), antisocial behaviour between the ages of nine and fifteen can be correlated strongly with impulsivity and that aggression in early childhood can predict antisocial acts and delinquency. One statistic shows that between seventy and ninety percent of violent offenders had been highly aggressive as young children (Holmes et al., 2001). These personality traits have, in some research, been shown to be heritable.

2.4.3 Environmental Influences

Thus far it has been established through research and various studies that genetics do influence criminal or antisocial behaviour. Researchers agree on the point that genes influence personality traits and disorders, such as the ones just mentioned. However, researchers also agree that there is an environmental component that needs to be examined. Environmental influences such as family and peers will be discussed, as well as a look into the social learning theory.

The family environment is critical to the upbringing of a child and if problems exist then the child is most likely to suffer the consequences. We have seen the problems associated with a child who is diagnosed with ADHD and how that can influence antisocial or criminal behaviour. In relation to that, some researchers have claimed that it is the family environment that influences the hyperactivity in children (Schmitz, 2003). In addition there are also family risk factors as poverty, education, parenting practices, and family structure. The relationship between family environment and child behaviour characterises a child's well being with a positive and caring parent child relationship, a stimulating home environment, and consistent disciplinary techniques. Families with poor communication and weak family bonds have been shown to have a correlation with children's development of aggressive/criminal behaviour. Therefore it seems obvious to conclude that those families who are less financially sound, perhaps have more children, and who are unable to consistently punish their children will have a greater likelihood of promoting an environment that will influence antisocial or delinquent behaviour.

Another indicator of future antisocial or criminal behaviour is that of abuse or neglect in childhood. A statistic shows that children are at a fifty percent greater risk of engaging in criminal acts, if they were neglected or abused (Holmes et al., 2001). This has been one of the most popular arguments as to why children develop antisocial or delinquent behaviours.

One additional research finding in the debate between genetic and environmental influences on antisocial or criminal behaviour has to deal with the age of the individual. Research seems consistent in recognising that heritability influences adult behaviour more than environmental influences, but that for children and adolescents the environment is the most significant factor influencing their behaviour (Rhee & Waldman, 2002). As an adult, we have the ability to choose the environment in which to live and this will either positively or negatively reinforce our personality traits, such as aggressiveness. However, children and adolescents are not in a position to choose their environment, which accounts for the greater influence of environmental factors on childhood behaviours.

Another significant factor in the development of antisocial or delinquent behaviour in adolescence is peer groups. Garnefski and Okma (1996) state that there is a correlation between the involvement in an antisocial or delinquent peer group and problem behaviour. One of the primary causes as to why this occurs can be traced back to aggressive behaviour in young children. When children are in preschool and show aggressive tendencies towards their peers, they will likely be deemed as an outcast. This creates poor peer relationships and relegates those children to be with others who share similar behaviours. A relationship like this would most likely continue into adolescence and maybe even further into adulthood. Similar tendencies of these individuals create an environment in which they influence one another and push the problem towards criminal or violent behaviour (Holmes et al., 2001).

Social learning theory has been cited as a way to explain how the environment can influence a child's behaviour. Using this theory to explain the aggressive or antisocial behaviour of a child means that a child observes aggressive behaviour between parents, siblings, or both. As a result, the children believe that this aggressive behaviour is normal and can therefore use it themselves because they do not see the harm in acting similar to their parents (Miles & Carey, 1997).

As stated earlier, interaction between family members and disciplinary techniques are influential in creating antisocial behaviour. Using the social learning theory these two factors are also critical in the development of aggression. Children who are raised in an aggressive family environment would most likely be susceptible to experiencing a lack of parental monitoring, permissiveness or inconsistency in punishment, parental rejection and aggression.

The exposure to such high levels of aggression and other environmental factors greatly influences and reinforces a child's behaviour. A significant point that should be known however is the fact that other research has supported the notion that genetics do influence levels of aggression, which stands in opposition to the social learning theory (Miles & Carey, 1997).

2.4.4 Gene-Environment Interactions

There are theories, however, concerning genetic and environmental influences, which seem to suggest an interaction between the two and one such theory is the general arousal theory of criminality. Personality psychologist Eysenck created a model based on three factors known as psychoticism, extraversion, and neuroticism, or what is referred to as the PEN model (Eysenck, 1996). Psychoticism was associated with the traits of aggressive, impersonal, impulsive, cold, antisocial, and un-empathetic. Extraversion was correlated with the traits

of sociable, lively, active, sensation-seeking, carefree, dominant, and assertive. Finally, neuroticism was associated with anxious, depressed, low self-esteem, irrational, moody, emotional, and tense (Eysenck, 1996). Through research and surveys, Eysenck found that these three factors could be used as predictors of criminal behaviour. He believed this to be especially true of the psychoticism factor and that measuring it could predict the difference between criminals and non-criminals. Extraversion was a better predictor for young individuals, while neuroticism was a better predictor for older individuals (Eysenck, 1996). An important point about these factors and the personality traits associated with them is that most of them have already been found to be heritable .

Understanding Eysenck's original model is critical to assessing the general arousal theory of criminality, which suggests an interaction between factors. Research has shown that criminality is strongly correlated with low arousal levels in the brain. Characteristics related to low arousal levels include lack of interest, sleepiness, lack of attention, and loss of vigilance.

Eysenck (1996) believed that these characteristics were similar to the personality factor of extraversion. Individuals with low arousal levels and those who are extraverts need to seek out stimulation because they do not have enough already in their brains. Therefore, the premise of the general arousal theory of criminality is that individuals inherit a nervous system that is unresponsive to low levels of stimulation and as a consequence, these individuals have to seek out the proper stimulation to increase their arousal. Under this theory, the proper stimulation includes high-risk activities associated with antisocial behaviour, which consists of sexual promiscuity, substance abuse, and crime (Miles & Carey, 1997).

A significant fact that must be pointed out though is that not every individual with low arousal levels or those who are extraverts will seek those high risk activities just mentioned. It takes the right environment and personality to create an individual with antisocial or criminal tendencies and that is why this theory can be considered to take into account both factors of genetic and environmental influences.

2.4.5 Parental Relations

Cleckley's ideas on sociopath were adopted in the 1980s to describe a "cycle of violence" or pattern found in family histories. A "cycle of violence" is where people who grow up with abuse or antisocial behaviour in the home will be much more likely to mistreat their own children, who in turn will often follow the same pattern.

Children who are neglected or abused are more likely to commit crimes later in life than others. Similarly, sexual abuse in childhood often leads these victims to become sexual predators as adults. Many inmates on death row have histories of some kind of severe abuse. The neglect and abuse of children often progresses through several generations. The cycle of abuse, crime, and sociopathy keeps repeating itself.

Children who are neglected or abused commit substantially more crimes later in life than others.

The cycle of violence concept, based on the quality of early life relationships, has its positive counterpart. Supportive and loving parents who respond to the basic needs of their child instill self-confidence and an interest in social environments. These children are generally well-adjusted in relating to others and are far less likely to commit crimes.

By the late twentieth century the general public had not accepted that criminal behaviour is a psychological disorder but rather a willful action. The public cry for more prisons and tougher sentences outweighed rehabilitation and the treatment of criminals. Researchers in the twenty-first century, however, continued to look at psychological stress as a driving force behind some crimes.

2.4.6 Hormones

Hormones are bodily substances that affect organs in the body functioning. Researchers also looked at the relationship between hormones, such as testosterone and cortisol, and criminal behaviour.

Testosterone is a sex hormone produced by male sexual organs that cause development of masculine body traits.

Cortisol is a hormone produced by adrenal glands located next to the kidneys that effects how quickly food is processed by the digestive system. Higher cortisol levels leads to more glucose to the brain for greater energy, such as in times of stress or danger.

Testosterone measurements in prison populations also showed relatively high levels in the inmates as compared to the U.S. adult male population in general.

Animal studies showed a strong link between high levels of testosterone and aggressive behaviour.

Studies of sex offenders in Germany showed that those who were treated to remove testosterone as part of their sentencing became repeat offenders only 3 percent of the time. This rate was in stark contrast to the usual 46 percent repeat rate. These and similar studies indicate testosterone can have a strong bearing on criminal behaviour.

Cortisol is another hormone linked to criminal behaviour. Research suggested that when the cortisol level is high a person's attention is sharp and he or she is physically active. In contrast, researchers found low levels of cortisol were associated with short attention spans, lower activity levels, and often linked to antisocial behaviour including crime. Studies of violent adults have shown lower levels of cortisol; some believe this low level serves to numb an offender to the usual fear associated with committing a crime and possibly getting caught.

It is difficult to isolate brain activity from social and psychological factors, as well as the effects of substance abuse, parental relations, and education. Yet since some criminals are driven by factors largely out of their control, punishment will not be an effective deterrent. Help and treatment become the primary responses.

2.4.7 Education

Conforming to Merton's earlier sociological theories, a survey of inmates in state prisons in the late 1990s showed very low education levels. Many could

not read or write above elementary school levels, if at all. The most common crimes committed by these inmates were robbery, burglary, automobile theft, drug trafficking, and shoplifting. Because of their poor educational backgrounds, their employment histories consisted of mostly low wage jobs with frequent periods of unemployment.

Employment at minimum wage or below living wage does not help deter criminal activity. Even with government social services, such as public housing, food stamps, and medical care, the income of a minimum wage household still falls short of providing basic needs.

People must make a choice between continued long term low income and the prospect of profitable crime. Gaining further education, of course, is another option, but classes can be expensive and time consuming. While education can provide the chance to get a better job, it does not always overcome the effects of abuse, poverty, or other limiting factors.

2.4.8 Peer Influence

A person's peer group strongly influences a decision to commit crime. For example, young boys and girls who do not fit into expected standards of academic achievement or participate in sports or social programs can sometimes resort to drug abuse such as cocaine etc. . Drugs and alcohol impair judgment and reduce inhibitions, giving a person greater courage to commit a crime. Researchers believe these youth may abandon schoolmates in favor of criminal gangs, since membership in a gang earns respect and status in a different manner. In gangs, antisocial behaviour and criminal activity earns respect and street credibility.

Like society in general, criminal gangs are usually focused on material gain. Gangs, however, resort to extortion, fraud, and theft as a means of achieving it.

2.4.9 Drug and Alcohol

Some social factors pose an especially strong influence over a person's ability to make choices. Drug and alcohol abuse is one such factor. The urge to commit crime to support a drug habit definitely influences the decision process. Both drugs and alcohol impair judgment and reduce inhibitions (socially defined rules of behaviour), giving a person greater courage to commit a crime. Deterrents such as long prison sentences have little meaning when a person is high or drunk.

Substance abuse, commonly involving alcohol, triggers "stranger violence," a crime in which the victim has no relationship whatsoever with his or her attacker. Such an occurrence could involve a confrontation in a bar or some other public place where the attacker and victim happen to be at the same time. Criminologists estimate that alcohol or drug use by the attacker is behind 30 to 50 percent of violent crime, such as murder, sexual assault, and robbery. In addition drugs or alcohol may make the victim a more vulnerable target for a criminal by being less attentive to activities around and perhaps visiting a poorly lighted or secluded area not normally frequented perhaps to purchase drugs.

The idea that drug and alcohol abuse can be a major factor in a person's life is why there are numerous treatment programs for young people addicted to these substances. Treatment focuses on positive support to influence a person's future decision making and to reduce the tendency for antisocial and criminal behaviour.

Another factor many criminologists consider key to making a life of crime easier is the availability of firearms in the society. Many firearms used in crimes are stolen or purchased illegally (bought on what is called the “black market”). Firearms provide a simple means of committing a crime while allowing offenders some distance or detachment from their victims.

Of the 400,000 violent crimes involving firearms in 1998, over 330,000 involved handguns. By the beginning of the twenty-first century firearm use was the eighth leading cause of death in the United States.

Similarly, the increased availability of free information on the Internet also makes it easy to commit certain kinds of crime. Web sites provide instructions on how to make bombs and buy poisons; all this information is easily available from the comfort of a person’s home. Easy access, however, will not be the primary factor in a person’s decision to commit a crime. Other factors, such as biological, psychological, or social will definitely have a role in addition to the easy access. Unless a person has a predisposition towards a criminal behaviour, even if there is free access to firearms or other instruments, the person may not indulge in the crime.

Self Assessment Questions

1) Explain how neurochemicals contribute to crime and criminal behaviour?

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2) How are personality disorders and traits associated with criminal behaviour?

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3) Discuss the environmental influences as influencing criminal behaviour.

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4) Discuss peer influences as contributing to criminal behaviour.

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2.5 CONTROLLING CRIMINAL BEHAVIOUR

In criminology, Social Control Theory as represented in the work of Travis Hirschi fits into the Positivist School, Neo-Classical School, and, later, Right Realism. It proposes that exploiting the process of socialisation and social learning builds self-control and reduces the inclination to indulge in behaviour recognised as antisocial. It was derived from Functionalist theories of crime and Ivan Nye (1958) proposed that there are four types of control, viz., (i) direct, (ii) internal, (iii) indirect, (iv) control through needs satisfaction. Let us deal with each of these in detail:

- i) **Direct:** This refers to the control in which punishment is threatened or applied for wrongful behaviour, whereas compliance is rewarded by parents, family, and authority figures.
- ii) **Internal:** This refers to the individual's own control from within in which the youth refrains from delinquency deliberately perhaps due to his strong conscience or superego.
- iii) **Indirect:** This refers to the person concerned identifying self with those who influence behaviour, for instance his or her delinquent act might cause pain and disappointment to parents and others with whom he or she has close relationships and this makes the youngster refrain from indulging in delinquent or deviant behaviours.
- iv) **Control through needs satisfaction:** This refers to the fact that if all an individual's needs are met, there is no point in criminal activity.

Thus Social Control Theory proposes that people's relationships, commitments, values, norms, and beliefs encourage them not to break the law. If moral codes are internalised and individuals are tied into, and have a stake in their wider community, they will voluntarily limit their propensity to commit deviant acts. The theory seeks to understand the ways in which it is possible to reduce the likelihood of criminality developing in individuals. It does not consider motivational issues, simply stating that human beings may choose to engage in a wide range of activities, unless the range is limited by the processes of socialisation and social learning.

This derives from a Hobbesian view of human nature which states that all choices are constrained by implicit social contracts, agreements and arrangements among people. Thus, morality is created in the construction of social order, assigning costs and consequences to certain choices and defining some as evil, immoral and/or illegal.

Another view point proposed by Reiss (1951) is that delinquency behaviour is a consequence of the failure of personal and social controls.

Personal control referred to the ability of the individual to refrain from meeting needs in ways which conflict with the norms and rules of the community. On the other hand the social control referred to the ability of social groups or institutions to make norms or rules effective. Reiss thus was of the view that the failure of primary groups such as the family to provide reinforcement for non delinquent roles and values was crucial to the explanation of delinquency.

Another sociologist who talked about this issue was Toby (1957), who argued that the uncommitted adolescent is a candidate for gang socialisation. He acknowledged gang socialisation as part of the causal, motivational, and dynamic process leading to delinquency. He introduced the concept of “stakes in conformity” and explained how some youths are selected for such learning experiences. He believed that all could be tempted into delinquency, but most refused because they considered that they had too much to lose. But the young who had few stakes or investments in conformity were more likely to be drawn into gang activity. The notion of “stakes in conformity” fits very well with concepts invoked in later versions of social control theory.

Another view point was by Franz Nye (1958) who not only elaborated a social control theory of delinquency, but specified ways to “operationalise” (measure) control mechanisms and related them to self-reports of delinquent behaviour. Nye specified different types of control as given below.

- direct control = punishments and rewards
- indirect control = affectionate identification with non-criminals; and
- internal control = conscience or sense of guilt.

Youth may be directly controlled through constraints imposed by parents, limiting the opportunity for delinquency, as well as through parental rewards and punishments. However, they may be constrained when free from direct control by their anticipation of parental disapproval (indirect control), or through the development of a conscience, an internal constraint on behaviour. Although he acknowledged motivational forces by stating that some delinquent behaviour results from a combination of positive learning and weak and ineffective social control, he adopted a control theory position and proposed that most delinquent behaviour is the result of insufficient social control.

Yet another approach to criminal behaviour was put forward by Reckless (1961), whose approach was termed as Containment Theory, focussed on a youth’s self image of being a good person as an insulator against peer pressure to engage in delinquency. He mentioned the positive sense of self from the inner mind of the individual and supervision and discipline from external source such as parents and family members.

The basic proposition is that there are “pushes” and “pulls” that will produce delinquent behaviour unless they are counteracted by containment. The motivations to deviate as pushes are:

- Discontent with living conditions and family conflicts;

- Aggressiveness and hostility, perhaps due to biological factors; and
- Frustration and boredom, arising from membership of a minority group or through lack of opportunities to advance in school or find employment;

Pulls are:

- Delinquent peers,
- Delinquent subcultures.

Thus there are many approaches to understand the various measures of controlling criminal behaviour.

2.6 LET US SUM UP

There cannot be enough possible evidence to conclude the point that genetics play the most important role in the outcome or behaviour of an individual. The opposing viewpoint of environmental factors is not without its doubts either as to being the prominent factor influencing antisocial or criminal behaviour of an individual.

Researchers, have shown that there is a large consensus of the fact that genes do influence behaviour to quite an extent. At the same time these researchers also believe that environmental factors account for what cannot be explained by genes. Therefore it seems obvious to reach the conclusion that an individual's antisocial or criminal behaviour can be the result of both their genetic background and the environment in which they were raised.

One researcher has proposed a theory relating to sociopaths and their antisocial behaviour. According to the theory, a primary sociopath is lacking in moral development and does not feel socially responsible for their actions. This type of sociopath is a product of the individual's personality, phenotype, and genotype. A secondary sociopath develops in response to his or her environment because of the disadvantages of social competition.

Living in an urban residence, having a low socio-economic status, or poor social skills can lead an individual to being unsuccessful in reaching their needs in a socially desirable way, which can turn into antisocial or criminal behaviour. The first type of sociopath is dependent on their genetic makeup and personality, while certain factors of the second type can also be heritable.

Notwithstanding, the second type has a greater dependence on environmental factors. In other words, both genetic and environmental factors cause the delinquent behaviour. There is a great need to try and identify those individuals, especially children, who may become susceptible to certain disorders or personality traits that can lead into antisocial, delinquent, or criminal behaviour. Society should not try to imitate the era of controlled breeding, but rather focus on the treatment and rehabilitation of those individuals in need. Certain educational, environment enrichment programs have been shown to have a lasting effect on children if given by a certain age. If more of these programs could be developed, society could prevent the future antisocial or criminal behaviour in children.

2.7 UNIT END QUESTIONS

- 1) Describe crime and criminal behaviour and bring out the salient features of the same.
- 2) Discuss critically the various approaches to understanding the causes of criminal behaviour?
- 3) Elucidate the various biological factors that contribute to criminal behaviour.
- 4) Discuss the gene-environment interaction in causing criminal behaviour.
- 5) How do education, peer influences and parental relationships influence criminal behaviour?
- 6) Discuss the various methods of controlling criminal behaviour.

2.8 GLOSSARY

Conviction	: The judgment of a jury or judge that a person is guilty of a crime as charged. The state of being found or proved guilty: <i>evidence that led to the suspect's conviction.</i>
Offences	: A violation or breach of a law, custom, rule, etc. any public wrong or crime, an indictable crime punishable on summary conviction. Annoyance, displeasure, or resentment Give offence (to) to cause annoyance or displeasure (to) Take offence to feel injured, humiliated, or offended a source of annoyance, displeasure, or anger (Military) attack; assault.
Infractions	: The act or an instance of infringing; a violation.
Hegemony	: The predominant influence, as of a state, region, or group, over another or others.
Consensus	: An opinion or position reached by a group as a whole:
Incarceration	: To put into jail; To shut in; confine.

2.9 SUGGESTED READINGS

Elaine Cassel, (2007) [2nd Edition]. *How Can We Reduce Criminal Behaviour?*
Douglas A Bernstein, NY

Newburn, Tim (2007). *Criminology*. Willan Publishing. NJ.

Siegel, Larry A (2001). *Criminology: Theories, Patterns, and Typologies*.
Wadsworth Publishing Company, NY

Wasserman, David T.(2001). *Genetics and Criminal Behaviour*; Springer, NJ.

UNIT 3 THEORIES OF CRIME

Structure

- 3.0 Introduction
- 3.1 Objectives
- 3.2 Definition of Crime
- 3.3 When an Act is Considered a Crime
 - 3.3.1 Harm
 - 3.3.2 Illegal
 - 3.3.3 Malafide Intention
 - 3.3.4 Criminal Intention
 - 3.3.5 Concurrence of Intention and Conduct
 - 3.3.6 Casual Relationship
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- 3.4 Schools of Thought
 - 3.4.1 Pre-Scientific or Demonological School
 - 3.4.2 Free-Will School
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 - 3.4.6 Typological School
 - 3.4.7 Socialistic School
 - 3.4.8 Sociological School
 - 3.4.9 Positivist School
 - 3.4.10 Italian School
 - 3.4.11 Lacassagne School
 - 3.4.12 Chicago School
- 3.5 Traditional and Modern Theories of Crime
 - 3.5.1 Social Structure Theories
 - 3.5.2 Social Disorganisation (Neighbourhoods)
 - 3.5.3 Social Ecology
 - 3.5.4 Strain Theory (Social Class)
 - 3.5.5 Sub Cultural Theory
- 3.6 Individual Theories
 - 3.6.1 Trait Theories
 - 3.6.2 Control Theories
 - 3.6.3 Symbolic Interactionism
 - 3.6.4 Rational Choice Theory
 - 3.6.5 Routine activity Theory
 - 3.6.6 Neo-Classical School
 - 3.6.7 Social Control Theory
 - 3.6.8 Drift Theory
 - 3.6.9 Rational Choice Theory
- 3.7 Complexity of Crime in Modern Times
- 3.8 Let Us Sum Up
- 3.9 Unit End Questions
- 3.10 Glossary
- 3.11 Suggested Readings

3.0 INTRODUCTION

Crime is an anti-social behaviour which a society rejects and to which it attaches penalties. In this way all those activities for which the state lays down punishments are Crimes. We will present a detailed study of crime in this unit. It will include the definition of crime in accordance with various viewpoints of renowned criminologists. It will present the typical characteristic features of crime. The unit will also deal with the various schools of thought which have explained crime in society. Finally the theories of crime are being presented in detail.

3.1 OBJECTIVES

After reading this unit, you will be able to:

- Define crime in accordance to various viewpoints of the criminologist;
- Explain various characteristics of a crime;
- Describe traditional and modern theories of crime; and
- Analyse the complexity of crime in modern times.

3.2 DEFINITION OF CRIME

A normative definition views crime as deviant behaviour that violates prevailing norms – cultural standards prescribing how humans ought to behave normally. This approach considers the complex realities surrounding the concept of crime and seeks to understand how changing social, political, psychological, and economic conditions may affect changing definitions of crime and the form of the legal, law-enforcement, and penal responses made by society.

In other words “Crime is the breach of rules or laws for which some governing authority (via mechanisms such as legal systems) can ultimately prescribe a conviction. Individual human societies may each define crime and crimes differently. While every crime violates the law, not every violation of the law counts as a crime; for example: breaches of contract and of other civil law may rank as “offences” or as “infractions”. Modern societies generally regard crimes as offences against the public or the state, distinguished from *torts* (offences against private parties that can give rise to a civil cause of action).

According to C. Darrow, “Crime is an act forbidden by the law of the land and for which penalty is prescribed “.This constitutes a definition of a crime from the social viewpoint. From the legal viewpoint, violation of law constitutes crime. In other words of Branes and Teeters ,“ The term “Crime “ technically means a form of anti-social behaviour that has violated public sentiment to such an extent as to be forbidden by statue”.

Garofalo developed a concept of the “natural crime” and defined it as a violation of the prevailing sentiments of pity and probity. Radcliff Brown defined crime as the violation of usage which gives rise to the exercise of a sanction. The crime any act which causes harm to man’s social interests. The criminal is a person who commits crime. According to law a criminal is one who has intentionally violated a criminal law. Sometimes a criminal is not treated as such until his criminal acts are proved in court.

3.3 WHEN AN ACT IS CONSIDERED A CRIME

There are seven interrelated but overlapping criteria to call an act as a crime. Ideally behaviour would not be a crime unless all the seven conditions are present.

3.3.1 Harm

Before a behaviour can be called crime there must be certain external consequences or 'harm'. A crime has a harmful impact on social interests.

3.3.2 Illegal

The harm must be legally forbidden, must have been prescribed in penal law. Anti-social behaviour is not crime unless it is prohibited by law.

3.3.3 Malafide Intention

There must be the criminal conduct i.e.: there must be an intentional or reckless action or inaction which brings about the harmful consequences e.g.: Doctor's negligence.

3.3.4 Criminal Intention

Criminal intent must be present. Hall suggests that legal scholars have confused between intention and motive. The motives for a crime may be good but the intention is criminal. Thus if a man kills his starving children his motive is good but killing is legally forbidden and so his intention is criminal.

3.3.5 Concurrence of Intention and Conduct

There must be a concurrence of criminal intention and conduct.e.g: if a policeman, who goes into a house to make an arrest goes into a house to make an arrest is not a trespasser from the beginning.

3.3.6 Casual Relationship

There must be a casual relationship between the legally forbidden harm and the voluntary misconduct.e.g: if a man dies of suffocation after being shot at, the relationship between conduct and the harm is not clear cut.

3.3.7 Prescription of Punishment

There must be legally prescribed punishment. The voluntary misconduct must be punishable by law.

Self Assessment Questions

- 1) Define Crime and discuss the various view points of the renowned criminologists.

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2) What are the characteristics of a crime? Elaborate in your words.

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3.4 SCHOOLS OF THOUGHT

As the civilisation advances, the nature and variety of crime undergoes change. We have numerous theories regarding crime, each reflecting particular stage of development of civilisation and a particular point of view. In the mid-18th century, criminology arose as social philosophers gave thought to crime and concepts of law. Over time, several schools of thought have developed. It is important to note, that while there have been numerous schools of criminological thought throughout history, for the most part, the newer schools were a revitalisation of the former and not a competing point of view. The current school most criminologists belong to is the Chicago School; however, there are still a great many who feel that a sub-cultural theory of deviance is the better explanation of criminogenesis.

The main schools of criminology are:

- Pre-Scientific or Demonological School
- Free- will School
- Classical School
- Ecological School
- Geographical School
- Typological School
- The Socialistic School
- The Sociological School

3.4.1 Pre-Scientific or Demonological School

The Demonological School is the most ancient theory of crime and dates of Pre-Scientific Age. According to the thinkers belonging to this age viewed that a crime is a handiwork of the devil. They believed that there are two kinds of forces in the world: Gods and Satanic forces.

The Gods force keeps us away from crime and helps us to do good , where as the devil force distracts man from the right path and makes him commit crime. It makes man reckless, lose the sense of morality and removes the fear of God from the individual. Such a person becomes unable to foresee the consequences of his actions. During this age there was a separate and distinct penal code; the system of punishment was not fixed nor was it well regulated.

The chief purpose behind infliction of punishment was to drive away the Demon from the soul. For this whipping was the most common form of penalty. The

tender organs of the body were exposed to cruel treatment, burning, laceration and maceration. The main idea behind this apparent maltreatment of the body was to cause pain to the devil so that it is compelled to leave the body.

This approach and the penal code thereof had no followers because it was

- 1) Unscientific
- 2) Irrational and
- 3) Cruel and Barbaric.

3.4.2 Free -Will School

This school of thought developed in the 16th and the 17th centuries. According to Free Will school the freedom of will was considered to be the most characteristic feature of man. The will of a man is believed to be an outward manifestation of the person's inner criminal resolve. Neither the moral code nor the fear of God nor the pressure of economic conditions was supposed to affect or in any manner modify the inner resolve.

This school was based upon the theory of Retributive punishment. The penalty was imposed upon the convict in order to avenge the wrong done by him. He was exclusively responsible for his actions and these constituted a breaker and violation of order, the order could be restored only by the law breaker either by paying an amount equivalent to the wrong committed or making him suffer in equal measure.

Since the school believed that body and soul were distinct elements and that soul survived death, a dead person was also prosecuted and order of penalty executed on his mortal remains. It offered a comprehensive and adequate explanation of the phenomenon of crime. According to scientists this theory was neither rational nor valid. The physical and social environment determined whether the individual will choose criminal behaviour or non criminal behaviour.

3.4.3 Classical School

The Classical School, which developed in the mid 17th century, was based on utilitarian philosophy. Cesare Beccaria, author of *On Crimes and Punishments* (1763–64), Jeremy Bentham, inventor of the *panopticon*, and other classical school philosophers argued that (1) people have free will to choose how to act. (2) Deterrence is based upon the notion of the human being as a 'hedonist' who seeks pleasure and avoids pain, and (3) a 'rational calculator' weighing up the costs and benefits of the consequences of each action. Thus, it ignores the possibility of irrationality and unconscious drives as motivational factors. (4) Punishment (of sufficient severity) can deter people from crime, as the costs (penalties) outweigh benefits, and that severity of punishment should be proportionate to the crime. (5) The more swift and certain the punishment, the more effective it is in deterring criminal behaviour. The Classical school of thought came about at a time when major reform in penology occurred, with prisons developed as a form of punishment. Also, this time period saw many legal reforms, the French Revolution, and the development of the legal system in the United States.

The explanation of crime on the basis of pleasure pain equation is rather inadequate and one sided. The motive behind all crimes allows no place for pleasure. It over emphasises the role of the individual and overlooks the role of social and cultural environment in the explanation of human behaviour.

The behaviour of man is an interaction of various forces, personal as well as impersonal and it is misleading to single out any factor as the main cause of behaviour. The principle of maximum happiness number is vague and has no guiding value. Moreover the concept of happiness and pleasure are subjective and these cannot be objectively evaluated. The legislative has to be based on facts and not on subjective feelings.

3.4.4 Ecological School

Ecology is a science which studies the effects of environmental change on the growth and development of plants. It emphasises the effect of social environment upon the behaviour of the individual. The main effort of this school is to establish a definite correlation between crime and socio-economic conditions of the criminal. It also studies in detail the relationship of various factors like density of population, the climate changes, town-planning, and spread of education with criminal behaviour.

Views and conclusions of this school are supported by statistical analysis, graphs, charts, and maps. The explanation of crime offered by ecological theory is not complete. It may be true of a particular society at a given time, but we cannot extend and apply these conclusions to other societies. This is because the environmental conditions are not uniform in each society, and they are subject to change. Hence this theory was also not popular.

3.4.5 Geographical School

The phenomenon of crime is closely related with the geography, climate, and attitude of the place where crime takes place. It attempts to show the influence upon behaviour of such factors as climate, topography, natural resources and geographical locations. The chief proponents of this school are Quetlet, Guerry and Montesque and Lombroso. As propounded by Quetlet and Guerry the law is known as Thermic law , according to which certain crimes are so linked with geographical conditions that these occur in a particular climate at a particular area.

According to Montesque , the rate of crime is high in areas near the equator. Lombroso's investigation on this phenomenon of crime discovered that the incidence of crime is less in plains, as compared with rocky lands, plateaus and valleys.

3.4.6 Typological School

According to this school, the criminals are classified on the basis of anthropological and psychological data. Lombroso discovered a definite relationship between physical structures of individuals and the mental makeup of the person. This theory is out moded. According to Dr. Goring the comparative study of physical and mental features of thousands of criminals and non criminals showed no significant difference between the features of criminals and non criminals. This disproves the assumption that a criminal has certain definite

features. They believe that criminal tendencies are not hereditary but are acquired. Hence it has no application in modern approach to crime.

3.4.7 Socialistic School

This school is the extension of the general theory of economic factors contributing to the criminal behaviour. The chief proponents of this school are Karl Marx, Engels, and Bonger. According to them all human activities are strictly influenced and determined by the economic causes. Marx and Engels believed that economic inequalities are the true causes of crime. Due to this economic inequalities, the society is divided into different classes and there is constant tension between these classes.

Bonger also believed that economic conditions are the root cause of the criminal activities. The philosophy of capitalism is an attempt to legitimize the self seeking acquisitiveness and aggressive pursuit of money and power. These tendencies lead to criminal activity. Though the socialist theory of crime has the definite merit of pinpointing an important factor in the production of crime, it is false to assign exclusive responsibility for the crime either to economics or geography or pleasure or culture. Actually all factors have their relevance to an adequate and comprehensive theory of crime.

3.4.8 Sociological School

This school offers a sociological explanation of crime. An attempt is made to establish various social factors correlative of various types of crimes. The sociological approach is concerned with effects of group patterns of behaviour, as well as the social status, the role the individual plays in the society, and the individual's conceptions of it, and of various other types of social situations and relationships.

Sutherland held the view that crime is basically a learned activity. It is only by association with criminals that one learns the nature of crimes and its modus operandi. No one invents crime it has to be learnt and its techniques mastered. This learning and training one receives by associating with the group of criminals. According to D.R.Taft social disorganisation is at the root of all crimes. By disorganisation it is meant that there is a breakdown of the traditional social structure, rejection of old values and loosening of social control upon human behaviour.

3.4.9 Positivist School

The Positivist school presumes that criminal behaviour is caused by internal and external factors outside of the individual's control. The scientific method was introduced and applied to study human behaviour. Positivism can be broken up into three segments which include biological, psychological and social positivism.

3.4.10 Italian School

Cesar Lombroso, an Italian prison doctor working in the late 19th century and sometimes regarded as the "father" of criminology, was one of the largest contributors to biological positivism and founder of the Italian school of criminology. Lombroso took a scientific approach, insisting on empirical evidence, for studying crime. He explained crime in terms of bio-physical characteristics and birth.

Lombroso's propositions were

- 1) Criminals are by birth a distinct type or species.
- 2) They have asymmetrical cranium, long jaw, flattened nose.
- 3) Have scanty, beard and low sensitivity to pain.

These thinkers tried to understand the relationship between behaviour and freewill or behaviour and determinism, to establish which of the 2 types of cause effect relationship was true. Lombroso considered the offenders to be throwbacks to Neanderthal man, and considered them to possess "atavistic" criminal tendencies.

This approach, influenced by the earlier theory of phrenology and by Charles Darwin and his theory of evolution, has been superseded. Enrico Ferri, a student of Lombroso, believed that social as well as biological factors played a role, and held the view that criminals should not be held responsible when factors causing their criminality were beyond their control. Criminologists have since rejected Lombroso's biological theories.

3.4.11 Lacassagne School

The Lacassagne School rejected Lombroso's theory of "criminal type" and of "born criminals", and indicated the importance of social factors. However, this theory did not reject biological factors. Indeed, Lacassagne created an original synthesis of both tendencies, influenced by positivism, phrenology and hygienism, which alleged a direct influence of the social environment on the brain and compared the social itself to a brain, upholding an organicist position.

Furthermore, Lacassagne criticized the lack of efficiency of prison, insisted on social responsibilities toward crime and on political voluntarism as a solution to crime, and thus advocated harsh penalties for those criminals thought to be unredeemable ("recidivists") for example by supporting the 1895 law on penal colonies or opposing the abolition of the death penalty in 1906.

Hans Eysenck (1964, 1977), a British psychologist, claimed that psychological factors such as extraversion and neuroticism made a person more likely to commit criminal acts. He also included a 'psychoticism' dimension that includes traits similar to the psychopathic profile, developed by Hervey M. Cleckley and later by Robert Hare.

He also based his model on early parental socialisation of the child. His approach bridges the gap between biological explanations and environmental or social learning based approaches.

3.4.12 Chicago School

It is the concept in which individuals learn to recover from the effects of criminal behaviour and bring about justice in the work of criminology. The Chicago school arose in the early twentieth century, through the work of Robert E. Park, Ernest Burgess, and other urban sociologists at the University of Chicago. In the 1920s, Park and Burgess identified five concentric zones that often exist as cities grow, including the "zone in transition" which was identified as most volatile and subject to disorder.

In the 1940s, Henry McKay and Clifford R. Shaw focused on juvenile delinquents, finding that they were concentrated in the zone of transition. Chicago School sociologists adopted a social ecology approach to studying cities, and postulated that urban neighborhoods with high levels of poverty often experience breakdown in the social structure and institutions such as family and schools. This results in social disorganisation, which reduces the ability of these institutions to control behaviour and creates an environment ripe for deviant behaviour.

Other researchers suggested an added social psychological link. Edwin Sutherland suggested that people learn criminal behaviour from older, more experienced criminals that they may associate with.

3.5 TRADITIONAL AND MODERN THEORIES OF CRIME

Historically crime is general rather than exception. Crime is a very complex social issue to be dealt with. However, the insights from sociological theories offer some hope to minimize crime in any society whether they are traditional or modern. In addition, affluence alone will not minimize crime because crime occurs in modern affluent societies due to many complex factors.

In any society the benefits or affluence is not equally distributed and there are individual differences in personality profile and different groups are able to cope with strain and therefore psychological, social environmental factors, official crime control methods, values and beliefs, as well psychological factors, biological factors and social factors interact in different degrees on individuals and groups and therefore give birth to the commitment of crime.

Theoretical perspectives used in criminology include psychoanalysis, functionalism, interactionism, Marxism, econometrics, systems theory, postmodernism, etc.

3.5.1 Social Structure Theories

This theory is applied to a variety of approaches within criminology in particular and in sociology more generally as a conflict theory or structural conflict perspective in sociology and sociology of crime. This perspective is itself broad enough and has within it a diversity of positions.

3.5.2 Social Disorganisation (Neighborhoods)

Social disorganisation theory is based on the work of Henry McKay and Clifford R. Shaw of the Chicago School. Social disorganisation theory postulates that neighbourhoods plagued with poverty and economic deprivation tend to experience high rates of population turnover. These neighbourhoods also tend to have high population heterogeneity. With high turnover, informal social structure often fails to develop, which in turn makes it difficult to maintain social order in a community. Thus crime flourishes.

3.5.3 Social Ecology

Since the 1950s, social ecology studies have built on the social disorganisation theories. Many studies have found that crime rates are associated with poverty,

disorder, high numbers of abandoned buildings, and other signs of community deterioration. As working and middle class people leave deteriorating neighbourhoods, the most disadvantaged portions of the population may remain. William Julius Wilson suggested a poverty “concentration effect”, which may cause neighbourhoods to be isolated from the mainstream of society and become prone to violence.

3.5.4 Strain Theory (Social Class)

Strain theory, (also known as Mertonian Anomie), advanced by American sociologist Robert Merton, suggests that mainstream culture, especially in the United States, is saturated with dreams of opportunity, freedom and prosperity. Most people buy into this dream and it becomes a powerful cultural and psychological motivation. Merton also used the term *anomie*, but it meant something slightly different for him than it did for Durkheim. Merton saw the term as meaning a dichotomy between what society expected of its citizens, and what those citizens could actually achieve. Therefore, if the social structure of opportunities is unequal and prevents the majority from realising the dream, some of them will turn to illegitimate means (crime) in order to realise it. Others will retreat into or become part of deviant subcultures (gang members, “hobos”: urban homeless drunks and drug abusers).

3.5.5 Sub Cultural Theory

Following on from the Chicago school and Strain Theory, and also drawing on Edwin Sutherland’s idea of differential association, sub cultural theorists focused on small cultural groups fragmenting away from the mainstream to form their own values and meanings about life.

Albert K. Cohen tied anomie theory with Freud’s reaction formation idea, suggesting that delinquency among lower class youths is a reaction against the social norms of the middle class. Some youths, especially from poorer areas where opportunities are scarce, might adopt social norms specific to those places which may include “toughness” and disrespect for authority. Criminal acts may result when youths conform to norms of the deviant subculture.

Richard Cloward and Lloyd Ohlin suggested that delinquency can result from differential opportunity for lower class youth. Such youths may be tempted to take up criminal activities, choosing an illegitimate path that provides them more lucrative economic benefits than conventional, over legal options such as minimum wage paying jobs available to them.

British sub cultural theorists focused more heavily on the issue of class, where some criminal activities were seen as ‘imaginary solutions’ to the problem of belonging to a subordinate class. A further study by the Chicago school looked at gangs and the influence of the interaction of gang leaders under the observation of adults.

Sociologists such as Raymond D. Gastil, have explored the impact of a Southern culture of honor on violent crime rates.

3.6 INDIVIDUAL THEORIES

3.6.1 Trait Theories

At the other side of the spectrum, criminologist Lonnie Athens developed a theory about how a process of brutalisation by parents or peers that usually occurs in childhood results in violent crimes in adulthood. Richard Rhodes' *Why They Kill* describes Athens' observations about domestic and societal violence in the criminals' backgrounds. Both Athens and Rhodes reject the genetic inheritance theories.

3.6.2 Control Theories

Another approach is made by the social bond or social control theory. Instead of looking for factors that make people become criminal, those theories try to explain why people do *not* become criminal.

Travis Hirschi identified four main characteristics: (i) attachment to others (ii) belief in moral validity of rules (iii) commitment to achievement and (iv) involvement in conventional activities. The more a person features those characteristics, the less are the chances that he or she becomes deviant (or criminal).

On the other hand, if those factors are not present in a person, it is more likely that he or she might become criminal. Hirschi expanded on this theory, with the idea that a person with low self control is more likely to become a criminal.

A simple example: someone wants to have a big yacht, but does not have the means to buy one. If the person cannot exert self control, he or she might try to get the yacht (or the means for it) in an illegal way. On the other hand, someone with high self control will more likely either wait or deny themselves that need.

Social bonds, through peers, parents, and others, can have a countering effect on one's low self-control. For families of low socio-economic status, a factor that distinguishes families with delinquent children from those who are not delinquent is the control exerted by parents or chaperonage.

In addition, theorists such as Matza and Sykes argued that criminals are able to temporarily neutralise internal moral and social behavioural constraints through techniques of neutralisation.

3.6.3 Symbolic Interactionism

Symbolic interactionism draws on the phenomenology of Edmund Husserl and George Herbert Mead, as well as subcultural theory and conflict theory. This school of thought focused on the relationship between the powerful state, media and conservative ruling elite on the one hand, and the less powerful groups on the other.

The powerful groups had the ability to become the 'significant other' in the less powerful groups' processes of generating meaning. The former could to some extent impose their meanings on the latter, and therefore they were able to 'label' minor delinquent youngsters as criminal. These youngsters would often take on board the label, indulge in crime more readily and become actors in the 'self-fulfilling prophecy' of the powerful groups.

Later developments in this set of theories were by Howard Becker and Edwin Lemert, in the mid 20th century. Stanley Cohen who developed the concept of “moral panic” in which he considered societal reaction to spectacular, alarming social phenomena such as post-World War Two youth cultures AIDS and football hooliganism.

3.6.4 Rational Choice Theory

Rational choice theory is based on the utilitarian, classical school philosophies of Cesare Beccaria, which were popularised by Jeremy Bentham. They argued that punishment, if certain, swift, and proportionate to the crime, was a deterrent for crime, with risks outweighing possible benefits to the offender. Beccaria advocated a rational penology and conceived of punishment as the necessary application of the law for a crime. Thus the judge was simply to conform his sentence to the law. Beccaria also distinguished between crime and sin, and advocated against the death penalty, as well as torture and inhumane treatments, as he did not consider them as rational deterrents.

This philosophy was replaced by the Positivist and Chicago Schools, and not revived until the 1970s with the writings of James Q. Wilson. The argument here is that criminals, like other people, weigh costs/risks and benefits when deciding whether or not to commit crime and think in economic terms. They will also try to minimize risks of crime by considering the time, place, and other situational factors.

Gary Becker, for example, acknowledged that many people operate under a high moral and ethical constraint, but considered that criminals rationally see that the benefits of their crime outweigh the cost such as the probability of apprehension, conviction, punishment, as well as their current set of opportunities. From the public policy perspective, since the cost of increasing the fine is marginal to that of the cost of increasing surveillance, one can conclude that the best policy is to maximize the fine and minimize surveillance.

With this perspective, crime prevention or reduction measures can be devised that increase effort required committing the crime, as for example, added surveillance, police or security guard presence, added street lighting, and other measures, are effective in reducing crime.

One of the main differences between this theory and Jeremy Bentham’s rational choice theory, which had been abandoned in criminology, is that if Bentham considered it possible to completely annihilate crime (through the panopticon), Becker’s theory acknowledged that a society could not eradicate crime beneath a certain level.

For example, if 25% of a supermarket’s products were stolen, it would be very easy to reduce this rate to 15%, quite easy to reduce it until 5%, difficult to reduce it under 3% and nearly impossible to reduce it to zero (a feat which would cost the supermarket so much in surveillance, etc., that it would outweigh the benefits).

Such rational choice theories, linked to neoliberalism, have been at the basics of crime prevention through environmental design.

3.6.5 Routine Activity Theory

Routine activity theory, developed by Marcus Felson and Lawrence Cohen, draws upon control theories and explains crime in terms of crime opportunities that occur in everyday life. A crime opportunity requires that elements converge in time and place including

- 1) a motivated offender
- 2) suitable target or victim
- 3) lack of a capable guardian.

A guardian at a place, such as a street, could include security guards or even ordinary pedestrians who would witness the criminal act and possibly intervene or report it to police. Routine activity theory was expanded by John Eck, who added a fourth element of “place manager” such as rental property managers who can take nuisance abatement measures.

3.6.6 Neo-Classical School

In criminology, the Neo-Classical School continues the traditions of the Classical School within the framework of Right Realism. Hence, the utilitarianism of Jeremy Bentham and Cesare Beccaria remains a relevant social philosophy in policy term for using punishment as a deterrent through law enforcement, the courts, and imprisonment

When crime and recidivism are perceived to be a problem, the first political reaction is to call for increased policing, stiffer penalties, and increased monitoring and surveillance for those released on parole. Intuitively, politicians see a correlation between the certainty and severity of punishment, and the choice whether to commit crime. The practical intention has always been to deter and, if that failed, to keep society safer for the longest possible period of time by locking the habitual offenders away in prisons (see Wilson). From the earliest theorists, the arguments were based on morality and social utility, and it was not until comparatively recently that there has been empirical research to determine whether punishment is an effective deterrent.

3.6.7 Social Control Theory

As represented in the work of Travis Hirschi, the Social Control Theory proposes that the process of socialisation and Social Learning Theory builds self-control and reduces the inclination to indulge in behaviour recognised as antisocial. It is based on Functionalist theories of crime and proposes that there are three types of control:

Direct: by which punishment is threatened or applied for wrongful behaviour, and compliance is rewarded by parents, family, and authority figures.

Indirect: by which a youth refrains from delinquency because his or her delinquent act might cause pain and disappointment to parents and others with whom he or she has close relationships.

Internal: by which a person’s conscience or sense of guilt prevents him or her from engaging in delinquent acts.

3.6.8 Drift Theory

Although it was not presented as a Social Control Theory, David Matza (1964) also adopted the concept of emphasised frustration and rebelliousness against normative social values by delinquent youth. Matza did not identify any specific constraints or controls that would keep youth from drifting, but drifters were depicted as youth who have few stakes in conformity and are free to drift into delinquency.

As with Hirschi, Matza was skeptical that deviancy could be explained in terms of distinct subcultural or contra cultural value systems.. Delinquent youth were neither compelled nor committed to their delinquent actions, but were simply less receptive to other more conventional traditions. Thus, delinquent youth were “drifting” between criminal and non-criminal behaviour, and were relatively free to choose whether to take part in delinquency.

3.6.9 Rational Choice Theory

This grew out of the expected utility principle in economic theory, that is people will make rational decisions based on their expectations for profit maximisation and the minimisation of losses. To that extent, it fits the model of utilitarianism as proposed by the Classical School, but its implications are doubted by the Neo-Classical School.

3.7 COMPLEXITY OF CRIME IN MODERN TIMES

Initial studies compared homicide statistics between states using and not using capital punishment, and found no evidence of deterrence (Bailey & Peterson). Studies then tested certainty as against severity of punishment, e.g. Erickson (1977). The research methodologies used are either the analysis of Official Statistics for objective indicators of correlations, and attitudinal interviews and questionnaires for subjective indicators (potential criminals will not be deterred unless they understand how the criminal justice system works). The research finds that the majority conform to the law because they subscribe to the social and moral values represented by the law (i.e. the process of socialisation is effective).

Hence, at best, the threat of punishment has a not statistically insignificant effect on reported crime and the empirical evidence in support of deterrence is very limited. Raymond Paternoster’s work demonstrates that the only statistically significant data emerges from experiential studies among those who have been through the criminal justice system (i.e. specific deterrence), but that this data on its own cannot validate general deterrence.

He also finds no evidence that formal social controls are effective. Some informal social negative consequences such as the disapproval of family, loss of reputation, possible loss of employment, etc., are more significant. There is also strong evidence that increasing the rewards of conformity by providing better employment opportunities at realistic rates of pay can achieve comparable deterrent effect by giving potential offenders more to lose (Tierney: 1996, 277).

Self Assessment Questions

1) What are different schools of thought related to criminology? Explain.

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2) Discuss the various theories associated with criminology? Elaborate each one of them.

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3) What do you understand by Chicago school of thought and Neo- classic school of thought?

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4) Elaborate in detail the following:

a) Strain theory

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b) Social disorganisation

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c) Drift theory

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d) Complexity of crime in modern times

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3.8 LET US SUM UP

In this unit we have learnt about the definition and description of crime and the various factors that go to make an act a crime. As for example we talked about harm, maladaptive intention etc. We then dealt with in detail the various schools of thought explaining crime and criminal behaviour. Starting from the demenological school of thought to free will school, geographical school, and the Chicago school of thought etc. We then took up the traditional and modern schools of thought in regard to crime and criminal behaviour. In this we talked about the social structure theory, social disorganisation, social ecology , strain theory and subcultural theory. We also pointed out how each school of thought had some defect and could not fully explain crime and criminal behaviour. Then we dealt with individual theoris of crime and criminal behaviour and pointed out the trait theories, symbolic interactionism, neo classical, social control theory and the drift theory and the rational choice theory. Then we discussed the complexity of crime in modern times.

3.9 UNIT END QUESTIONS

- 1) Define and elaborate on crime and criminal behaviours
- 2) When do you think an act will be considered as a crime? What factors determine the same?
- 3) Discuss the Demonological and Free will schools of thought in describing crime.
- 4) How do classical school and the Chicago school explain criminal behaviour?
- 5) Discuss the socialistic and sociological schools of thought in detail regarding criminal Behaviour.
- 6) How do traditional and modern theories differ from the classical theories? Discuss critically.
- 7) What are individual theories and how do they explain criminal behaviour?
- 8) Elucidate the complexity of crime in the modern times.

3.10 GLOSSARY

Penalties	: Punishment imposed for breaking a law, rule or contract.
Deviant behaviour	: Diverging from usual or accepted standards, esp. in social or sexual behaviour.
Violates	: Break or fail to comply with
Law enforcement	: Ensuring obedience to the laws.
Breach	: The Act or the result of breaking
Conviction	: A fixed or firm belief
Offences	: A violation or breaking of a social or moral rule
Infractions	: Breach, violation
Forbidden	: To command (a person) not to do something.

Probity	: Integrity and uprightness
Malafide	: Bad faith, intend to deceive
Concurrence of intention	: Agreeing or consistent
Revitalisation	: Give new life
Criminogenesis	: Likely to cause criminal behaviour
Satan	: Devil
Retributive Punishment:	A punishment inflicted as a vengeance for a wrong or criminal Act
Penology	: The study of the punishment of crime and of prison management
Punishment	: The action of punishing or the state of being punished

3.11 SUGGESTED READINGS

Ahuja , Ram (2000). *Criminology*. Rawat Publications, New Delhi

Sharma, Rajender Kumar (1999) *Criminology and Penology*. H B Books, New Delhi.

UNIT 4 CRIMINAL RESPONSIBILITY

Structure

- 4.0 Introduction
- 4.1 Objectives
- 4.2 Definition of Criminal Responsibility
 - 4.2.1 Assessment of Criminal Responsibility
 - 4.2.2 Mens Rea
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4.0 INTRODUCTION

In this unit we will be dealing with criminal responsibility which means that whether a person who has committed the act or perpetrated the crime is responsible enough to know that whatever he or she has done is legally incorrect, unlawful and will entail punishment. Whether the person is aware of the crime committed and was the crime committed with complete awareness and insight and also full knowledge of the consequences. In what way criminal responsibility is considered in terms of age, mental health and mental illness etc. Whether a mentally ill person can be asked to appear in the court and defend self and whether a person suffering from certain typical problems such as epilepsy can defend self in the court etc.

4.1 OBJECTIVES

After completing this unit, you will be able to:

- Define criminal responsibility;
- Explain criminal responsibility in terms of age factor;
- Describe criminal responsibility and its characteristic features;
- Analyse criminal responsibility in terms of mental disorders; and
- Elucidate the various factors that have to be considered in regard to criminal responsibility.

4.2 DEFINITION OF CRIMINAL RESPONSIBILITY

Criminal responsibility is the fact of being responsible for a crime that the person has committed. Criminal responsibility applies not only to those who perform criminal acts but also to those who aid and abet a perpetrator by encouraging or in any way knowingly helping in the commission of such an act.

The precise definition of criminal responsibility varies from place to place but, in general, to be responsible for a criminal act implies that the perpetrator must understand what they are doing and that it is wrong. An individual may not be considered responsible for having committed a crime if the person is a child who does not understand what he or she is doing. Let us say two children of age 3 years or so are playing near a bath tub with water and one child pushes the other child into the water playfully and the other child dies in the process. In such a case the child cannot be held responsible for the killing of the other child because both of them were playing and in play without any understanding of the implications the first child pushed the second and the second child died. Here there was no intention to kill but just play activity. The age factor thus plays an important role in criminal responsibility.

Another aspect in which one cannot consider a person responsible for committing a crime is mental disorder. Let us say a person suffering from paranoid disorder (highly suspicious when suspicion is not at all warranted) feels threatened by persecutors and runs for life from those persons. He is so scared of the persecutors and imagines a person in his office being at the root of it. He is convinced that by

killing that person he could be saved from being persecuted. Such a person who kills is doing so because of a delusion (false belief) that he is getting persecuted by villains under the orders of a person in his office. This is a mental illness and under this condition a person can go and kill another but is not aware of the various consequences. Hence such a person cannot be held responsible for killing.

In yet another case a person may be hearing voices (auditory hallucinations) to go and kill Ms.X and he will go and kill that person and come back, least realising the consequences of his actions. In such cases too the person cannot be held responsible for committing the crime. Thus on grounds of mental disorder the person may not be held responsible for the criminal action.

A landmark case occurred in 1843, when Daniel M’Naghten shot and killed the secretary to Britain’s Prime Minister Robert Peel. The medical evidence found M’Naghten to be insane. This led to the famous M’Naghten Rule where someone could evade criminal responsibility if it could be proved that they did not understand the “nature and quality” of the act they were committing. Equally, they were not held responsible if they did understand what they were doing, but did not know or realise that it was wrong.

Persons suffering from a psychosis may be so out of touch with reality that at the time of the crime, the person may not realise what he is doing and what consequences such a criminal action will have. Disorders of impulse control may mean someone is unable to stop himself or herself from attacking someone. People whose actions and judgment are affected by prescription drugs may also not be fully responsible. Crimes with no apparent or rational motive may also be committed by those who are not fully responsible for their actions.

4.2.1 Assessment of Criminal Responsibility

There are a number of issues related to this factor namely the (i) Insanity standards and the construal of criminal responsibility, (ii) A review of issues related to the assessment of criminal responsibility, including the structure of these evaluations (iii) instruments developed to guide these evaluations (iv) the role of delusions in the evaluation of criminal responsibility (v) An overview of the empirical developments regarding criminal responsibility, including research on judicial instruction, and jury/juror decision-making etc.

4.2.2 Mens Rea

Criminal intent or reckless state of mind is one that the prosecution must prove that an accused had at the time of committing the offense to secure a conviction. Ordinarily, a crime is not committed, if, the mind of the person doing the act is innocent. There must be some blame worthy condition of mind (*mens rea*) before a person is made criminally liable. For instance, causing injury to an assailant in private defense is no crime, however, the moment injury is caused with intent to take revenge, the act becomes criminal. It must be kept in mind that the requisite guilty state of mind varies from crime to crime. What is an evil intent for one kind of offence may not be so for another kind.

The underlying principle of the doctrine of *mens rea* is expressed in the Latin *maxim actus non facit reum nisi mens sit rea* – the act does not make one guilty

unless the mind is also guilty. Those who actually perform the criminal act (e.g., wielding the weapon that strikes the fatal blow) are often called principals in the first degree. Those who assist at the time of the commission of the offense (e.g., holding the victim down while the principal in the first degree strikes the blow) are principals in the second degree. And those who assist before the crime takes place (e.g., by lending the weapon or by providing information) are accessories before the fact.

Usually, the law considers all equally responsible and liable to the same punishment. In many cases, though, the accessory before the fact is considered more culpable (e.g., if he has instigated the offense and arranged for it to be committed by an associate), and in some cases the person who actually performs the criminal act is completely innocent of all intent (e.g., a nurse who unknowingly administers to a patient, on a doctor's instructions, medicine that turns out to be poison). In the latter situation, the person who carries out the act is an innocent agent and not criminally responsible, and the person who caused the innocent agent to act is considered the principal in the first degree.

The mere commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute a crime, at any rate in the case of the more serious crimes. These generally require, in addition, some element of wrongful intent or other fault.

4.2.3 Mens Rea in the Indian Penal Code 1860

The Indian Penal Code 1860 sets out the definition of offences, the general conditions of liability, the conditions of exemptions from liability and punishments for the respective offences. Lord Macaulay and his colleagues have not used the common law doctrine of mens rea in defining these crimes. However, they preferred to import it by using different terms indicating the required evil intent or mens rea as an essence of a particular offence.

Guilt in respect of almost all the offences created under the IPC is fastened either on the ground of intention, or knowledge or reason to believe. Almost all the offences under the IPC are qualified by one or other words such as 'wrongful gainer or wrongful loss', 'dishonestly', 'fraudulently', 'reason to believe', 'criminal knowledge or intention', 'intentional cooperation', 'voluntarily', 'malignantly', 'wantonly', 'maliciously'. All these words indicate the blameworthy mental condition required at the time of commission of the offence, in order to constitute an offence. Thus, though the word mens rea as such is nowhere found in the IPC, its essence is reflected in almost all the provisions of the Indian Penal Code 1860. Every offence created under the IPC virtually imports the idea of criminal intent or mens rea in some form or other.

4.2.4 Appropriate Age Limits and Criminal Responsibility

On 2nd February 2007, the Committee on the Rights of the Child issued General Comment No. 10, that is, Children's Rights in Juvenile Justice (GC 10), providing their interpretation of the Convention on the Rights of the Child (CRC) provisions for children in conflict with the law. This is one of a series of seven explanatory Fact Sheets highlighting key themes in the GC 10 with the aim of ensuring that it becomes widely known, understood and used by State Parties.

The minimum age of criminal responsibility (minimum age) refers to the minimum age below which children shall be presumed not to have the capacity to infringe the penal law. The establishment of such a minimum age means that if a child below that age breaks the law, it cannot be held criminally responsible. While article 40 of the Convention on the Rights of the Child (CRC) requires that State Parties establish a minimum age, it leaves the specific age to be decided by the individual state.

At present, there is a wide spectrum of minimum ages of criminal responsibility existing in national legislations across the world, that is the range is somewhere between as young as 7 years up to age 16. Some examples are as follows:

India	– 7
Canada and Netherlands	– 12
Germany and Uganda	– 14
United Kingdom and Switzerland	– 10
Niger	– 13
Spain	– 16

The need for fixing the minimum age

The CRC and the Committee on the Rights of the Child recommend that the minimum age be raised as high as possible, taking into account the developmental differences and decision-making capabilities of children and young people.

International and domestic inconsistencies, individual discretion on child maturity and the contradiction of international conventions make it essential for States to determine an appropriate minimum age of criminal responsibility. Hence certain recommendations in this regard are as given below:

- State Parties should set their minimum age to no lower than 12 years of age;
- State Parties who currently have a minimum age which is higher than 12 should not decrease it; rather, they should work to raise it;
- States with two minimum ages should increase their lower age to 12 and increase their higher age to 14 or 16;
- States should submit detailed information with their periodic reports on the treatment of children who come in conflict with the law when they are below the minimum age along with what arrangements have been made to ensure that their treatment is fair and just;
- Children whose age cannot be proven to be above the minimum age should not be formally charged in a penal law procedure (the benefit of doubt principle);
- Even children below the minimum age have a right to a response or reaction to their alleged actions;
- States should also respect an upper-age limit (the age of 18, according to CRC), meaning that all children aged 18 and below at the time an offence has been committed should be considered under youth criminal justice system. States are also encouraged to raise this limit (up to age 21 for example) whenever possible and appropriate;

- States should set a minimum age that does not, by way of exception, allow the user of a lower age. In addition, there must be no special rules where children may be tried as adults by way of exception.

Self Assessment Questions

- 1) Define criminal responsibility and bring out its characteristic features.

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- 2) What is Mens Rea? How is it defined in Indian Penal Code.

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- 3) Why is it necessary to fix age limits for criminal responsibility?

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- 4) What is an appropriate age limit for criminal responsibility?

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4.3 CRIMINAL RESPONSIBILITY AND MENTAL DISORDER

4.3.1 Definition of Mental Disorder

Mental disorder is defined as a “disease of the mind” can include any mental abnormality which causes impairment with the exception of voluntary intoxication or transient mental states such as hysteria concussion consequently, personality

disorders are eligible for this defence. At the present time this is uncommon, largely because appellate court decisions have rendered it unlikely that an individual with a personality disorder would be unable to appreciate the nature and quality of the act in the manner that the courts have ruled. It implies knowledge of both legal and moral wrongfulness.

“Moral” means according to societal rather than individual moral code of the accused. It is insufficient that the individual simply chooses to follow their own moral dictates when they have the capacity to understand that it is wrong in the eyes of the law and wrong according to society’s usual standards. The accused must have the ability to apply that knowledge rationally.

4.3.2 Patterns of Criminality and Mental Disorder

Crime was a response to psychotic symptoms, such as delusions and hallucinations – many will be NCR

Crime motivated by compulsive urges, such as paraphilia’s or disorders of impulse control – most not NCR

Crime as the result of a personality disorder

Coincidental mental disorder not related to crime

Mental disorder results from the crime – dissociation, depression

Malingered mental disorder to avoid responsibility.

4.3.3 Different Types of Personality and Mental Disorders

DSM IV describes three clusters of personality disorders:

Cluster A – paranoid, schizoid, schizotypal

Cluster B – antisocial, borderline, histrionic, and narcissistic

Cluster C – avoidant, dependent, obsessive-compulsive

Mental disorders -Paranoia

Paranoia is a thought process thought to be heavily influenced by anxiety or fear, often to the point of irrationality and delusion. Paranoid thinking typically includes persecutory beliefs concerning a perceived threat towards oneself. Historically, this characterisation was used to describe any delusional state. In the DSM-IV-TR, paranoia is diagnosed in the form of the following:

- Paranoid personality disorder
- Paranoid schizophrenia (a subtype of schizophrenia)
- The persecutory type of delusional disorder, which is also called “querulous paranoia” when the focus is to remedy some injustice by legal action.

Paranoid Personality Disorder

Paranoid personality disorder is a psychiatric diagnosis characterised by paranoia and a pervasive, long-standing suspiciousness and generalised mistrust of others. Those with this condition are hypersensitive, are easily slighted, and habitually relate to the world by vigilant scanning of the environment for clues or suggestions to validate their prejudicial ideas or biases. Paranoid individuals are eager observers. They think they are in danger and look for signs and threats of that danger, disregarding any facts. (Waldinger, 1997). They tend to be guarded and

suspicious and have quite constricted emotional lives. Their incapacity for meaningful emotional involvement and the general pattern of isolated withdrawal often lend a quality of withdrawnness and isolation to their life experience.

The subjects of most forms of paranoia are liable to commit crime, usually violent, which may lead to their being tried for assault or murder. The question of their responsibility before the law is therefore one of the first importance (see also *Insanity: Law*). The famous case of *McNaghten*, tried in 1843 for the murder of Mr. Drummond, private secretary to Sir Robert Peel, is, in this connexion, highly important, for *McNaghten* was a typical paranoiac labouring under delusions of persecution, and his case formed the basis of the famous deliverance of the judges in the House of Lords, in the same year, on the general question of criminal responsibility in insanity. The judges' deliverance contains the following statement of law:

If "he labours under such *partial* delusion only and is not *in other respects insane* we think he must be considered in the same situation as to responsibility as if the facts to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defense, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

In considering the above deliverance it must be remembered that it was given under the influence of the enormous public interest created by the *McNaghten* trial. It has also to be remembered that in a criminal court the term responsibility means liability to legal punishment.

The dictum laid down is open to several objections.

- 1) It is based upon the erroneous assumption that a person may be insane on one point and sane on every other. This is a loose popular fallacy for which there is no foundation in clinical medicine. The systematisation of a delusion involves, as has been pointed out, the whole personality and affects emotion, intellect and conduct. The human mind is not divided into mutually exclusive compartments, but is one indivisible whole liable to be profoundly modified in its relation to its environment according to the emotional strength of the predominant morbid concepts.
- 2) It does not take into account the pathological diminution of the power of self control. The influence of continued delusions of persecution, especially if accompanied by painful hallucinations, undermines the power of self control and tends ultimately to reduce the subject towards the condition of an automaton which reacts reflexly and blindly to the impulse of the moment.
- 3) The opinion is further at fault in so far as it assumes that the test of responsibility rests upon the knowledge of right and wrong, which implies the power to do right and to avoid wrong, an assumption which is very far from the truth when applied to the insane. The number of insane criminals who possess no theoretical knowledge of right and wrong is very few indeed, so few that for practical purposes they may be disregarded.

- 4) The true paranoiac is a person of an anomalous mental constitution apart from his insanity; although he may to outward appearances be able, on occasion, to converse or to act rationally, the moment he is dominated by his delusions he becomes not partially but wholly insane; when in addition his mind is distracted by ideas of persecution or hallucinations, or both, he becomes potentially capable of committing a crime, not because of any inherent vicious propensity but in virtue of his insanity. There is therefore no middle course, from the medical point of view, in respect to the criminal responsibility of the subjects of paranoia; they are all insane wholly, not partially, and should only be dealt with as persons of unsound mind.

Schizophrenia

Schizophrenia is a mental disorder characterised by a disintegration of the process of thinking and of emotional responsiveness. It most commonly manifests as auditory hallucinations, paranoid or bizarre delusions, or disorganised speech and thinking, and it is accompanied by significant social or occupational dysfunction. The onset of symptoms typically occurs in young adulthood.

4.3.4 Criminal Responsibility and Schizophrenia

Investigating the mental state just before the crime helps when deliberating over criminal responsibility. Generally, schizophrenia is characterised by an alternation between the micro psychotic and basic normal states, and classified clinically into severe, moderate, and mild according to the level of susceptibility to the occurrence of the activation recurrence phenomenon.

Differentiating between the form and contents of the micro psychotic state is of marked importance in schizophrenia. In addition, identifying the form facilitates the distinction between behaviours while sane and those during schizophrenic episodes. Practically, the activating stimuli, which are likely to trigger the micro psychotic state, are applied in the interview to establish the psychiatric testimony based upon the activation-recurrence phenomenon. After the diagnosis of schizophrenia has been confirmed, the examinee is exposed to the stimuli possibly activating the micro psychotic state during the criminal act.

Observing the recurrence of the micro psychotic state and its frequency enables estimation of the susceptibility to the occurrence of the activation-recurrence phenomenon and the mental state during the criminal act. Therefore, if a micro psychotic state during the criminal act can be confirmed, the inability to be held legally responsible is postulated.

In contrast, if a micro psychotic state during the criminal act cannot be confirmed, the specialist giving the psychiatric testimony should conclude that the crime was most likely undertaken while sane, taking into account the objective circumstantial evidence and the suspect's coherent actions during the crime.

<p>Self Assessment Questions</p> <p>1) How are criminal responsibility and mental disorders related?</p> <p>.....</p> <p>.....</p> <p>.....</p>
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2) Discuss McNaughten trial and indicate why was it necessary to lay down certain laws in this regard? What are the criticisms against the same?

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3) Define mental disorder and bring out the differences between personality disorders and mental disorders.

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4) What are the various types of mental disorders? How is schizophrenia affect criminal responsibility?

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4.4 DELINQUENT ACT

A criminal act committed by an adult would lead to the prosecution of the adult in a criminal court, but when the same crime is committed by a juvenile, then this will be within the jurisdiction of the juvenile court. Delinquent acts include crimes against persons, crimes against property, drug offenses, and crimes against public order, when juveniles commit such acts.

4.4.1 Criminal Responsibility and Delinquent Act

According to IC 31-37-2-1, a Delinquent child is defined as a delinquent child if, before becoming eighteen (18) years of age, the child:

- 1) commits a delinquent act described above
- 2) needs care, treatment, or rehabilitation that the
 - a) the child is not receiving;
 - b) the child is unlikely to accept voluntarily; and
 - c) is unlikely to be provided or accepted without the coercive intervention of the court.

According to IC31-37-2-2 a Delinquent act has been described in many ways. For instance delinquent act would include (a) leaving home without permission of parent, guardian, or custodian (2) A child commits a delinquent act if, before becoming eighteen (18) years of age, the child leaves home:

- without reasonable cause; and
- without permission of the parent, guardian, or custodian, who requests the child's return.

According to IC 31-37-2-3 Delinquent act refers to the violation of compulsory school attendance law. Under this A child commits a delinquent act if, before becoming eighteen (18) years of age, the child violates IC 20-33-2 concerning compulsory school attendance.

As per IC 31-37-2-4 Delinquent act includes habitual disobedience of parent, guardian, or custodian Sec. 4 specifies it further by stating that the a child commits a delinquent act if, before becoming eighteen (18) years of age, the child habitually disobeys the reasonable and lawful commands of the child's parent, guardian, or custodian.

As per the IC 31-37-2-5 a Delinquent act refers to curfew violation. In Sec. 5. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits a curfew violation under IC 31-37-3.

IC 31-37-2-6 defines a Delinquent act as a violation concerning minors and alcoholic beverages Sec. 6. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child violates and drinks such prohibited beverages.

IC 7.1-5-7 concerning minors and alcoholic beverages.

IC 31-37-2-7 Delinquent act; fireworks violation Sec. 7. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child violates IC 22-11-14-6(c) concerning minors and fireworks.

4.4.2 Psychopath and Criminal Responsibility

"Likeable," "Charming," "Intelligent," "Alert," "Impressive," "Confidence-inspiring," and "A great success with the ladies": These are the sorts of descriptions repeatedly used by Cleckley in his famous case-studies of psychopaths. They are also, of course, "irresponsible," "self-destructive," and the like. These descriptions highlight the great frustrations and puzzles that surround the study of psychopathy.

Psychopaths seem to have in abundance the very traits most desired by normal persons. The untroubled self-confidence of the psychopath seems almost like an impossible dream and is generally what "normal" people seek to acquire when they attend assertiveness training classes. In many instances, the magnetic attraction of the psychopath for members of the opposite sex seems almost supernatural.

Cleckley's seminal hypothesis concerning the psychopath is that he suffers from a very real mental illness indeed: a profound and incurable affective deficit. If he really feels anything at all, they are emotions of only the shallowest kind. He does bizarre and self-destructive things because consequences that would fill the ordinary man with shame, self-loathing, and embarrassment simply do not

affect the psychopath at all. What to others would be a disaster is to him merely a fleeting inconvenience.

Psychopaths can be brilliant, write scholarly works, imitate the *words* of emotion, but over time, it becomes clear that their words do not match their actions. They are the type of person who can claim that they are devastated by grief who then attend a party “to forget.” The problem is: they really DO forget.

Being very efficient machines, like a computer, they are able to execute very complex routines designed to elicit from others support for what they want. In this way, many psychopaths are able to reach very high positions in life. It is only over time that their associates become aware of the fact that their climbing up the ladder of success is predicated on violating the rights of others.

The psychopath recognises no flaw in his psyche, no need for change.

Psychopathy is a disorder characterised by emotional abnormalities, such as lack of empathy, conscience and concern for others, and by conduct abnormalities, such as repetitive antisocial behaviour. It is estimated that 25% of convicts serving prison terms suffer from psychopathy, which is a substantial risk factor for crime. Our criminal justice system assumes that no one should be blamed and punished unless the agent deserves blame and punishment. The law also has consequential justifications for criminal punishment, such as prevention, but desert is at least a necessary justification.

By definition, an agent who is not morally responsible for behaviour does not deserve moral blame and punishment for it. Indeed, the degree to which moral and legal responsibility should be identical is of course controversial. Our criminal law contains numerous instances of strict liability in which punishment, often potentially severe, is imposed without any proof of moral fault. For the most part, however, as we have seen, the doctrines that excuse or mitigate criminal responsibility closely track the variables commonly thought to create moral excuse or mitigation.

The justification for the law’s view that psychopaths are responsible may be briefly stated.

First, psychopathy does not prevent agents from acting as the law defines action, nor does it prevent psychopaths from forming prohibited mental states.

A psychopath who kills another human being intentionally is fully *prima facie* criminally responsible.

Further, psychopaths are not excused because they do possess many rational capacities. They usually know the facts and are generally in touch with reality.

They understand that there are rules and consequences for violating them, which they treat as a “pricing” system, and they feel pleasure and pain, the anticipation of which can potentially guide their conduct. This is a relatively thin conception of rational capacity, but the law deems it sufficient to justify punishment on desert and deterrence grounds.

Finally, psychopaths do not suffer from lack of self-control as it is traditionally understood. They do not act in response to desires or impulses that are subjectively experienced as overwhelming, uncontrollable or irresistible.

Once again, there is no need to excuse according to either a desert or deterrence justification for punishment.

In short, the law views the psychopath as bad, and not as mad. Psychopaths are not morally responsible and do not deserve blame and punishment.

There are two potential theories for why this should be so: a specific and a general theory concerning the psychopath's rational capacities.

The specific theory concedes the law's thin view of the psychopath's rational capacities, but suggests that the psychopath has particularised deficits of rationality when moral concern and respect for others is in question.

As a normative matter, the best reasons people have for not violating the rights of others are that the potential wrongdoer fully understands that it is wrong to do so and has the capacity to empathize with the potential pain of their possible victims and to use that as a reason for refraining.

If a person does not understand the point of morality and has no conscience or capacity for empathy, only fear of punishment will give the person good reason not to violate the rights of others.

As has been recognised at least since Hobbes, however, social cooperation and safety cannot be secured solely by the fear of state punishment.

Internalised conscience and fellow feeling are the best guarantors of right action.

The psychopath is not responsive to moral reasons, even if they are responsive to other reasons. Consequently, they do not have the capacity for moral rationality, at least when their behaviour implicates moral concerns, and thus they are not responsible.

They have no access to the most rational reasons to behave well.

The broader theory, most ably advanced by Paul Litton, denies that psychopaths are rational at all because they lack any evaluative standards to assess and guide their conduct.

They do not even possess evaluative standards related to the pursuit of excitement and pleasure.

Psychopaths are like Frankfurt's concept of the "wanton." They do not feel regret, remorse, shame, and guilt, feelings that are typically experienced in reaction to our failure to meet the standards we have set for ourselves.

They may feel frustration and anger if they fail to get what they want, but these are not reactive emotions. Such frustration or anger does not entail negative self-evaluation.

Moreover, severe psychopaths are out of touch with ordinary social reality. They say that they have goals, but act in ways inconsistent with understanding of what entails having and achieving a goal.

They do not consistently follow life plans and are impulsive.

Much of their conduct appears unintelligible because we cannot imagine what good reason would motivate it. In brief, psychopaths have a generally diminished capacity for rational self-governance that is not limited to the sphere of morality.

The psychopath is not a person with whom moral management is possible.

Again, psychopaths know the facts and the rules and are capable of manipulation of others to achieve their own ends, but they do not get the point of morality.

It is as if they are color blind to moral concerns. The rights and interests of others have no place on their practical reasoning.

Blaming and punishing such people is morally pointless, although it may be instrumentally warranted.

Whether psychopaths should be blamed and punished is a question of how we want to live together. Because psychopaths are not members of the moral community, I believe that they should not be held responsible.

Psychopathy is a continuum concept so all psychopaths would not have to be excused. Severe psychopathy would be excused, however, and individual jurisdictions would have discretion to decide whether less severe psychopathy should also excuse.

An interesting issue is whether psychopaths would also meet the criteria for “control” tests for legal insanity, such as the inability to conform one’s conduct to the requirements of law.

In short, for psychopaths (and others) failures of self-control collapse into rationality deficits. At present, psychopathy is not a treatable condition, so all psychopaths who commit non-trivial crimes would be subject to potentially life-long involuntary civil commitment if they are excused by reason of legal insanity. Psychopathy is a risk factor for crime, but many might not re-offend despite their mental abnormality.

<p>Self Assessment Questions</p> <p>1) Define delinquency in legal terms. What are its important features?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>2) What is a delinquent act? Which are the activities indulges in by a person come under this category?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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3) Discuss delinquent act and criminal responsibility.
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4) Discuss the various characteristic features of psychopath and indicate when a crime committed by a psychopath will be considered criminally responsible?
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4.5 INSANITY

Insanity, craziness or madness is a spectrum of behaviours characterised by certain abnormal mental or behavioural patterns. Insanity may manifest as violations of societal norms, including becoming a danger to themselves and others, though not all such acts are considered insanity. In modern usage *insanity* is most commonly encountered as an informal unscientific term denoting mental instability, or in the narrow legal context of the insanity defense. In the medical profession the term is now avoided in favour of diagnoses of specific mental illness such as schizophrenia and other psychotic disorders. When discussing mental illness in general terms, “psychopathology” is considered a preferred descriptor.

4.5.1 Legal Use of the Term Insanity

All jurisdictions require a sanity evaluation to address the question first of whether or not the defendant has a mental illness. Most courts accept a major mental illness such as psychosis but will not accept the diagnosis of a personality disorder for the purposes of an insanity defense. The second question is whether the mental illness interfered with the defendant’s ability to distinguish right from wrong. That is, did the defendant know that the alleged behaviour was against the law at the time the offense was committed. Additionally, some jurisdictions add the question of whether or not the defendant was in control of their behaviour at the time of the offense. For example, if the defendant was compelled by some aspect of their mental illness to commit the illegal act, the defendant could be evaluated as not in control of their behaviour at the time of the offense. The forensic mental health specialists submit their evaluations to the court. Since the question of sanity or insanity is a legal question and not a medical one, the judge and or jury will make the final decision regarding the defendant’s status regarding an insanity defense. In most jurisdictions within the United States, if the insanity plea is accepted, the defendant is committed to a psychiatric institution for at least 60

days for further evaluation, and then reevaluated at least yearly after that. Insanity is generally no defense in a civil lawsuit.

In India, Insanity or unsoundness of mind is not defined in the act. It means a disorder of the mind, which impairs the cognitive faculty; that is, the reasoning capacity of man to such an extent as to render him incapable of understanding consequences of his actions. It means that the person is incapable of knowing the nature of the act or of realising that the act is wrong or contrary to law. A person, although of unsound mind, who knows that he is committing an unlawful act, may not get the benefit of IPC, s. 84. The nature and extent of the unsoundness must be so high so as to impair his reasoning capacity and that he may not understand the nature of the act or that it is contrary to law. It excludes from its preview insanity, which might be caused by engendered by emotional or volitional factors.

There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind) and these are:

- 1) an idiot – an idiot is one who from birth had defective mental capacity. This infirmity in him is perpetual without lucid intervals.
- 2) one made so by illness – by illness, a person is made non compos mentis. He is therefore excused in case of criminal liability, which he acts under the influence of this disorder.
- 3) a lunatic or a madman – lunatics are those who become insane and whose incapacity might be or was temporary or intermittent. A lunatic is afflicted by mental disorder only at certain period and vicissitudes, having intervals of reason; and
- 4) one who is drunk – this is covered under IPC.

4.5.2 Legal Insanity

The tests for legal insanity may be placed in two broad categories—cognitive and control (also called “volitional”). There is some doctrinal variation among the jurisdictions, but the essential questions are similar.

Cognitive tests ask whether, at the time of the crime, the defendant was disabled by mental disorder from knowing, appreciating, or understanding the nature of his conduct or that it was morally or legally wrong. Control tests ask whether, as a result of mental disorder, the defendant was unable at the time of the crime to control his conduct or to conform his conduct to the requirements of the law.

None of the cognitive or control tests for legal insanity is self-defining. All require substantial interpretation. To begin, how should the threshold requirement of a mental disease or disorder or defect be defined? The Supreme Court has made clear that the definition of mental disorder as a legal criterion for insanity is a legal question and within the discretion of the states. Thus, states are free to limit legal insanity to cases involving severe mental disorder or to define mental disorder in a non-traditional way, as long as the definition is minimally rational. They need not be bound by the definitions used by the mental health science disciplines, such as psychiatry and psychology.

Moreover, there is substantial leeway in whether the tests should be read narrowly or broadly. Control tests are often characterised as volitional, as if mental disorder has somehow disabled the agent's volitional capacities, but this locution is confusing and should be abandoned.

There is no consensual definition of volition or will in any of the relevant disciplines, such as psychology or philosophy, and this formulation quickly dissolves into the intractable issues of how the brain enables the mind and how intentions are related to actions. Perhaps one helpful way of thinking about volition is as the executory mental state that produces an action in response to an intention. Viewed in this way, however, virtually no one with a mental disorder has a volitional problem because people with disorders are fully able to execute the intentions that their disordered thoughts, perceptions, and desires may motivate.

Despite the definitional and empirical difficulties, however, some criminologists and legal philosophers nevertheless believe control tests are necessary for crimes committed by defendants with impulse disorders, such as Intermittent Explosive Disorder, or "disorders of desire," such as Pedophilia.

The problem in cases of alleged lack of self-control is distinguishing the disordered person from any other agent who also wants to do something very badly that the agent should not do, such as the very greedy person tempted terribly to steal. Simply characterising the desire as disordered in one case but not the other cannot resolve the question of control; it simply begs that question.

Why should we ever excuse someone who acts wrongly in response to a very strong desire, whether that desire is normal or abnormal? Moreover, what theory or account allows us to characterise desires, as opposed to perceptions and beliefs, as irrational? How do we distinguish between an irresistible desire and a desire simply not resisted? Concerns like these led both the American Bar Association and the American Psychiatric Association to recommend abolition of an independent control test during the insanity reform movement that occurred in response to the Hinckley verdict.

The relevance of mental disorder to legal insanity tests is conceptually straightforward, although evidentiary problems can arise. Insanity tests address normative issues concerning responsibility that are broader than claims involving action or mens rea, which are more factual.

The finder of fact needs the thickest possible description of the defendant's perceptions, thoughts, and feelings at the time of the crime in order to determine whether the legal standard for insanity is met. The fact-finder employing a cognitive or control test must thus evaluate how mental disorder affects perceptions, thoughts, beliefs, desires, and feelings. While anatomical, physiological, and other kinds of non-behavioural evidence may help the finder of fact make inferences about the defendant's psychological phenomenology, the ultimate test is behavioural, making mental disorder evidence crucially relevant.

People are found legally insane because they lack rational capacity or, more controversially, because they cannot conform their behaviour to the requirements of law.

Further, the "causal role" that mental disorder may play in criminal behaviour must be properly understood. Causation in this instance means that mental

disorder produced distorted perceptions, thoughts, or desires that influenced the defendant's reasons for action. It does not refer to "mechanical" causation. It has nothing to do with determinism or free will. The actions of people motivated in part by abnormal perceptions, beliefs, and desires are actions, but they may be excused if the abnormality renders the agent sufficiently irrational. Causation of behaviour by abnormal beliefs, for example, is no different from, no more "causal" than, causation of behaviour by normal beliefs. The only difference is that in the former case, the agent may be irrational and should therefore be excused.

Lack of rational capacity—not determinism, lack of free will, or abnormal causation—justifies the insanity defense and explains its criteria.

4.5.3 Incompetency and Mental Illness

An important distinction to be made is the difference between competency and criminal responsibility.

The issue of competency is whether a defendant is able to adequately assist his attorney in preparing a defense, make informed decisions about trial strategy and whether or not to plead guilty or accept a plea agreement. This issue is dealt with in UK law as "fitness to plead".

Criminal responsibility, however, deals with whether a defendant can be held legally responsible for his criminal behaviour.

Competency largely deals with the defendant's present condition, while criminal responsibility addresses the condition at the time the crime was committed.

In the United States, a trial in which the insanity defense is invoked typically involves the testimony of psychiatrists or psychologists who will present opinions on the defendant's state of mind at the time of the offense. Mental health practitioners are restrained from making a judgment on the issue of whether the defendant is or is not insane or what is known as the "ultimate issue".

Insanity is a legal concept, not a psychiatric concept of mental illness. Whether a person has a diagnosed mental disorder is not sufficient reason, from the court's point of view, to relieve them from all responsibility for illegal acts they may commit. A person may have a mental disorder and be a competent person in many other ways, able to write checks, handle his personal affairs, hold a job and carry on a variety of behaviours despite the mental disorder. Likewise, a person may commit a criminal act, independent of the fact that he has a mental disorder.

Depending on the jurisdiction, other elements need to be proven, for the court to accept that the mental disorder was responsible for the criminal act, that is, it must be shown that the defendant committed the crime because of the mental disorder. For example, the mental disorder interfered with his ability to determine right from wrong at the time the offense was committed.

It would unduly stigmatize a person with a diagnosed mental illness to say that because of the mental illness he is not responsible for his behaviour. Therefore, persons whose mental disorder is not in dispute will be determined sane as the court will decide that despite a "mental illness" the defendant was responsible for the acts he committed and he will be treated in court as a normal defendant.

If the person has a mental illness and it is determined that the mental illness interfered with the person's ability to determine right from wrong, and other associated criteria a jurisdiction may have, and if the person is willing to plead guilty or is proven guilty in a court of law, some jurisdictions have an alternative option known as either a Guilty but Mentally Ill (GBMI) or a Guilty but Insane verdict. The GBMI verdict is available as an alternative to, rather than in lieu of, a "not guilty by reason of insanity" verdict. Michigan (1975) was the first state to create a GBMI verdict.

Sometimes a person without mental illness can be found to be insane; for example, a person who was in a medical state of delirium at the time of the crime, or a person who is acting under the influence of a drug that was involuntarily administered (though voluntary intoxication has been rejected by most jurisdictions as a defense to crime).

4.5.4 Rules of Appreciation

In this section, various rules applied in United States jurisdiction with respect to insanity defenses are discussed.

The M'Naghten Rules

The guidelines for the *M'Naghten Rules* (1843) 10 C & F 200, state, *inter alia*, and evaluating the criminal responsibility for defendants claiming to be insane were settled in the British courts in the case of Daniel M'Naughten in 1843. M'Naughten was a Scottish woodcutter who murdered the secretary to the prime minister, Sir Robert Peel, in a botched attempt to assassinate the prime minister himself. M'Naughten apparently believed that the prime minister was the architect of the myriad of personal and financial misfortunes that had befallen him. During his trial, nine witnesses testified to the fact that he was insane, and the jury acquitted him, finding him "not guilty by reason of insanity."

The House of Lords asked the judges of the common law courts to answer five questions on insanity as a criminal defence, and the formulation that emerged from their review—that a defendant should not be held responsible for his actions only if, due to his mental disease or defect, he (i) did not know that his act would be wrong; or (ii) did not understand the nature and quality of his actions—became the basis of the law governing legal responsibility in cases of insanity in England. Under the rules, loss of control because of mental illness was no defense. The M'Naughten rule was embraced with almost no modification by American courts and legislatures for more than 100 years, until the mid-20th century. In 1998, 25 states plus the District of Columbia still used versions of the M'Naughten rule to test for legal insanity.

4.5.5 Mens Rea and Legal Insanity

As should be clear from the foregoing Parts, the mens rea issue is entirely distinct from the legal insanity issue, even if precisely the same evidence would be relevant to adjudicating both claims. People with mental disorder are not automatons; rather, they are agents who act for reasons. Their reasons may be motivated by distorted perceptions and beliefs, but they do form intentions and have knowledge of what they are doing in the narrow, most literal sense. Thus, it is very uncommon for mental disorder to negate all mens rea, even if the defendant is profoundly delusional, as Daniel M'Naughten and Andrea Yates presumably were.

In some rare cases, as we have already discussed, evidence of mental disorder might negate mens rea because the mental state it produces will be flatly inconsistent with the mens rea required by the definition of the crime or because it indirectly helps to explain why mens rea was not formed on that occasion. In these cases, the same evidence that a defendant was delusional may both negate mens rea and support a finding of legal insanity, but the questions being answered by the evidence are different.

Self Assessment Questions

1) Define insanity.

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2) Give the legal definition of insanity.

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3) Discuss the incompetency to stand trial and mental illness.

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4) What is meant by Rules of appreciation?

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5) Discuss Men's Rea in terms of legal insanity.

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4.6 CIVIL CASES VS. CRIMINAL CASES - KEY DIFFERENCES

Civil cases usually involve private disputes between persons or organisations. Criminal cases involve an action that is considered to be harmful to society as a whole. Below is a comparison of the key differences between civil and criminal cases.

4.6.1 Civil Cases

A civil case begins when a person or entity (such as a corporation or the government), called the plaintiff, claims that another person or entity (the defendant) has failed to carry out a legal duty owed to the plaintiff. Both the plaintiff and the defendant are also referred to as “parties” or “litigants.” The plaintiff may ask the court to tell the defendant to fulfill the duty, or make compensation for the harm done, or both. Legal duties include respecting rights established under the Constitution or under federal or state law.

Civil suits are brought in both state and federal courts. An example of a civil case in a state court would be if a citizen (including a corporation) sued another citizen for not living up to a contract.

For example, if a lumberyard enters a contract to sell a specific amount of wood to a carpenter for an agreed-upon price and then fails to deliver the wood, forcing the carpenter to buy it elsewhere at a higher price, the carpenter might sue the lumberyard to pay the extra costs incurred because of the lumberyard’s failure to deliver; these costs are called damages. If these parties were from different states, however, then that suit could be brought in federal court under diversity jurisdiction if the amount in question exceeded the minimum required by statute (\$75,000).

In India, The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred. A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. It is immaterial whether or not any fees are attached to the office or whether or not such office is attached to a particular place.

Individuals, corporations, and the federal government can also bring civil suits in federal court claiming violations of federal statutes or constitutional rights. For example, the federal government can sue a hospital for overbilling Medicare and Medicaid, a violation of a federal statute. An individual could sue a local police department for violation of his or her constitutional rights—for example, the right to assemble peacefully.

4.6.2 Criminal Cases

A person accused of a crime is generally charged in a formal accusation called an indictment (for felonies or serious crimes) or information (for misdemeanors). The government, on behalf of the people of the United States, prosecutes the case through the United States Attorney’s Office if the person is charged with a federal crime. A state’s attorney’s office prosecutes state crimes.

It is not the victim's responsibility to bring a criminal case. In a kidnapping case, for instance, the government would prosecute the kidnapper; the victim would not be a party to the action.

In some criminal cases, there may not be a specific victim. For example, state governments arrest and prosecute people accused of violating laws against driving while intoxicated because society regards that as a serious offense that can result in harm to others.

When a court determines that an individual committed a crime, that person will receive a sentence. The sentence may be an order to pay a monetary penalty (a fine and/or restitution to the victim), imprisonment, or supervision in the community (by a court employee called a U.S. probation officer if a federal crime), or some combination of these three things.

4.7 TYPES OF CRIME

4.7.1 White-Collar Crime

Within the field of criminology, white-collar crime has been defined by Edwin Sutherland as “a crime committed by a person of respectability and high social status in the course of his occupation” (1949). Sutherland was a proponent of Symbolic Interactionism, and believed that criminal behaviour was learned from interpersonal interaction with others. White-collar crime, therefore, overlaps with corporate crime because the opportunity for fraud, bribery, insider trading, embezzlement, computer crime, copyright infringement, money laundering, identity theft, and forgery are more available to white-collar employees.

4.7.2 Blue-Collar Crime

The types of crime committed are a function of what is available to the potential offender. Blue-collar crime tends to be more obvious and thus attracts more active police attention (e.g. for crimes such as vandalism or shoplifting, where physical property is involved). In contrast, white collar employees can incorporate legitimate and criminal behaviour, thus making themselves less obvious when committing the crime. Therefore, blue collar crime will more often use physical force, whereas in the corporate world, the identification of a victim is less obvious and the issue of reporting is complicated by a culture of commercial confidentiality to protect shareholder value.

4.7.3 State-Corporate Crime

The negotiation of agreements between a state and a corporation will be at a relatively senior level on both sides, this is almost exclusively a white-collar “situation” which offers the opportunity for crime. White-collar crime has become a priority of law enforcement.

When senior levels of a corporation engage in criminal activity using the company this is sometimes called control fraud.

4.7.4 Organised Crime

Organised crime or criminal organisations are transnational, national, or local groupings of highly centralised enterprises run by criminals for the purpose of

engaging in illegal activity, most commonly for monetary profit. The *Organised Crime Control Act* (U.S., 1970) defines organised crime as “The unlawful activities of a highly organised, disciplined association. Such crime is commonly referred to as the work of the *Mob* in the U.S.

Mafia is a term used to describe a number of criminal organisations around the world. In the United States, “the Mafia” generally refers to the Italian American Mafia. Other powerful organisations described as mafias include the Russian Mafia, the Irish Mob, the Chinese Triads, the Albanian Mafia, Bosnian mafia, the Japanese Yakuza, the Neapolitan Camorra, the Calabrian ‘Ndrangheta, the Apulian Sacra Corona Unita, the Indian Mafia, the Unione Corse, Serbian Mafia, the Mexican Mafia and the Bulgarian mafia. There are also a number of localised mafia organisations around the world bearing no link to any specific ethnic background.

Some criminal organisations, such as terrorist organisations, are politically motivated. Gangs may become “disciplined” enough to be considered “organised”. An organised gang or criminal set can also be referred to as a mob. The act of engaging in criminal activity as a structured group is referred to in the United States as racketeering.

4.7.5 Juvenile Sex Crimes

This refers to the minor who commits sexual crimes. They indulge in sexual crimes which are defined as sexually abusive behaviour committed by a person under the age of 18 that is perpetrated “against the victim’s will, without consent, and in an aggressive, exploitative, manipulative, or threatening manner.

Examining prevalence data and the characteristics of juvenile sex offenders is a fundamental component to obtain a precise understanding of this heterogeneous group. With mandatory reporting laws in place, it became a necessity for providers to report any incidents of disclosed sexual abuse.

4.7.6 Political Crime

In criminology, a political crime is an offence involving overt acts or omissions (where there is a duty to act), which prejudice the interests of the state, its government or the political system. It is to be distinguished from state crime when it is the states that break both their own criminal laws or public international law.

States will define as political crimes any behaviour perceived as a threat, real or imagined, to the state’s survival including both violent and non-violent oppositional crimes. A consequence of such criminalisation may be that a range of human rights, civil rights, and freedoms are curtailed, and conduct which would not normally be considered criminal *per se* is criminalised at the convenience of the group holding power.

Thus, while the majority of those who support the current regime may consider criminalisation of politically motivated behaviour as an acceptable response when the offender is driven by more extreme political, ideological, religious or other beliefs, there may be a question of the morality of a law which simply criminalises ordinary political dissent.

4.7.7 Public Order Crime

In criminology public order crime is defined a crime which involves acts that interfere with the operations of society and the ability of people to function efficiently, that is, public order crime is a behaviour that has been labelled criminal because it is contrary to shared norms, social values, and customs. Generally speaking, deviancy is criminalised when it is too disruptive and has proved uncontrollable through informal sanctions.

Public order crime should be distinguished from political crime. In the former, although the identity of the “victim” may be indirect and sometimes diffuse, it is cumulatively the community that suffers, whereas in a political crime, the state perceives itself to be the victim and criminalises the behaviour it considers threatening. Thus, public order crime includes consensual crime, victimless vice, and victimless crime. It asserts the need to use the law to maintain order both in the legal and moral sense.

For example, in cases where a criminal act subverts or undermines the commercial effectiveness of normative business practices, the negative consequences extend beyond those at whom the specific immediate harm was intended. Similarly, in environmental law, there are offences that do not have a direct, immediate and tangible victim, so crimes go largely unreported and unprosecuted because of the problem of lack of victim awareness. In short, there are no clear, unequivocal definitions of ‘consensus’, ‘harm’, ‘injury’, ‘offender’, and ‘victim’.

4.7.8 State Crime

In criminology, state crime is activity or failures to act that break the state’s own criminal law or public international law. For these purposes, Ross (2000b) defines a “state” as the elected and appointed officials, the bureaucracy, and the institutions, bodies and organisations comprising the apparatus of the government. Initially, the state was the agency of deterrence, using the threat of punishment as a utilitarian tool to shape the behaviour of its citizens. Then, it became the mediator, interpreting society’s wishes for conflict resolution. Theorists then identified the state as the “victim” in victimless crimes.

Green & Ward (2004) adopt Weber’s Thesis of a sovereign “state” as possessing a monopoly on the right to use force. Thus, the criteria for determining whether a state is “deviant” will draw on international norms and standards of behaviour for achieving the state’s usual operating goals. One of those standards will be whether the state respects human rights in the exercise of its powers. But, one of the definitional difficulties is that the states themselves define what is criminal within their own territories, and as sovereign powers, they are not accountable to the international community unless they submit to international jurisdiction generally, or criminal jurisdiction in particular.

4.7.9 Victimless Crime

A victimless crime is an infraction of criminal law without any identifiable evidence of an individual that has suffered damage in the infraction. Typical examples include violations of laws concerning public decency or public order, and include the sale, possession, and use of illicit drugs, prostitution, trafficking in pornography, and gambling. These laws are based on the *offence principle*, as opposed to laws based on the *harm principle*.

In a constitutional state, the legislature, a body in turn elected by the sovereign, defines criminal law. A crime (as opposed to a civil wrong or *tort*) is an infraction of a law, and will not always have an identifiable individual or group of individuals as its victims, but may also, for example, consist of the preparations that did not result in any damage (*mens rea* in the absence of *actus reus*), such as attempted murder, offenses against legal persons as opposed to individuals or natural persons, or directed against communal goods such as social order or a social contract or the state itself, as in tax avoidance and tax evasion, treason, or, in non-secular systems, the supernatural (infractions of religious law).

Self Assessment Questions

1) What are the key differences in civil and criminal cases? Elucidate

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2) Discuss white collar crime and blue collar crime bringing out the differences between them.

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3) What is an organised crime? Would you say that the state corporate crime is an organised crime?

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4) Distinguish between political crime and state crime?

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4.8 FACTORS THAT HAVE TO BE CONSIDERED IN REGARD TO CRIMINAL RESPONSIBILITY

Let us first take up the biological factors. Neurochemicals are responsible for the activation of behavioural patterns and tendencies in specific areas of the brain. There have been attempts to determine the role of neurochemicals in influencing criminal or antisocial behaviour. Included in the list of neurochemicals already cited by researchers are monoamine oxidase (MOA), epinephrine, norepinephrine, serotonin, and dopamine. Monoamine oxidase (MAO) is an enzyme that has been shown to be related to antisocial behaviour. Specifically, low MAO activity results in disinhibition which can lead to impulsivity and aggression.

Serotonin is a neurochemical that plays an important role in the personality traits of depression, anxiety, and bipolar disorder. It is also involved with brain development and a disorder in this system could lead to an increase in aggressiveness and impulsivity. Low levels of serotonin have been found to be associated with impulsive behaviour and emotional aggression. Dopamine is a neurotransmitter in the brain that is associated with pleasure and is also one of the neurotransmitters that is chiefly associated with aggression. Activation of both affective (emotionally driven) and predatory aggression is accomplished by dopamine .

Attention Deficit Hyperactivity Disorder (ADHD), Conduct Disorder (CD), and Oppositional Defiance Disorder (ODD) are three of the more prominent disorders that have been shown to have a relationship with later adult behaviour. ODD is characterised by argumentativeness, noncompliance, and irritability, which can be found in early childhood. When a child with ODD grows older, the characteristics of their behaviour also change and more often for the worse. They start to lie and steal, engage in vandalism, substance abuse, and show aggression towards peers. Frequently ODD is the first disorder that is identified in children and if sustained can lead to the diagnosis of CD. It is important to note however that not all children who are diagnosed with ODD will develop CD.

ADHD is associated with hyperactivity-impulsivity and the inability to keep attention focused on one thing . Impulse control dysfunction and the presence of hyperactivity and inattention are the most highly related predisposing factors for presentation of antisocial behaviour. Children diagnosed with ADHD have the inability to analyse and anticipate consequences or learn from their past behaviour. Children with this disorder are at risk of developing ODD and CD, unless the child is only diagnosed with Attention Deficit Disorder (ADD), in which case their chances of developing ODD or CD are limited. The future for some children is made worse when ADHD and CD are co-occurring because they will be more likely to continue their antisocial tendencies into adulthood.

Conduct Disorder is characterised with an individual's violation of societal rules and norms (Morley & Hall, 2003). As the tendencies or behaviours of those children who are diagnosed with ODD or ADHD worsen and become more prevalent, the next logical diagnosis is CD. What is even more significant is the fact that ODD, ADHD, and CD are risk factors for developing Antisocial Personality Disorder (ASPD). This disorder can only be diagnosed when an individual is over the age of eighteen and at which point an individual shows

persistent disregard for the rights of others. ASPD has been shown to be associated with an increased risk of criminal activity. Therefore, it is of great importance that these early childhood disorders are correctly diagnosed and effectively treated to prevent future problems.

Another critical aspect that must be examined regarding antisocial or criminal behaviour is the personality characteristics of individuals. Two of the most cited personality traits that can be shown to have an association with antisocial or criminal behaviour are impulsivity and aggression.

The family environment is critical to the upbringing of a child and if problems exist then the child is most likely to suffer the consequences. We have seen the problems associated with a child who is diagnosed with ADHD and how that can influence antisocial or criminal behaviour. In relation to that, some researchers have claimed that it is the family environment that influences the hyperactivity of children.

Another significant factor in the development of antisocial or delinquent behaviour in adolescence is peer groups. There is a correlation between the involvement in an antisocial or delinquent peer group and problem behaviour. One of the primary causes as to why this occurs can be traced back to aggressive behaviour in young children. When children are in preschool and show aggressive tendencies towards their peers, they will likely be deemed as an outcast. This creates poor peer relationships and relegates those children to be with others who share similar behaviours.

Social learning theory has been cited as way to explain how the environment can influence a child's behaviour. Using this theory to explain the aggressive or antisocial behaviour of a child means that a child observes aggressive behaviour between parents, siblings, or both. As a result, the children believe that this aggressive behaviour is normal and can therefore use it themselves because they do not see the harm in acting similar to their parents.

The exposure to such high levels of aggression and other environmental factors greatly influences and reinforces a child's behaviour. A significant point that should be known however is the fact that other research has supported the notion that genetics do influence levels of aggression, which stands in opposition to the social learning theory (Miles & Carey, 1997).

4.9 LET US SUM UP

There cannot be enough possible evidence to conclude the point that genetics play the most important role in the outcome or behaviour of an individual. The opposing viewpoint of environmental factors is not without its doubts either as to being the prominent factor influencing antisocial or criminal behaviour of an individual. In this paper, there is more evidence supporting the genetics viewpoint, but that does not mean it is more important. With the research and studies having numerous flaws and the inability to adequately separate nature and nurture, there is still a great debate between genetic and environmental factors.

Researchers, however, have certainly come far in their progression, to the point where there is a large consensus of the fact that genes do influence behaviour to

a certain extent. Although not as widely publicized, it is the belief of the author that these same researchers also believe that environmental factors account for what cannot be explained by genes. Therefore it seems obvious to reach the conclusion that an individual's antisocial or criminal behaviour can be the result of both their genetic background and the environment in which they were raised.

One researcher has proposed a theory relating to sociopaths and their antisocial behaviour. According to the theory, a primary sociopath is lacking in moral development and does not feel socially responsible for their actions. This type of sociopath is a product of the individual's personality, physiotype, and genotype. A secondary sociopath develops in response to his or her environment because of the disadvantages of social competition. Living in an urban residence, having a low socio-economic status, or poor social skills can lead an individual to being unsuccessful in reaching their needs in a socially desirable way, which can turn into antisocial or criminal behaviour. The first type of sociopath is dependent on their genetic makeup and personality, while certain factors of the second type can also be heritable. Notwithstanding, the second type has a greater dependence on environmental factors (Miles & Carey, 1997). Perhaps from this review of both genetic and environmental factors, it seems clear to support the idea of the secondary sociopath type. An individual can inherit certain genes and when combined with the right environmental factors can lead them to engage in antisocial or criminal behaviour.

Although not mentioned extensively in the text of the paper, there is a great need to try and identify those individuals, especially children, who may become susceptible to certain disorders or personality traits that can lead into antisocial, delinquent, or criminal behaviour. Society should not try to imitate the era of controlled breeding, but rather focus on the treatment and rehabilitation of those individuals in need. Certain educational, environment enrichment programs have been shown to have a lasting effect on children if given by a certain age (Raine, Mellinger, Liu, Venables, & Mednick, 2003). If more of these programs could be developed, society could help prevent the future antisocial or criminal behaviour of children.

4.10 UNIT END QUESTIONS

- 1) Define criminal responsibility and indicate when does a crime become criminal responsibility?
- 2) Discuss Men's Rea and its provisions in great detail.
- 3) Define mental disorders of all typ[es and indicate the relagtionship between criminal responsibility and mental disorders.
- 4) Discuss critically the criminal responsibility in terms of the delinquent act?
- 5) Defining the term insandity indicate how criminal responsibility is related to insanity?
- 6) What are the differences between criminal and civil cases?
- 7) Elucidate the various types of crimes and indicate the criminal responsibility in regard to each of them.

4.11 GLOSSARY

Automaton	: Moving mechanical device made in imitation of a human being.
Executor	: A person appointed by a testator to carry out the terms of their will.
Fallacy	: Mistaken belief or a failure in reasoning which renders an argument invalid.
Fraudulent	: Done by or involving fraud.
Hysteria	: Exaggerated or uncontrollable emotion or excitement or convergence of psychological stress into physical symptoms or a change in self-awareness.
Perpetrate	: Carry out or commit (a harmful, illegal or immoral action).
Persecute	: Subject to prolonged hospitality or ill-treatment.
Personality Disorder	: Deeply ingrained and mal-adaptive pattern of behaviour typically causing long term difficulties in social relationships.
Psychosis	: A mental disorder in which thought and emotions are so impaired that perception of external reality is severely affected.
Transient	: Lasting for a short while.
Vandalise	: Deliberately destroy or damage property.

4.12 SUGGESTED READINGS

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Indian Penal Code 1860

UNIT 1 MENTAL DISABILITY, MALINGERING, MENTAL ILLNESS, SUBSTANCE ABUSE EVALUATION (FORENSIC PERSPECTIVE)

Structure

- 1.0 Introduction
- 1.1 Objectives
- 1.2 Mental Disability
 - 1.2.1 Definition and Concept
 - 1.2.2 Relationship to Criminality
 - 1.2.3 Mentally Disabled and the Criminal Justice System
 - 1.2.4 Assessment and Evaluation
- 1.3 Malingering
 - 1.3.1 Definition and Concept
 - 1.3.2 Malingering/Deception and Criminal Justice System
 - 1.3.3 Response Styles
 - 1.3.4 Evaluation and Assessment of Malingering/Deception
- 1.4 Mental Illness
 - 1.4.1 Definition and Concept
 - 1.4.2 Mental Illness and Crime
 - 1.4.3 Criminal Justice System and Mentally Ill Offender
 - 1.4.4 Assessment and Evaluation
- 1.5 Substance Abuse Evaluation
 - 1.5.1 Definition and Concept
 - 1.5.2 Drug Abuse and Crime
 - 1.5.3 Drug Abuse and Criminal Justice System
 - 1.5.4 Assessment and Evaluation
- 1.6 Let Us Sum Up
- 1.7 Unit End Questions
- 1.8 Suggested Readings

1.0 INTRODUCTION

This unit will discuss the concept of mental disability malingering, mental illness, substance abuse, assessment and evaluation and the impact of these factors in criminal justice system as a whole from a forensic perspective. In this unit we will be dealing with the concept of disability and its relationship to criminality. There will be a discussion on how persons with mental disorder are dealt with in the criminal justice system. This will be followed by a discussion on assessment and evaluation and the tools thereof to find out if a person is malingering, cheating, etc., and how far one can rely on the statement of the defendant. Also quite often persons may commit a crime under the influence of substance and drug abuse. These aspects in terms of criminal justice system are being presented in this unit.

1.1 OBJECTIVES

After completing this unit, you will be able to:

- Define mental disability;
- Describe malingering;
- Explain mental illness;
- Elucidate substance abuse and the effect of these factors in the development of criminality; and
- Put forth the various methods of assessment and evaluation from the forensic perspective.

1.2 MENTAL DISABILITY

1.2.1 Definition and Concept

Mental disability refers to all kinds of intellectual sub-normality. Mental disability is defined as “incomplete or insufficient general development of the mental capacities.” The level of intellectual functioning of those suffering from mental disabilities can be extremely low. These persons are also labeled as mentally retarded persons who have an IQ of 70 and below on an intelligence test. Mental retardation is a failure to develop intellectually and otherwise, at a rate comparable to other individuals within the same age group. Those with extremely limited mental ability reveal very clearly the lack of development and inability to manage themselves in their day-to-day living and it is not difficult to assess their mental abilities. However, those individuals whose level of ability is nearly approximate the average or dull may pose problems. Their disability cannot be readily assessed and they are expected to handle the situation as adequately as others of their own age group which they are not capable to do. In such cases, the problem arises due to their relative social incompetence and not merely due to the presence of appreciable degree of mental disability.

The mentally disabled persons are less able to make discriminations and to use good judgment in practical life situations. As adults such persons may be quite successful in simple works where little judgment or planning is required. Many of them find useful and satisfying place in the society, manage their own affairs with reasonable success and prudence and generally behave as a good citizen. It is apparent that the mentally disabled persons are not innately perverse and, therefore, not naturally prone to indulge in criminal acts. The explanation for the fact that some become useful citizens and others become chronic delinquents or criminals are numerous and varied as in the case of persons with average or superior intelligence.

1.2.2 Relationship to Criminality

The relationship between mental disability and criminality is not very clear and contrary views have been expressed. That is, some psychologists are of the opinion that mental disability is an important factor in the production of criminal behaviour but some hold the opinion that correlation between mental disability/deficiency and delinquency is not significant and does not imply a cause and effect relationship between the two.

On the other hand, it is a fact that mental disability may not be a specific cause for development of a criminal personality, these may handicap the personality development to a great extent and render the individual more vulnerable to environmental stress. Many of the persons with mental disability are exposed to unfavourable influences and conditions not ordinarily experienced by normal individual such as:

They may be having mentally deficient parents who are incapable of providing even the normal amount of supervision and direction while such individuals require special care attention.

Another factor which may contribute is the fact that the mentally disabled individuals are suggestible and anxious to please that he is targeted very easily by others. They cannot appreciate the dangerousness and consequences of the act and, therefore, may be induced to do things which the normal person will not dare to attempt. Such an individual can be encouraged to commit crime by other criminals in his surroundings.

Many of these persons may develop irritability due to their failure to compete successfully in the broader social group and on account of this they are given unkind nicknames, victimised by pranks and jokes which may lead them to strike back often with a violence appropriate to their lack of judgment and self restraint.

From the above discussion it is clear that mental disability is not related to criminality as a causative factor rather it is situational and such situation may give rise to the criminal behaviour in otherwise normal individuals.

1.2.3 Mentally Disabled and the Criminal Justice System

The mentally disabled persons may be a victim of a crime, may have witnessed a crime and may have committed a crime or accused of committing a crime and their disability will definitely have an impact upon how such persons will benefit from the criminal justice system?

1) Mentally Disabled person as a victim

There is a serious risk that people with limited mental capacity will be served extremely poorly by the criminal justice system because

- a) they may be unable to report offences against them to the police,
- b) in the absence of other evidence, the evidence of the mentally disabled victim may not be regarded as too unreliable to present in the court,
- c) those who live in institutions may be at a disadvantage because the managers looking after them may not have appropriate procedures for contacting the police about crimes reported by residents. Alternatively, they may actively discourage staff from reporting such matters to the police because the victim would make a poor witness in their eyes.

2) Mentally Disabled person as a Witness

It may be that the mentally disabled persons have a greater than average chance of witnessing a crime. Such persons are at an increased risk of being victimised by others in the community. In case, they are victims of sexual assault, their own evidence is extremely important (Kebbell and Hatton, 1999). In order to be a

competent witness under the British case law, the judge has to be satisfied on two main issues for which the advice of psychologists and psychiatrists may be sought. The issues are:

- a) does the witness understand the oath and its implied sanction, and
- b) is the witness capable of giving an accurate account of what they have seen?

According to Kebbel and Hatton (1999) the style of questioning used with the persons with mental disability may have an influence on the quality of the testimony elicited. They are able to answer general and simple questions and not the specific and complex questions.

Mentally Disabled person as an Accused/ Suspect: When the mentally disabled persons are suspected or are accused for their involvement in, committing a crime, the first question arises at the time of interrogation i.e. whether he/she is able to understand the questions presented to him by the interrogating officer?

At a later stage, the question of understanding his/her rights comes whether the accused/suspect has sufficient present ability to consult his/her lawyer with a reasonable degree of rational understanding, and whether he/she has a rational as well as factual understanding of the proceedings against him/her. Further, false confession under police pressure is a risk with such a vulnerable group.

1.2.4 Assessment and Evaluation

The psychological assessment of an individual's mental abilities requires the application of psychometric tests to assess the mental functioning. Generally intelligence tests are administered to assess and evaluate the mental ability. There are various types of intelligence tests available-group vs. individual tests, verbal vs. performance tests, adult vs. children's tests. The best testing instrument of mental ability is the Wechsler Adult Intelligence Scale - 4th edition, Wechsler Intelligence Scale for Children – 4th edition and Stanford-Binet Intelligence Scales – 5th edition. The WAIS has both the components i.e. verbal and performance and this is an individual test.

Besides administration of psychometric tests, the psychologist can conduct

- a) Clinical Interview which includes review of psychiatric ,medical and social history, mental status examination, behaviour, culture, religion, and preference for support,
- b) Cognitive Testing which includes assessment of functioning across multiple areas of cognitive skills like reasoning, judgment, insight, mental flexibility, memory, attention, language, and visuospatial abilities among others. The process of cognitive testing is analogous to putting the brain on a “road test” and this is the only tool to demonstrate how the brain actually functions in the outside world, and
- c) Functional Testing is helpful in the assessment of skills specific to independent living.

1.3 MALINGERING

1.3.1 Definition and Concept

Malingering in psychiatric terms is lying. The term malingering is commonly used to refer to conscious deception. There is no psychiatric concept of malingering which does not have the element of conscious fabrication. It is conscious exaggeration of symptoms as opposed to unconscious attempt at resolution of conflicts.

The widely accepted definition of malingering is the “conscious simulation or exaggeration of injury, illness, or disability”. The essential features of malingering as defined by the DSM, is the “intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs...”

Malingering may be seen most commonly in those people who have been injured either in a working situation or in an automobile accident. A malingerer is one who is responding to an injury by a falsified deceptive set of symptoms. In malingering there is deliberate and persistent planning and the conscious mind is a participant in the simulated disorder.

Deception is one possible behavioural outcome to resolving a problem situation. The ability to be deceptive begins in childhood and continues unabated into adolescence and adulthood. Deceptive behaviour cuts across all socio-economic tiers, educational groupings, career lines, and workplace settings and is seen in every area of human activity.

Deception in various forms is a pervasive phenomenon in among living organisms. Reviling, conjuring, confidence games, and psychic frauds are still popular ventures. Deception is a ubiquitous, adaptive, and potentially detectable phenomenon. Malingering or deception is generally used for unlawful gains, fake claims, and to avoid punishments for a crime.

The symptoms targeted for deception reflects goal formulation and planning on part of the faker. As a rule the fakers select target symptoms in accordance with the direction of their vested interests. Selecting a target means that the faker makes assumptions about both ground truth and distortion.

Targets can change as a function of many factors like opportunity, fatigue, and evaluator behaviour but the goal remains the same. Finally, the targets are often based on partially real deficits and represent an exaggeration of deficits rather than pure fabrication. In a nutshell, the targets of malingering involve any short term objectives which, when achieved are in the direction of the faker’s stake.

1.3.2 Malingering/Deception and Criminal Justice System

Deception is relevant to all forensic settings and situations where expert opinions on mental state are sought. Civil claims of psychological damage or trauma is one area where malingering is always suspected. Civil claims of mental injury, trauma, or defect may be broadly categorised into tort claims and eligibility claims.

Tort claims allege that a personal injury was caused to the plaintiff or to the property of the plaintiff by the negligence or intentional act of the defendant. Such injuries are compensable through awards for the actual damages sustained and sometimes for punitive damages as well. Eligibility claims allege that the claimant satisfies current criteria for special assistance from a government program. In all these types of claims distortion and outright malingering of complaints is a significant probability.

Another situation in which malingering occurs very frequently is when a suspect faces the death sentence. Simulation may also occur when the accused is a police informer or is suspected of being an informer by his criminal associates.

1.3.3 Response Styles

Four types of response styles have been described by Lipman (1962), which are as given below:

- a) Invention – the patient has no symptoms but fraudulently represents that he has,
- b) Perseveration – genuine symptoms formerly present have ceased, but are fraudulently alleged to continue,
- c) Exaggeration – genuine symptoms are present, but the patient fraudulently makes these out to be worse than they are,
- d) Transference – genuine symptoms are fraudulently attributed to a cause other than the actual cause in fact.

1.3.4 Evaluation and Assessment of Malingering/Deception

The forensic psychologists may be asked to evaluate the validity of an illness, whether malingering is involved, and to aid in the follow up evaluation of persons claiming mental and emotional difficulties due to previous traumatic experience.

The forensic distortion analysis (FDA) mandates a scrutiny of the actor, oneself as an evaluator, and the context in which the distortion occurs. In many cases the issues surrounding FDA makes it impossible for one individual or discipline to answer all the biological, psychological, and social questions in deception analysis.

Deception analysis involves some collaboration with other sources of data. An adequate database for FDA requires information relevant both to the time of evaluation and some past event. In the forensic distortion analysis, therefore, the initial step is to gather information. Possible sources include:

- Interviews of significant/ knowledgeable others.
- Behavioral observation of the possible deceiver in individual and group, structured and unstructured, stressful and non-stressful situations.
- Functional analysis of previous deceptive behaviour.
- Analysis of validity indicators on psychological testing.
- Analysis of learning curves and expected performance in intellectual and neuropsychological methods.
- Competence assessment.
- Medical and laboratory analysis.

- Neurological testing using PET, CT, and MRI technologies.
- Semantic and transcript analysis.
- Non verbal behaviour analysis.
- Autobiographical materials like diaries, letters.
- Records produced by others like military, school, job.
- Expunged records in the State or Federal archives.
- Intervention paradigm designed to assess deceit by changing it.
- Base rate analysis for trait of the groups in which the deceiver holds membership.

The analysis then proceeds to a synthesis of the findings by considering all factors and assigning due importance to various factors. It is expected that the synthesis can be verified and replicated by independent examiners. A good working rule is that deception must be demonstrated, not simply arrived at by ruling out other possibilities. The evaluator should recognise that ground truth for any event, free of camouflage and faking, stands by itself and can be measured.

Besides the above data analysis, psychological tests like Minnesota Multiphasic Personality Inventory (MMPI) and MMPI-2 have also been used in case of civil litigants. The MMPI-2 is a 567-item multiscale inventory designed to assess psychopathology. In addition to its clinical scales, the MMPI-2 contains specialised scales designed to evaluate issues related to response styles. However, these scales have not been widely used or cross validated. Some psychological tests specially designed to assess malingering are as follows:

The Structured Interview of Reported Symptoms (SIRS) is an interview designed to comprehensively assess malingering and related response styles.

The Miller Forensic Assessment of Symptoms Test (M-FAST) is a 25-item structured interview consisting of seven scales designed to be used to screen for malingering.

The Structured Inventory Malingering Symptomatology (SIMS) is a 75-item true/false test composed of five scales: low intelligence, affective disorders, neurological impairment, psychosis, and amnesia.

The FDA model suggests that any combination of methods – interviewing, testing, observation, base rate comparison – can be utilised.

<p>Self Assessment Questions</p> <p>1) What is the difference between mental disability and malingering?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

2) How the concept of mental disability related to criminal justice system?
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3) Explain the benefits of malingering to the malingerer?
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4) What are the various methods of assessment of psychological phenomena in relation to criminal justice system?
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1.4 MENTAL ILLNESS

1.4.1 Definition and Concept

Mental illness is a disorder of the mind that is judged by the experts to interfere substantially with the person’s ability to cope with life on a daily basis. It presumably deprives a person from freedom of choice but it is important to note that there are degrees to this deprivation. Mental illness is manifested in behaviour that deviates notably from normal conduct. A mentally ill individual is characterised by abnormal patterns of experience and behaviour. Abnormal behaviour is usually more extreme than is normal behaviour. Abnormal behaviour is a deviation from commonly accepted patterns of behaviour, emotion, or thought and usually refers to maladaptive behaviour. The task of differentiating between what is normal and what is abnormal has always been very difficult. Different persons define abnormality in different ways, from different point of view and for different purposes.

The mental illness or abnormal behaviour can be broadly classified as Neuroses (includes anxiety reactions, phobic reactions, conversion reactions, dissociative reactions, obsessive compulsive reactions, and neurotic depressive reactions).

Psychoses includes paranoid reactions, psychotic depressive reactions, manic reactions and manic depressive cycles, schizophrenic reactions, and involuntional

psychotic reactions. Personality disorders include character disorder, inadequate and unstable personalities, sociopathic personality disturbances, sexual deviation and addiction, psychosomatic disorders, and acute and chronic brain disorder.

1.4.2 Mental Illness and Crime

The relationship between mental illness and criminal behaviour is a complex one. Numerous attempts have been made to classify and integrate criminal behaviour into accepted psycho-social diagnoses.

The common element in criminal behaviour and abnormal behaviour is that both fail to live in conformity with the rules and regulations of the society and show partial disregard for the requirements for social acceptability.

This common factor has led to the thought that crime is product of mental abnormality. The relationship between criminal behaviour and mental illness is not as strong as it is often assumed and the fact is that all law violators are not mentally ill and all persons who suffer from mental disorder do not commit crime. In behaviour which is both criminal and abnormal the problem is greater and mentally ill offenders pose special problems for the criminal justice system.

1.4.3 Criminal Justice System and Mentally Ill Offender

According to Wootton (1978), the issue of mental illness may be raised at three different stages:

- a) the accused may be certified insane and, therefore, unfit to stand trial,
- b) the accused may plead mental illness as an excuse to a criminal charge or as in the case of the English Homicide Act 1957, the accused may enter a plea of “diminished responsibility” in order to reduce a charge of murder to that manslaughter, and
- c) when an offender has been convicted the court may substitute medical for penal treatment.

Even when the accused has successfully pleaded the defense of mental illness to a criminal charge, he may not necessarily be discharged rather he may be detained for medical treatment. According to M’Naghten Rules 1843, in order to establish a defense of insanity it must be proved that the accused ‘was laboring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing. Or if he did know it, that he did not know he was doing what was wrong.

Essentially, the rule states that if a person because of some mental disease, did not know right from wrong at the time of committing an unlawful act, or did not know that what he was doing was wrong, that person cannot be held responsible for his/her actions.

However the M’Naghten rule does not cover the “irresistible impulse” concept which points out that the individual may realise the wrongfulness of their conduct, be aware of what is right and what is wrong but still be powerless to do right in the face of overwhelming pressure from uncontrollable impulses.

The Brawner Rule, which is largely based on an insanity rule suggested by Model Penal Code (MPC) is another commonly used rule for determining insanity. The

rule states “A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law” (U.S. vs. Brawner, 1972).

The Brawner Rule, unlike M’Naghten, recognises partial responsibility for criminal conduct as well as the possibility of an “irresistible impulse” beyond one’s control. according to the Brawner rule it must be demonstrated that the mental disease directly influenced the defendant’s mental or emotional process , or impaired his/her ability to control behaviour.

It also excludes from the definition of mental disease any repeated criminal or antisocial conduct and, therefore, under this rule the psychopathic or antisocial personality disorder is not covered.

1.4.4 Assessment and Evaluation

Now-a-days the courts are permitting clinical psychologists to testify as expert witnesses. Clinical Psychologists make a variety of contributions related to the criminal law, but they are known most distinctively for the evaluation of criminal suspects by means of psychological tests. Psychological tests are an objective and standardised tools to assess the individual’s intelligence, personality, psychopathology, and mental capacity.

The clinical psychologist or forensic psychologist will most likely use psychometric tests. The psychometric tests used to assess the mental illness and criminality of an individual, are the traditional psychological instruments. Most frequently used instruments are Minnesota Multiphasic Personality Inventory (MMPI and MMPI-2), Wechsler Adult Intelligence Scale-Revised (WAIS-R), Rorschach Psycho-diagnostic Inkblots, Bender Visual Motor Gestalt tests, Personality Assessment Inventory (PAI), NEO-Personality Inventory-Revised (NEO-PI-R).

A clinical evaluation is always helpful in assessing and documenting the capacity. Although there are no golden rule regarding the components of a typical capacity assessment it is always helpful to structure the assessment by integrating theoretical principles, legal considerations, and clinical models. Theoretical information from Grisso’s conceptual model provides an important guide for the assessment process by integrating legal and clinical considerations into five domains – functional, causal, interactive, judgmental, and dispositional.

The assessment outcome should include the following:

- a) a description of the nature, type, and extent of the respondent’s specific cognitive and functional limitations,
- b) an evaluation of the respondent’s mental and physical condition, and if appropriate, educational potential, adaptive behaviour, and social skills,
- c) a prognosis for improvement and a recommendation as to the appropriate treatment or habitation plan, and
- d) the date of any assessment or examination upon which the report is based.

1.5 SUBSTANCE ABUSE EVALUATION

1.5.1 Definition and Concept

Drug addiction may be defined as the habitual use of drugs which cause psychological dependence, physical dependence and tolerance. According to DSM-IV, substance misuse/abuse does not meet the criteria for drug dependence. According to the DSM-IV diagnostic criteria, substance (drug and alcohol) intoxication are characterised by

- a) a recent ingestion of a particular substance,
- b) maladaptive behaviour like poor judgment, labile behaviour, or physical or sexual aggression, without which it would not matter from a legal viewpoint whether the person was intoxicated, and
- c) critical physical and psychological signs that will vary according to the substance. The use and misuse of psychoactive substances, including alcohol, may result in the patient developing a wide range of psychological disorders depending on the drug being used.

The concept of dual diagnosis is a recent development which incorporates a wide range of co-existing problems, including the co-existence of addictive behaviour with concurrent mental health problems. Carey (1989) states that with dual diagnostic patients, the psychiatric disorder and the substance misuse are separate, chronic disorders each with an independent course, yet each able to influence the property of other.

1.5.2 Drug Abuse and Crime

Drug addiction is not a crime but the addict comes in conflict with the law through the unlawful purchase, importation or possession of drugs. Furthermore, many addicts support their drug habit by the sale of drugs, theft, prostitution or other crimes. The illicit purchase of drugs is expensive and persons who are addicts turn to crime to support their addiction.

1.5.3 Drug Abuse and Criminal Justice System

Drug addiction does not relieve a suspect of legal responsibility for his criminal act. It has also been argued that drug intoxication is no defense to a crime unless the intoxication was involuntary. Intoxication is involuntary only if the intoxicant was imbibed as a result of duress, fraud or mistake. It is not sufficient that one was advised or persuaded to drink.

In spite of its deleterious medical and psychological effects, incapacitating self induced ethanol or illicit substance intoxication at the time of an instant offense is not considered a valid argument for claiming impairment. Mitigation may be claimed if substance intoxication removed the criminal intent – *mens rea* – necessary for the offense to have occurred.

1.5.4 Assessment and Evaluation

The increasing incidence of mentally ill substance-abusing individuals generally is reflected in the mentally disordered seen in the courts, prisons and secure health services. The residual effects of addictive substances (that may mask or

mimic psychiatric symptoms, such as depression) make the accurate assessment of co-existing disorders especially difficult. In such a situation, an extended assessment of the significance and interactive nature of the mental health and substance abuse, the length of the current abstinence, with delay of diagnosis if abstinence has not been achieved, mental health symptoms at the end of 4-6 week's abstinence, re-evaluation of mental health symptoms and appropriateness of treatment placement has been suggested.

The assessment of dual diagnosis should aim at acquiring information on the following areas:

- Symptoms of dual-diagnosis disorders.
- Drugs: types, dose (amount, cost), frequency, duration and mode of use, effects, complications (physical, social, and psychological), presence of any withdrawal symptoms.
- Alcohol: number of units, frequency and duration of use, withdrawal symptoms, and complications.
- Psychiatric history: nature of illness, and details of any previous treatment, whether illness was related to drug and alcohol.
- Interaction with dual diagnosis disorders.
- Family and social relationships.
- Medical history and current health status.
- Criminal justice history.
- Mental state: appearance/behaviour (withdrawals or intoxication), speech (slurred or rapid), mood and thought disorder, suicidal thoughts/intent, sleep, appetite, perceptual disturbances, insight into problem.

Other key areas to address include employment/vocational status, educational history and status, literacy levels, IQ and developmental disabilities, interpersonal coping strategies, skills deficits (e.g. related to problem solving or communication).

Self Assessment Questions

1) How will you structure the assessment plan of a mentally ill person?

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2) What are the factors to be considered in the assessment of a drug addict?

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3) Whether on account of substance abuse an individual can be absolved of his criminal responsibility?

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4) Differentiate between mental disability and mental illness?

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5) How the question whether a person is mentally ill have its effect in the deliverance of justice?

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1.6 LET US SUM UP

Mental disability refers to all kinds of intellectual sub-normality. The level of intellectual functioning of those suffering from mental disabilities can be extremely low. These persons are also labeled as mentally retarded persons who have an IQ of 70 and below on an intelligence test. Mental retardation is a failure to develop intellectually and otherwise, at a rate comparable to other individuals within the same age group. Those with extremely limited mental ability reveal very clearly the lack of development and inability to manage themselves in their day-to-day living and it is not difficult to assess their mental abilities. The mentally disabled persons are less able to make discriminations and to use good judgment in practical life situations. As adults such persons may be quite successful in simple works where little judgment or planning is required. Many of them find useful and satisfying place in the society, manage their own affairs with reasonable success and prudence and generally behave as a good citizen.

Mental disability is an important factor in the production of criminal behaviour but some hold the opinion that correlation between mental disability/ deficiency and delinquency is not significant and does not imply a cause and effect relationship between the two.

On the other hand, it is a fact that mental disability may not be a specific cause for development of a criminal personality, these may handicap the personality development to a great extent and render the individual more vulnerable to environmental stress. Such an individual can be encouraged to commit crime by other criminals in his surroundings.

The mentally disabled persons may be a victim of a crime, may have witnessed a crime and may have committed a crime or accused of committing a crime and their disability will definitely have an impact upon how such persons will benefit from the criminal justice system. There is a serious risk that people with limited mental capacity will be served extremely poorly by the criminal justice system because

- a) they may be unable to report offences against them to the police,
- b) in the absence of other evidence, the evidence of the mentally disabled victim may not be regarded as too unreliable to present in the court,
- c) those who live in institutions may be at a disadvantage because the managers looking after them may not have appropriate procedures for contacting the police about crimes reported by residents. Alternatively, they may actively discourage staff from reporting such matters to the police because the victim would make a poor witness in their eyes.

Mentally Disabled person as witness or as an Accused or Suspect will not be able to get any justice and cannot report events also in the correct manner.

The psychological assessment of an individual's mental abilities requires the application of psychometric tests to assess the mental functioning. Generally intelligence tests are administered to assess and evaluate the mental ability. Besides administration of psychometric tests, the psychologist can conduct clinical interview, cognitive testing and functional testing.

Malingering in psychiatric terms is lying. The term malingering is commonly used to refer to conscious deception. Deceptive behaviour cuts across all socio-economic tiers, educational groupings, career lines, and workplace settings and is seen in every area of human activity. Malingering or deception is generally used for unlawful gains, fake claims, and to avoid punishments for a crime. The symptoms targeted for deception reflect goal formulation and planning on part of the faker.

Four types of response styles are available namely, invention, perseveration, exaggeration and transference. All these will affect judgement.

Mental illness is a disorder of the mind that is judged by the experts to interfere substantially with the person's ability to cope with life on a daily basis. It presumably deprives a person from freedom of choice but it is important to note that there are degrees to this deprivation. Mental illness is manifested in behaviour that deviates notably from normal conduct. A mentally ill individual is characterised by abnormal patterns of experience and behaviour.

The relationship between mental illness and criminal behaviour is a complex one. The common element in criminal behaviour and abnormal behaviour is that both fail to live in conformity with the rules and regulations of the society and show partial disregard for the requirements for social acceptability. Even when the accused has successfully pleaded the defense of mental illness to a criminal charge, he may not necessarily be discharged rather he may be detained for medical

treatment. According to M’Naghten Rules 1843, in order to establish a defense of insanity it must be proved that the accused ‘was laboring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing. Or if he did know it, that he did not know he was doing what was wrong.

Now-a-days the courts are permitting clinical psychologists to testify as expert witnesses. Clinical Psychologists make a variety of contributions related to the criminal law, but they are known most distinctively for the evaluation of criminal suspects by means of psychological tests. Psychological tests are an objective and standardised tools to assess the individual’s intelligence, personality, psychopathology, and mental capacity.

Drug addiction may be defined as the habitual use of drugs which cause psychological dependence, physical dependence and tolerance. According to DSM-IV, substance misuse/abuse does not meet the criteria for drug dependence.

Drug addiction is not a crime but the addict comes in conflict with the law through the unlawful purchase, importation or possession of drugs. Furthermore, many addicts support their drug habit by the sale of drugs, theft, prostitution or other crimes. The illicit purchase of drugs is expensive and persons who are addicts turn to crime to support their addiction.

Drug addiction does not relieve a suspect of legal responsibility for his criminal act. It has also been argued that drug intoxication is no defense to a crime unless the intoxication was involuntary. Intoxication is involuntary only if the intoxicant was imbibed as a result of duress, fraud or mistake. It is not sufficient that one was advised or persuaded to drink.

1.7 UNIT END QUESTIONS

- 1) Define mental disability and indicate the characteristic features of the same.
- 2) Elucidate the concept of malingering and put forth how this affects justice.
- 3) How does mental illness affect judgement in regard to criminal cases?
- 4) In what way substance abuse cause criminal behaviour and how this affects judgement?
- 5) What are the relationship between mental disability and criminal behaviour?
- 6) What relationship exists between mental illness and criminal behaviour?
- 7) Will substance abuse make a person criminal?
- 8) Discuss critically the various assessment techniques to decide mental abnormality.

1.8 SUGGESTED READINGS

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UNIT 2 COMPETENCY TO STAND TRIAL IN THE COURT AND WAIVER OF MIRANDA RIGHTS AND DEATH PENALTY MITIGATION

Structure

- 2.0 Introduction
- 2.1 Objectives
- 2.2 Competency to Stand Trial in the Court of Law
 - 2.2.1 Definition and Concept
 - 2.2.2 Assessment and Evaluation of Competency to Stand Trial
- 2.3 Competency to Confess and Waive Miranda Rights
 - 2.3.1 Concept and Meaning
 - 2.3.2 Assessment and Evaluation of Competency to Waive Miranda Rights
- 2.4 Death Penalty and Mitigation
 - 2.4.1 Definition and Concept
 - 2.4.2 Factors Affecting Jury Decisions
 - 2.4.3 Developmental Approach to Mitigation
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- 2.5 Let Us Sum Up
- 2.6 Unit End Questions
- 2.7 Suggested Readings

2.0 INTRODUCTION

In this unit, the issues of the competency of an accused to face trial in the court of law, waiver of Miranda rights and death penalty mitigation will be discussed. In this unit we start with the assessment by forensic psychologist in regard to a person's Competency to stand trial in the court of law. We deal with various methods of assessment in this regard. This is followed by another assessment by forensic psychologist in regard to waiver of the Miranda rights. This aspect is being dealt with in great detail. The last issue taken up here is the death penalty and mitigation and the various factors that affect the jury decision and explaining the developmental approach to the same. We also present how a forensic psychologist present himself as an expert and give expert testimony in this regard.

2.1 OBJECTIVES

After completion of this unit, you will be able to:

- Define competency;
- Explain the Meaning of competency to stand trial;
- Elucidate the legal standard for mental competence;
- Analyse the role of psychologist in understanding the competency issue;

- Elucidate waiver of Miranda rights; and
- Explain death penalty mitigation by plea bargaining.

2.2 COMPETENCY TO STAND TRIAL IN THE COURT OF LAW

2.2.1 Definition and Concept

The right to select is a fundamental societal value, but in certain situations, an individual's ability to make personal choices may be questioned. In such situations, individual autonomy must be weighed against another societal interest that of protecting the individual. Competency as a legal term has been defined by Black's Law dictionary as "the mental ability to understand problems and to make decisions". The precise meaning of competency assumes different forms depending upon the context for which it is addressed.

The legal requirement of competence to stand trial is an extension of the general rule that no one should be tried for a crime in his/her absence. If a defendant must be physically present to defend against criminal charges, that defendant must also be present "mentally".

An individual should not be subjected to the process of legal system if he/she is unable to understand the nature and purpose of those proceedings. Disorders that interfere with the psychological participation of a defendant at trial render that defendant incompetent to stand trial and require the postponement of the proceeding till effective participation can be assured. The issue of an accused/defendant's competency is present throughout the legal proceeding against him/her.

The question of competency to stand trial involves three separate questions – (i) does the defendant have a genuine mental disorder sufficiently severe to justify a finding of incompetence (diagnosis), (ii) is the defendant unable to understand rationally and factually the legal proceedings and to assist counsel in defense (incapacity), and (iii) is this incapacity caused by the mental disorder (causation).

Competency may be significantly affected by pre existing cognitive limitations or an underlying psychiatric disorder. However, the presence of a mental illness alone is insufficient to indicate a lack of capacity. A genuine mental disorder causes a defendant to be incapacitated and a genuine mental disorder does not cause a defendant to be incapacitated.

Some special legal and/or clinical problems may be posed in following circumstances i.e. in case of defendants who have a genuine diagnosis that causes an insufficient incapacity to stand trial, in case of defendants who have a genuine mental disorder but whose impaired capacity to stand trial is due to fabrication or exaggeration and in case of defendants who have a genuine mental disorder, who are incapable of standing trial, but whose mental disorder is not severe enough to justify a finding of incompetence. A context specific functional impairment should also be present.

2.2.2 Assessment and Evaluation of Competency to Stand Trial

Competency issue arises in both civil and criminal arenas, and in general court conducts such evaluations in an effort to safeguard the individuals. Assessment

and evaluation of competence is based on four elements, specifically with regard to having the requisite mental skills for the acquisition, comprehension, and processing of relevant information in order to make a decision. The individual must understand the basic facts of a given situation, implication of the situation and its relation to himself/herself.

The process of referring a person for an evaluation to assess competency can occur any time prior to the adjudication. The question of the defendant's competence to proceed in a court trial can be raised by the arresting officer, jail staff, prosecution or defense counsel, or even by a family member. Whenever, the sanity of the accused is likely to be a significant factor at the time of trial, the access to psychiatric evaluation is a must.

In actual practice, all the participants in the criminal process are usually able to identify readily the majority of incompetent defendants. Actively psychotic, demented, and severely mentally retarded persons are usually recognised by arresting officers, jail personnel, or defense attorneys and transferred to treatment facilities prior to any court appearances. However, defendants charged with particularly notorious crimes and defendants who decompensate while awaiting trial often require professional evaluation before criminal proceedings are postponed.

At times the defense attorneys raise issue of competence to stand trial for their apparently competent clients in order to secure a court ordered professional evaluation of the defendant which would be otherwise unavailable. These evaluations may produce evidence relevant to an insanity plea, to the question of diminished capacity, or to mitigating factors which may be considered at the time of sentence.

The competency to stand trial is a legal standard and not a psychological or psychiatric or medical concept. The Psychologists/ Psychiatrists as mental health consultants are, therefore, faced with the challenge of explaining the court about a defendant's mental symptoms that affect his capacity to understand, participate, and make decisions. The role of the forensic psychologist/psychiatrist as court consultants is, therefore, to explain a defendant's capacities in relation to the relevant legal concepts. The mental health consultant will consider three primary factors which are relevant to the defendant's competency to stand trial:

- The examination of general cognitive capacities of the defendant will reveal his basic level of knowledge and about court related matters. If a defendant displays the symptoms which will interfere with his general capacities, there is little reason to go further.
- The examination of decisional capacity of the defendant will indicate whether he can apply these capacities to the specific decisions he is facing in the legal case. It is important to recognise that competency to stand trial is based upon a capacity to make reasonable decisions, not whether the decisions were reasonable. People are free to make unreasonable decisions, although they may be having the capacity to do otherwise.
- The examination of the defendant's capacities relevant to his specific case will indicate how the defendant's mental condition or situation interacts with the unique features of the case.

Various forensic assessment instruments have been developed by different researchers in the field. These are: MacArthur Structured Assessment of the Competencies of the Criminal defendants, Georgia Court Competency Test, Georgia Court Competency Test-Mississippi Version Revised, the Competency Assessment Instrument, the Interdisciplinary Fitness Interview, and competency Screening Test. There are numerous assessment tools but there is no standard tool to evaluate capacity, and evaluations include minimum clinical interview and review of available records. Forensic evaluator should utilise validated and current instruments and methods within a broadly designed assessment approach, which includes assessment of present psychopathology and response styles.

2.3 COMPETENCY TO CONFESS AND WAIVE *MIRANDA RIGHTS*

2.3.1 Concept and Meaning

In *Miranda vs. Arisona* the US Supreme Court ruled that any statement arising from a custodial interrogation of a suspect would be presumed to be involuntary and not admissible unless the suspect is informed of his right to remain silent, to avoid self incrimination, to obtain legal counsel before and during police questioning, and to obtain free legal counsel if indigent.

Litigation concerning a defendant's capacity to confess has been increasing in criminal and juvenile courts. A confession or incriminating statement given by a suspect can greatly influence the final court judgment of a defendant's guilt or innocence.

Self-incriminating statement to a law enforcement agency, even in the absence of other incriminating evidence, often produce guilty verdicts. The psychologists or mental health professional have assisted the court in assessing the defendant's capacity to have waived *Miranda Rights* at the time of interrogation. *Miranda* focused evaluation involves a retrospective analysis of the defendant's mental state at the time of police questioning.

In 1966, the Supreme Court of USA ruled in *Miranda vs. Arisona* that a suspect's statement is presumed involuntary and inadmissible in the court if the law enforcement does not provide four warnings, that is,

- i) the right to remain silent
- ii) that any statement can be used against the suspect in the future court proceedings
- iii) the right to the presence of an attorney before and during the interrogation, and
- iv) an attorney provided free of charge if the suspect is unable to pay for one.

The terms competency to confess or competency to waive *Miranda* rights have been used interchangeably with capacity to waive *Miranda* rights. Competency generally refers to legal determination by the court, capacity has to do with the individual's ability to waive the rights at the time of interrogation. A forensic evaluation must be functionally based i.e. integrated with the legally relevant criteria.

2.3.2 Assessment and Evaluation of Competency to Waive Miranda Rights

Mental Health Professionals has to assess whether a waiver of *Miranda* right was made knowingly, intelligently and voluntarily:

Waiver of a right knowingly implies that the individual is able to understand and comprehend the rights in addition to the manner in which the rights were administered. The rights can be read by the law enforcement or the suspect may be given a written “*Miranda* waiver form”. In such cases, where the suspect has read and signed the waiver form, the assessment of reading comprehension is important. The readability of waiver form can be analysed by the Flesch-Kincaid readability formula, easily calculated with word processing programs.

An intelligent waiver of rights involves a decision making capacity, an appreciation of the rights based on the knowledge of legal process. A defendant may understand the “rights” in the perspective but may not exercise it because of the fear that doing so may not go against him/her.

The evaluation of voluntariness of the waiver has to be done very carefully. The clinicians can assess relevant psychological factors that make an individual more susceptible to the effects of police conduct. Information regarding the defendant’s interrogative suggestibility, compliance, submissiveness, coping skills, impulse control, intelligence, anxiety, memory, the effects of drug intoxication and sleep deprivation can be submitted to the court.

Information on psychological characteristics, which may make a defendant more likely to be misled by the interrogating and investigating officers or to change response under pressure compared to others should also be provided to the court. The judicial decision of validity of a *Miranda* waiver is based not only on the evaluation results but also on the totality of circumstances surrounding the *Miranda* waiver.

For conducting an evaluation of capacity to waive *Miranda* rights the following steps should be taken:

- i) Review of third party data which includes the copy of *Miranda* waiver form or the card from which the *Miranda* was read. The forensic psychologist should obtain school records, work records, psychological and medical records and any other record which will help the interpretation of evaluation findings in a historical perspective.
- ii) If any videotape or audiotape of interrogation is available, it should be reviewed and presented in the court of law. The content analysis of the interrogation has to be done.
- iii) Clinical interview including psycho-social history and mental status examination has to be conducted. An important process involved in the interview is to obtain step-by-step version of what transpired during first contact with the law enforcement personnel up through *Miranda* waiver and subsequent statement.

This is necessary to assess the defendant’s capacity to recite the rights from memory, and also the rights can be remembered after they are read by the

examiner or by the defendant himself. This also helps in assessing the defendant's reading and hearing abilities.

- iv) Intelligence test administration is required to obtain IQ scores and also to understand the cognitive capacities to understand and appreciate the abstract concepts contained in *Miranda*. Reading comprehension testing is also needed.
- v) Personality testing is required to assess the psychological variables which may affect the individual's ability to comprehend and process information for issues relevant to the voluntariness of the *Miranda* waiver. The assessment of minimisation or exaggeration of cognitive and psychopathological symptoms should also be done.
- vi) Specialised tests: Grisso developed four tests to evaluate the defendant's capacity to make a knowing and intelligent waiver of *Miranda* rights at the time of police questioning. The four tests are the Comprehension of *Miranda* rights, the Comprehension of *Miranda* rights-Recognition, the Comprehension of *Miranda* vocabulary, and the Functions of Rights in Interrogation. Wechsler scales for intelligence testing and personality tests like MMPI-2, PAI, and 16 PF are also administered to know the intelligence and personality factors of the defendant.

The ultimate determination of capacity to waive *Miranda* rights at the time of police interrogation is the jurisdiction of the court and the forensic mental health professionals can provide valuable data to the court in order to assist in the determination whether the defendant made a knowing, intelligent, and voluntary waiver of rights.

2.4 DEATH PENALTY AND MITIGATION

2.4.1 Definition and Concept

Death penalty has been considered cruel and unusual by the US courts. Chief Justice Warren Burger then touched upon the changes that would have to be made to allow the use of death penalty in compliance with the result of the case. The court implied that capital punishment would be sanctioned if the penalty is uniformly and consistently applied. The United States Supreme Court was concerned with the sentencing process. Although there is a growing consensus against the death penalty in the United States, a large number of people believe in capital punishment. As such, imposition of death penalty may not be readily influenced by issues which have led to the decrease in support for death penalty (wrongful execution, lack of deterrent value). In 1979, the US Supreme Court upheld the use of guided discretion in the application of death sentence for specific crimes in a bifurcated trial: the first stage requires the jury to determine guilt or innocence, and the second to determine sentence after consideration of aggravating and mitigating circumstances.

Aggravating circumstances are the factors which define and narrow the class of defendants eligible for the death penalty. The aggravating circumstances are delineated by the factors that can be classified into four categories:

- i) defendant's characteristics,

- ii) elements of crime,
- iii) motive of the crime, and
- iv) victim's characteristics.

Mitigating circumstances are the factors that decrease a capital defendant's culpability to the level at which the death penalty is considered undeserved. Mitigating factors are not limited to those defined by statute, but instead include "any aspect of character or record, and any circumstance of the offence that might serve as a basis for a sentence less than death" (Lockett vs. Ohio, 438 U.S. 586, 1978). Mitigating circumstances include severe neglect and physical abuse, sexual abuse, and borderline mental retardation.

The mitigating circumstances lessen a defendant's moral culpability and go against a sentence of death as against the aggravating circumstances increase the defendant's moral culpability and may be used to support the imposition of death sentence.

2.4.2 Factors Affecting Jury Decision

Garvey (1998) studied the impact of certain factors on Jury decision making in capital cases and found that the Jury is most likely to impose death sentence in the event of the murder being particularly heinous, a child being the victim of murder, the defendant being remorseless, and the defendant being a risk for future dangerousness.

The factors like doubt regarding guilt, a defendant's youthfulness, presence of mental retardation, and other factors beyond the control of the defendant like mental illness were found to be strong mitigation elements. The Jurors were almost unconcerned about the development factors like child abuse or a background of extreme poverty.

2.4.3 Developmental Approach to Mitigation

The capital defendant is similar to any other person in that they have a developmental history. In the field of developmental psychology these life events have been identified as risk factors and protective factors respectively. A risk factor is a predictor which has a strong link to adverse outcomes such as delinquency, adult antisocial behaviour, substance abuse, unemployment, and violence.

The risk factors include perinatal difficulties, family history of criminal behaviour and substance abuse, early exposure to violence, economic deprivation, media portrayals of violence, academic failure and lack of commitment to school, and low intelligence. Studies have shown that these individuals are more likely to experience psychiatric disturbances, engage in criminal behaviour, have limited occupational success, function poorly in school, have impaired marital relationships, isolate from others, and experience poor physical health.

On the other hand the fact is that in spite of living in most disadvantaged situation, an individual experiences one or more protective factors in his/her environment. An increase in access to the protective factors may help in reduction of negative effects of risk factors. The protective factors are appropriate parental supervision, mutual connectedness between parent and child, a commitment to education by

both child and parent, association with a peer group that have conventional values, parental approval of peer group, positive self esteem, and child involvement in pro-social activities.

Resiliency is a construct which explains that an individual may reflect signs of adaptation despite significant life adversity. The presence of any single risk factor does not cause adverse outcomes. The convergence of the risk factors leads to widespread dysfunction, and the presence of protective factors causes resilience.

2.4.4 Expert Testimony on Mitigation

During the presentation of mitigation, it is important to clearly mention what could have been done to change the defendant's life course, what was done to assist in the process of change, and what tools were readily available yet not implemented. In order to provide expert testimony on mitigation, the mental health professional must be aware of the risk factors experienced by the defendant and be able to discuss the influence of these factors in relation to interventions that were or were not implemented.

The individual risk factors need to be evaluated over the life course, and discussed with respect to cumulative stress and the interaction among factors. The issue of resiliency is of great importance in capital mitigation. A large no. of people experience adverse life events, but only some of them indulge in capital crime. The success of mitigation depends largely on the fact that the Trier of the fact must be convinced that the defendant's experience of the similar life events was unique and the uniqueness of the defendant's response explains the violent behaviour.

It is necessary for the mental health professional to be aware of the fact that jury decision making is influenced by the juror's own life experience. The knowledge that they have accumulated from previous interactions over many years has a direct influence on their thought and response. The strength of mitigation evidence is at least in part related to the relationship between the defendant, the crime and the pre-existing schemata of each juror.

In situations where jurors' schemata are based on biased or inaccurate information that are detrimental to the defendant, the power of mitigation testimony is likely to be greatly reduced. The mental health professional must be ready to discuss stereotypes and to present information which will challenge the myths that may surround the character and life history of the defendant, then only mitigation testimony will have its impact in decision making in the court.

Self Assessment Questions

1) Explain the concept and meaning of competency to stand trial?

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2) What are the factors which will affect an individual's competency to stand trial?
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3) What are the methods of assessment of a defendant's ability to understand and comprehend the *Miranda* warning?
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4) Explain the developmental approach to mitigation trial?
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5) What are the factors influencing the jury decision in capital trials?
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2.5 LET US SUM UP

In this unit we have defined competence to stand trial at the court of law. Competency as a legal term has been defined as the mental ability to understand problems and to make decisions. The precise meaning of competency assumes different forms depending upon the context for which it is addressed.

The legal requirement of competence to stand trial is an extension of the general rule that no one should be tried for a crime in his/her absence. If a defendant must be physically present to defend against criminal charges, that defendant must also be present "mentally".

An individual should not be subjected to the process of legal system if he/she is unable to understand the nature and purpose of those proceedings. Disorders that interfere with the psychological participation of a defendant at trial render that defendant incompetent to stand trial and require the postponement of the proceeding till effective participation can be assured. The issue of an accused/defendant's competency is present throughout the legal proceeding against him/her. Competency may be significantly affected by pre existing cognitive limitations or an underlying psychiatric disorder. However, the presence of a mental illness alone is insufficient to indicate a lack of capacity. A genuine mental disorder causes a defendant to be incapacitated and a genuine mental disorder does not cause a defendant to be incapacitated.

Some special legal and/or clinical problems may be posed in following circumstances i.e. in case of defendants who have a genuine diagnosis that causes an insufficient incapacity to stand trial, in case of defendants who have a genuine mental disorder but whose impaired capacity to stand trial is due to fabrication or exaggeration and in case of defendants who have a genuine mental disorder, who are incapable of standing trial, but whose mental disorder is not severe enough to justify a finding of incompetence. A context specific functional impairment should also be present.

Competency issue arises in both civil and criminal arenas, and in general court conducts such evaluations in an effort to safeguard the individuals. The process of referring a person for an evaluation to assess competency can occur any time prior to the adjudication. The question of the defendant's competence to proceed in a court trial can be raised by the arresting officer, jail staff, prosecution or defense counsel, or even by a family member.

Actively psychotic, demented, and severely mentally retarded persons are usually recognised by arresting officers, jail personnel, or defense attorneys and transferred to treatment facilities prior to any court appearances. However, defendants charged with particularly notorious crimes and defendants who decompensate while awaiting trial often require professional evaluation before criminal proceedings are postponed.

The competency to stand trial is a legal standard and not a psychological or psychiatric or medical concept. The Psychologists/ Psychiatrists as mental health consultants are, therefore, faced with the challenge of explaining the court about a defendant's mental symptoms that affect his capacity to understand, participate, and make decisions. The role of the forensic psychologist/psychiatrist as court consultants is, therefore, to explain a defendant's capacities in relation to the relevant legal concepts. There are various forensic assessment instruments have been developed by different researchers in the field.

Litigation concerning a defendant's capacity to confess has been increasing in criminal and juvenile courts. A confession or incriminating statement given by a suspect can greatly influence the final court judgment of a defendant's guilt or innocence.

Self-incriminating statement to a law enforcement agency, even in the absence of other incriminating evidence, often produce guilty verdicts. The psychologists or mental health professional have assisted the court in assessing the defendant's

capacity to have waived *Miranda Rights* at the time of interrogation. *Miranda* focused evaluation involves a retrospective analysis of the defendant's mental state at the time of police questioning.

Mental Health Professionals has to assess whether a waiver of *Miranda* right was made knowingly, intelligently and voluntarily:

The evaluation of voluntariness of the waiver has to be done very carefully. The clinicians can assess relevant psychological factors that make an individual more susceptible to the effects of police conduct. Information regarding the defendant's interrogative suggestibility, compliance, submissiveness, coping skills, impulse control, intelligence, anxiety, memory, the effects of drug intoxication and sleep deprivation can be submitted to the court.

Information on psychological characteristics, which may make a defendant more likely to be misled by the interrogating and investigating officers or to change response under pressure compared to others should also be provided to the court. The judicial decision of validity of a *Miranda* waiver is based not only on the evaluation results but also on the totality of circumstances surrounding the *Miranda* waiver.

For conducting an evaluation of capacity to waive *Miranda* rights the following steps should be taken:

- i) Review of third party data
- ii) If any videotape or audiotape of interrogation is available
- iii) Clinical interview including psycho-social history and mental status examination
- iv) Intelligence test administration
- v) Personality testing
- vi) Specialised tests

The ultimate determination of capacity to waive *Miranda* rights at the time of police interrogation is the jurisdiction of the court and the forensic mental health professionals can provide valuable data to the court in order to assist in the determination whether the defendant made a knowing, intelligent, and voluntary waiver of rights.

Death penalty has been considered cruel and unusual by the US courts. The court implied that capital punishment would be sanctioned if the penalty is uniformly and consistently applied. Imposition of death penalty may not be readily influenced by issues which have led to the decrease in support for death penalty (wrongful execution, lack of deterrent value).

Mitigating circumstances are the factors that decrease a capital defendant's culpability to the level at which the death penalty is considered undeserved. Mitigating circumstances include severe neglect and physical abuse, sexual abuse, and borderline mental retardation. The mitigating circumstances lessen a defendant's moral culpability and go against a sentence of death as against the aggravating circumstances increase the defendant's moral culpability and may be used to support the imposition of death sentence.

The factors like doubt regarding guilt, a defendant's youthfulness, presence of mental retardation, and other factors beyond the control of the defendant like mental illness were found to be strong mitigation elements. The Jurors were almost unconcerned about the development factors like child abuse or a background of extreme poverty.

During the presentation of mitigation, it is important to clearly mention what could have been done to change the defendant's life course, what was done to assist in the process of change, and what tools were readily available yet not implemented.

It is necessary for the mental health professional to be aware of the fact that jury decision making is influenced by the juror's own life experience. The knowledge that they have accumulated from previous interactions over many years has a direct influence on their thought and response. The strength of mitigation evidence is at least in part related to the relationship between the defendant, the crime and the pre-existing schemata of each juror.

2.6 UNIT END QUESTIONS

- 1) Define and conceptualise competency to stand trial
- 2) What are the assessment and evaluations carried to assess a person's competency to stand trial.?
- 3) Explain what is meant by competency to confess and waive Miranda Rights.
- 4) What are the ways one could assess the competency to waive Miranda Rights?
- 5) What are the measures of evaluating the competency to Waive Miranda Rights?
- 6) Define death penalty and mitigation and bring out its characteristic features.
- 7) Define and conceptualise death penalty and mitigation.
- 8) Delineate the factors that affect jury's decision.
- 9) Describe the developmental approach to mitigation.
- 10) Critically examine the significance of expert testimony on mitigation.

2.7 SUGGESTED READINGS

Heilburn, Kirk, Grisso, Thomas and Goldstein, Thomas (2008). *Foundations of Forensic Mental Health Assessment* (Best practices in forensic mental health assessment). Oxford University Press, Oxford.

Veeraraghavan, Vimala (2009). *Handbook of Forensic Psychology*. Select Scientific Publishers, New Delhi.

Zapf, Patricia and Roesch, Ronald (2009). *Evaluation of Competence to Stand Trial*. Oxford University Press, Oxford.

UNIT 3 FORENSIC PSYCHOLOGICAL ASSESSMENT OF CRIMINAL BEHAVIOUR

Structure

- 3.0 Introduction
- 3.1 Objectives
- 3.2 Definition and Concept of Forensic Psychological Assessment
 - 3.2.1 Workers Compensation
 - 3.2.2 Disability
 - 3.2.3 Personal Injury
 - 3.2.4 Criminal Law
 - 3.2.5 Child Custody
- 3.3 Definition of Criminal Behaviour
- 3.4 Forensic Psychology
 - 3.4.1 Definition and Scope
 - 3.4.2 The Conceptual Basis of Forensic Psychology
 - 3.4.3 Practical Aspects of Forensic Psychology
 - 3.4.4 The Scope of Work of Forensic Psychologist
 - 3.4.5 Major Components of Forensic Psychology
 - 3.4.6 Role of Forensic Psychologist in Criminal Justice System
- 3.5 Psychological Assessment and Evaluation
 - 3.5.1 Types of Tests Useful for Forensic Assessment and Evaluation
 - 3.5.2 Mental Status Examination
 - 3.5.3 Interview and Cognitive Interview
 - 3.5.4 Cognitive Testing
- 3.6 Personality Testing
 - 3.6.1 The Minnesota Multiphasic Personality Inventory
 - 3.6.2 Personality Assessment Inventories
 - 3.6.3 Personality Inventory Revised (NEO PI-R)
 - 3.6.4 Projective test e.g. The Rorschach Test
 - 3.6.5 Psychological and Behavioural Profiling
- 3.7 Let Us Sum Up
- 3.8 Unit End Questions
- 3.9 Suggested Readings

3.0 INTRODUCTION

In this unit the focus of discussion will be the concept of criminal behaviour from the forensic psychological viewpoint and various methods of assessment of criminal behaviour. We will be defining forensic psychological assessment and in which all areas the same may be applied, as for example in worker compensation, disability etc. We then define criminal behaviour and indicate the basis of forensic psychology and the many practical aspects of it. We then deal with the scope and major components of forensic psychology and delineate

the role of forensic psychologist. This is followed by forensic psychological assessment and evaluation in which the various types of tests that are used are presented. These are in addition to the mental status examination and the interviews that are conducted routinely by the psychologist.

3.1 OBJECTIVES

After completing this unit, you will be able to:

- Define forensic psychological assessment;
- Explain assessment of criminal behaviour;
- Elucidate the major characteristics of forensic psychological assessment;
- Explain the various assessment tools for use;
- Describe how to use these assessment tools for assessing criminal behaviour; and
- Analyse the presentation of the interpretation of the assessment.

3.2 DEFINITION AND CONCEPT OF FORENSIC PSYCHOLOGICAL ASSESSMENT

Forensic psychology represents the intersection between law and psychology. Psychologists are expected to render expert opinions needed for legal determinations. They also conduct Psychological testing which is highly objective and accurate which are in turn used for taking fair judicial decisions and make fair judgement. Some of the important areas in which forensic psychologists help include the following:

3.2.1 Workers' Compensation

In this the forensic psychologist tries to make an assessment of the impact of physical injury that the worker sustained on the job for the purpose of working out compensation to be given to the worker. Psychological assessment can be used to make determinations about emotional, mental, and psychiatric injury.

3.2.2 Disability

Where a person is totally disabled and cannot take up any meaningful job, which can provide some amount of income, the insurance companies and certain other governmental agencies may provide for social security to such a person. However, to be sure that this individual is so disabled that he or she cannot take up a job, an assessment has to be made of the mental status of the individual as well as the physical condition. Also an assessment has to be made to find out to what an extent the physical disability has led to psychological disability etc. All these aspects are handled by psychologists. In fact psychological testing can provide an objective index of the presence and degree of psychological disability, and can also be used to prove the legitimacy of a claim, or at times even used in order to demonstrate that the claimant is malingering.

3.2.3 Personal Injury

In a car accident or railway accident or for that matter any other accident outside of home and work place if an individual gets injured due to the fault of someone

else etc., a legal action may be filed to determine liability for the injury and to collect damages. A psychologist may provide assessment of emotional damage. Brain damage may also be assessed, through the use of neuropsychological tests.

3.2.4 Criminal Law

In a number of cases the criminal or the person concerned who is suspected of having committed a crime, may suffer from some mental disorder or neurological disorder which may make the person incapable of standing trial in the court. Psychologists are used to evaluate criminal defendants in order to determine their competency to stand trial and to determine sanity as it relates to criminal responsibility.

3.2.5 Child Custody

In these cases the forensic psychologist plays a very significant role. For instance, when a married couple with children divorces, custody arrangements and determinations must be made. When there is dispute in regard to who will take custody of the child between the two parents or whether grandparents have to be given custody etc., an expert, usually a psychologist, is called in to thoroughly evaluate the situation and to make recommendations to the court about custody. This evaluation looks at the capabilities of the parents and the needs of the children, and an arrangement is recommended which, ideally, makes the best use of each parent's strengths. Psychological testing which is conducted by the psychologist improves the objectivity of these evaluations.

3.3 DEFINITION OF CRIMINAL BEHAVIOUR

Crime is an act of person which is contrary to the norms of the society and against the law. Tappan (1947) defined crime as "an intentional act in violation of the criminal law committed without defense or excuse, and penalised by the state as a felony or misdemeanor".

According to this definition criminal behaviour is intentional that violates a criminal code. Intentional in the sense that it was not committed by accident or under duress. To fix the criminal responsibility of an individual it is necessary to know whether the person was aware that he/she was committing a crime and what he/she was doing was wrong according to the laws of the society. This is a legal definition which encompasses a great variety of acts ranging from homicide to minor traffic violation.

Like all other behaviour of human beings, crime is also a behaviour which is learned and motivated. The behavioural traits result from an interaction of hereditary and environmental factors. Moreover, all individuals are active problem solvers who perceive, interpret, and respond to their environments uniquely.

The unlawful behaviour is subjectively adaptive for the individual but deviant and harmful for the broader society. The unlawful conduct is a response pattern that a person has found to be effective, or thinks will be effective, in certain circumstances.

Engaging in criminal behaviour might be one person's way of adapting or surviving under physically, socially, or psychologically dire conditions. Another

person might decide that violence is necessary to defend honor, protect self, or reach a personal goal. In either case, the person is choosing what he/she believes is the best alternative for that particular situation. This is also true that everyone will not select unlawful behaviour as an adaptive measure as there are individual differences in the personality of the individual which determine the action of an individual.

Personality refers to all the biological and cognitive features of the human being that psychologists have identified as important in the mediation and control of behaviour. Criminal behaviour is the result of psychological, biological and sociological factors. Although all criminals cannot be considered as being mentally ill, yet it cannot be denied that much criminality has psychological roots.

3.4 FORENSIC PSYCHOLOGY

3.4.1 Definition and Scope

Forensic Psychology is the interface between Psychology and Law. The Committee on Ethical Guidelines for Forensic Psychologists (1991) defined Forensic Psychology as a field that covers “all forms of professional conduct when acting, with definable fore-knowledge, as a psychological expert on explicitly psychological issues in direct assistance to the courts, parties to legal proceedings, correctional and forensic mental health facilities, and administrative, judicial, and legislative agencies acting in a judicial capacity”.

There is a lack of consensus over the definition of forensic psychology, but this problem equally applies to any field of Psychology and probably is inherent in defining any discipline of science. The question “what is Forensic Psychology” is important but more important is the question that “who should be entitled to call themselves forensic psychologists?”

This question of who is qualified to call him or herself a forensic psychologist essentially is of defining the nature of the skills and knowledge required by anyone working in the field apart from a basic training in Psychology itself.

In the United Kingdom, it has been suggested that the Forensic Psychologists should possess legal as well as psychological and psychometric knowledge and skill (DCLP Training Committee 1994).

3.4.2 The Conceptual Basis of Forensic Psychology

- a) The psychology relevant to the study of criminal behaviour.
- b) The legal frame work including the law and structure of the criminal justice system of the country in which it is being practiced.
- c) An understanding of the achievements and potential achievements of the application of psychology to
 - Criminal Investigation Processes
 - Legal Processes
 - Custodial Processes
 - Treatment Processes (for both offenders and victims)

3.4.3 Practical Aspects of Forensic Psychology

These are to be understood in terms of the following:

- Different demands for assessment and approaches to assessment.
- Processes of investigation, prosecution and defense.
- Decision making in respect of guilt, sentencing, custody, treatment, rehabilitation.
- Professional criteria for report production and giving of testimony.
- Extensive practical experience in a minimum of one area of Forensic Psychology.

This discipline of psychology is very vast, knowledge based and skill based, the Forensic Psychologists, therefore, should possess a broader knowledge of the context and research than the minimum needed to function in their routine job.

3.4.4 The Scope of Work of Forensic Psychologist

As mentioned earlier the scope of work of the forensic psychologist is many. For example they deal with

- 1) Child Custody Decision
- 2) Jury Selection
- 3) Alleviation of Police Burnout
- 4) Carrying out competency evaluation
- 5) Deposing as an expert witness in the court of law.
- 6) Advises and helps Police Department personnel and Probation Officer to increase their understanding of human behaviour and problem.

3.4.5 Major Components of Forensic Psychology

There are two components of Forensic Psychology (i) applied and (ii) academic.

- 1) Applied Forensic Psychology deals with the following:
 - i) Police Psychology (Recruitment, Job Stress)
 - ii) Investigative Psychology
 - iii) Criminal Profiling.
 - iv) Polygraph Examination to verify the veracity of statement of the subjects (i.e. suspects/accused persons, victims, and witnesses) regarding the facts of the crime under investigation.
 - v) Brain Mapping to assess the experiential knowledge of the subjects regarding the crime under investigation.
 - vi) Narco-analysis to unveil the sub conscious mind of the subjects in case they are not able to recall the facts of the crime under investigation (this test has should be applied in rare cases).
 - vii) Interview and cognitive interview.
 - viii) Psychological Assessment
 - ix) Clinical Psychology (Assessment) Prediction
 - x) Prison Psychology (Treatment, Parole/ Release)

- 2) Academic Forensic Psychology includes the following:
 - i) Biological Psychology (Inheritance of criminality, Effects of injury)
 - ii) Developmental Psychology (Aggression, Delinquency)
 - iii) Cognitive Psychology (Eyewitness Testimony, Interviewing)
 - iv) Social Psychology (Juries, Media Influences)

3.4.6 Role of Forensic Psychologist in Criminal Justice System

- 1) At the interrogation level by application of scientific methods like:
 - Interview
 - Cognitive Interview
 - Polygraph
 - Brain Mapping
 - Hypnosis/ Narco-Hypnosis
 - Criminal Profiling
- 2) At the Judicial procedure level
 - By presenting evidence
 - By assessing the mental status of the offender/ victim – i.e. competency to stand trial and to take criminal responsibility.

3.5 PSYCHOLOGICAL ASSESSMENT AND EVALUATION

In the previous sections we have studied that criminal behaviour is like other behaviours and is learned and motivated, and that indulgence in criminal behaviour also depends on the biological and psychological and sociological factors of the personality. The process of psychological evaluation and assessment of criminal behaviour does not differ from the process of evaluating other human behaviours.

Forensic Psychology is a branch of Psychology and, therefore, it is not possible to separate the developments in forensic psychology from the developments in the broader discipline. As a result many of the psychological assessment techniques, tests and measurements used for the assessment of offenders for forensic purposes have their origins outside the field. Their availability to forensic psychologists is contingent on developments in academic, educational and clinical psychology.

The APA Dictionary of Psychology (2007) defines psychological assessment as “the gathering and integration of data in order to make a psychological evaluation, decision, or recommendation”. Multiple tools of assessment are – interview, behavioural observations, tests, and other specialised instruments. A psychological test is a “standardised instrument (i.e., a test, inventory, or scale)” used for the purpose of measuring any variety of abilities, aptitudes, or attributes.

The practice of Forensic psychology relies heavily on psychological research and assessment tools. According to a survey, the forensic psychologists frequently used MMPI-2, one of the Wechsler intelligence or memory, one of the Hare

Psychopathic Checklist versions, Structured Interview of Reported Symptom, and Personality Assessment Inventory.

The forensic assessment differs from traditional testing in some important ways which include purpose, and understanding of who is being served. The major difference is that in mental health evaluation the client is the examinee whereas in forensic evaluation specific legal questions regarding the examinee has to be addressed in order to assist in decision making.

Forensic examinee are frequently mandated for an evaluation and often assumed to have significant reasons to be purposefully selective in self-disclosure so that a much stronger focus must be placed on examiner objectivity and assessment of examinee's response style. Because of threats of conscious deception or selective self-presentation in forensic evaluations, there is more emphasis on use of multiple sources of data to verify information as well as strong reliance on external sources (i.e. collateral observations, historical records, and reports of others) apart from the formal assessment interactions with the examinee.

3.5.1 Types of Tests Useful in Forensic Assessment and Evaluation

While there are some instruments specifically developed for forensic use, like structured interviews, rating scales, or tests designed for use with a particular legal application in mind like Competence Assessment Instrument for Standing Trial (CAI), Psychopathy Checklist-Revised (PCL-R), and Competence Assessment Instrument for Standing Trial for Defendants with Mental Retardation (CAST/MR), there are also many other instruments which are used in other settings that can be used in forensic field.

Quite frequently other instruments, developed for non-forensic purposes, are used in a forensic assessment because of the vast research on the instruments, validity indicators built into some of the instruments, or ability for these tests to contribute to a broad understanding of the person to develop hypotheses related to factors bearing on the legal question(s).

Such tests are Personality tests, tests of malingering, and cognitive tests including IQ measures. Whenever any test is used for forensic evaluation, important factors under consideration are:

- i) sufficient research and norms with a population similar to that of the examinee,
- ii) adequate test development and psychometric properties, and
- iii) ability to link test results to conclusions regarding the referral question (Heilbrun, 2001).

Some of the tests and techniques of evaluation are mentioned herewith:

3.5.2 Mental Status Examination

A mental status examination (MSE) is an assessment of a patient's level of cognitive (knowledge-related) ability, appearance, emotional mood, and speech and thought patterns at the time of evaluation. It is one part of a full neurologic (nervous system) examination and includes the examiner's observations about the patient's attitude and cooperativeness as well as the patient's answers to

specific questions. The most commonly used test of cognitive functioning per se is the so-called Folstein Mini-Mental Status Examination (MMSE), developed in 1975.

Purpose

The purpose of a mental status examination is to assess the presence and extent of a person's mental impairment. The cognitive functions that are measured during the MSE include the person's sense of time, place, and personal identity; memory; speech; general intellectual level; mathematical ability; insight or judgment; and reasoning or problem-solving ability.

Complete MSEs are most commonly given to elderly people and to other patients being evaluated for dementia (including AIDS-related dementia). Dementia is an overall decline in a person's intellectual function—including difficulties with language, simple calculations, planning or decision-making, and motor (muscular movement) skills as well as loss of memory.

The MSE is an important part of the differential diagnosis of dementia and other psychiatric symptoms or disorders. The MSE results may suggest specific areas for further testing or specific types of required tests. A mental status examination can also be given repeatedly to monitor or document changes in a patient's condition. The main components are:

- Appearance, attitude, and behaviour.
- Mood and affect.
- Speech and language.
- Thought process and content.
- Perception
- Cognition.
- Insight and judgment.

3.5.3 Interview and Cognitive Interview

Interview is a face-to-face relationship between the interviewee and the interviewer. The salient features of conducting an effective interview are:

- Proper phrasing of interview questions.
- Interview schedules (set of questions, statements, pictures or other stimuli to evoke responses).
- Set of rules or procedures for using the schedules.
- Conducting the interview (evoking the responses or events that are to be classified).
- Recording the responses – paper-pencil notes, electronic equipments or other devices

The Cognitive Interview aims to enhance recall by subjects who are co-operative but unable to narrate the incident. The cognitive interview consists of four strategies to improve memory:

The questioning should be compatible with the cognitive abilities of the interviewee. The recall activity should include sensory motor imagery of the events.

The probe should be of a specific nature to facilitate the flow of information and to ensure that all elements are covered specifically asking about things such as the time at which events took place.

Mentally reinstate the incident including their feelings associated with it, and external factors that they are able to recall.

Try to report the events in a number of different sequences i.e. besides recollecting in chronological order also in reverse order or starting from the middle.

Report events from alternative perspectives like that of another witness, the offender or from other physical location.

Retrieval method has to be varied and extensive in order to facilitate recall to the maximum.

3.5.4 Cognitive Testing

The term “cognition” describes those mental processes that allow us to perform day-to-day functions, for example, the ability to pay attention, to remember and to solve problems are all parts of cognition.

Cognitive tests are used to measure a person’s cognition. Other terms for cognitive tests include neuropsychological tests, psychometric tests, psychological tests, intelligence tests or neurocognitive tests.

Normally, tests are designed to assess a single or only a few aspects of cognition. This means that multiple tests must be administered to get an overall ‘picture’ or ‘map’ of an individual’s cognitive ability.

Cognitive tests can be categorised according to the aspect or “domain” of thinking that they aim to assess. The three most commonly cited domains of cognition are attention, memory and executive function. Each of these broad domains encompasses more specific aspects of cognition. For example, at one level memory can be broken down into short-term and long-term memory, while attention can be broken down into many components including sustained and divided attention.

Each cognitive test is designed to measure performance in a limited number of domains of cognition, with additional domains assessed as different complexities which are added to the tasks. For example, attentional abilities are required to concentrate on and complete even the simplest of tasks, whilst preserved memory is additionally needed to perform well on tasks of new learning. Combining these individual tasks into a test battery can provide a more complete profile of a person’s current cognitive state.

Throughout the 20th century “paper-and-pencil” cognitive tests were used commonly to measure intelligence, assist with the diagnosis of brain disorders such as Alzheimer’s disease, and measure recovery from brain disease or injury.

The first computerised cognitive tests were developed in the 1970s and 1980s. Computerised testing offers accurate recording of reaction time, electronic capture and processing of data (minimising human error) and standardisation of test administration (minimising sources of response bias).

Cognitive testing is a method to ascertain the functions of the brain whether it is functioning well or otherwise? This technique has been developed in the field of Neuropsychology, which includes a vast array of tests that measure basic intelligence, learning and memory, sensory perception and sensory-muscle integration, reasoning and problem solving skills, language and communication abilities, and basic academic skills. Cognitive testing is able to identify and to document the level of skill or the degree of impaired functioning of a person. The utility of this technique in the forensic field is in cases involving head injury, toxic exposure, or questions of competency or capacity. To name some of these tests – Wechsler Adult Intelligence Scale (WAIS), Folstein Mini-Mental State Examination (MMSE), and Halstead-Reitan Neuropsychological Test Battery.

3.6 PERSONALITY TESTING

Psychology, particularly that branch (abnormal psychology) which is most relevant to criminology, came into its own during the twentieth century. Central to the psychological perspective is the idea that almost all causes of criminal behaviour originate in the personality. Personality is defined as the complex set of emotional and behavioural attributes that tend to remain relatively constant as the individual moves from situation to situation. Psychiatry goes a step further by postulating that mental illness and crime both have similar properties (in being responses to the same stressors and each having maladaptive qualities).

As long ago as 1870, Henry Maudsly, in his book, *Body and Mind*, wrote that criminals would go insane if they didn't engage in crime. This is because their pathological urges must find expression in something. So, it has long been recognised that there is a strong relationship between mental illness and crime (not to say that one is the cause of another). Criminal adaptation to this condition of helplessness occurs because choosing crime over other possible alternatives provides certain psychological advantages or gratifications, which are as follows:

- Crime involves activity, and when man is engaged in motoric behaviour, he feels less helpless.
- However petty a criminal act may be, it carries with it a promise of change in a favourable direction.
- Crime offers the possibility of excitement.
- Crime calls for the individual to maximise his faculties and talents which might otherwise lie dormant.
- Crime can relieve feelings of inner oppression and stress.
- Adopting the criminal role provides an excellent rationalisation for inadequacy.
- Deviant behaviour sometimes helps the criminal to form close and relatively nonoppressive relations with other criminals.
- Crime can provide pleasure or gratify needs.

The purpose of the personality test is to assess the match between a person's personality profile and the required job profile, and thus screen out candidates.

It is very likely that as part of job selection process a candidate will have to face a personality test. While the job interview examines the person's overt behaviour, the personality test 'aims' to reach deeper, and expose those areas that the person may not be aware of, thereby providing recruiters with a more comprehensive profile of the candidate's personality.

The information provided by the personality test, coupled with the interview and the other psychometric tests including aptitude tests, helps the evaluator to put the pieces together and get an overall impression of the applicant.

Thus Personality testing irrespective of it being used in forensic field or employment field or any other field, is used to gather information to allow psychologists to describe what a person is like, how the person functions or is likely to function with others, whether there is significant psychopathology, extent to which a person is open and transparent in self presentation or guarded or even deceptive and prognosis for improvement with treatment for mental health problems.

In forensic field the personality testing is utilised to address questions like risk assessment, mental illness diagnosis and treatment recommendations, competency and capacity, tort cases where emotional distress claims are made, and criminal cases where mental illness factors are being presented. To name some standardised personality tests, we can mention the following:

- Minnesota Multiphasic Personality Inventory (MMPI and MMPI-2),
- Personality Assessment Inventory such as EPI
- NEO-Personality Inventory-Revised (NEO-PI-R) and
- A projective test Rorschach Inkblots.

Let us take each of the above and deal with them briefly.

3.6.1 The Minnesota Multiphasic Personality Inventory

It is known as the MMPI, and its revised second edition (MMPI-2) are psychological assessment instruments completed by the person being evaluated, and scored and interpreted by the examiner. The clinician evaluates the test taker's personal characteristics. By analysing the test taker's patterns of response to the test items, the examiner is able to draw some tentative conclusions about the client's level of adaptation, behavioural characteristics, and personality traits. The MMPI-2 is preferred to the older MMPI because of its larger and more representative community comparison group (also referred to as the "normative" group).

The results of the MMPI-2 allow the test administrator to make inferences about the client's typical behaviours and way of thinking. The test outcomes help the examiner to determine the test taker's severity of impairment, outlook on life, approaches to problem solving, typical mood states, likely diagnoses, and potential problems in treatment. The MMPI-2 is used in a wide range of settings for a variety of procedures. In addition, the instrument is often used by expert witnesses in forensic settings as part of an evaluation of a defendant's mental health, particularly in criminal cases. The MMPI has also been used to evaluate candidates for employment in some fields, and in educational counseling.

3.6.2 Personality Assessment Inventory

The Personality Assessment Inventory (PAI) provides information relevant for clinical diagnosis, treatment planning and screening for psychopathology. The PAI covers constructs most relevant to a broad-based assessment of mental disorders.

This is a 344-item instrument requires 50-60 minutes to administer. Each item is rated on a 4 point scale ranging from false, not at all true, to very true. The PAI consists of 22 non-overlapping full scales covering the constructs most relevant to a broad-based assessment of mental disorders: 4 validity scales, 11 clinical scales, 5 treatment scales, and 2 interpersonal scales. To facilitate interpretation and cover the full range of complex clinical constructs, 10 full scales contain conceptually derived subscales.

3.6.3 Personality Inventory-Revised (NEO PI-R)

The NEO Personality Inventory (NEO PI-R) is a highly-regarded assessment of personality. Based on the Five-Factor model, the NEO PI-R measures the interpersonal, motivational, emotional, and attitudinal styles of adults and adolescents. It consists of 240 personality items and 3 validity items, and is available in two forms. Form-S is designed for self-reports and Form-R is written in the third person for observer reports.

It is used in the following areas:

- In counseling and clinical settings with adults as well as senior high school and college students.
- In business and industrial settings.
- Psychological research, including studies in sport psychology and recreation.

The NEO PI-R was designed to provide a general description of normal personality relevant to clinical, counseling and educational situations. NEO PI-R items and materials were designed to be easily read and understood. The five domains (factors) measured by the NEO PI-R provide a general description of personality, while the facet scales allow more detailed analysis. These five factors and their facet scales include:

- i) **Neuroticism** (Anxiety, Hostility, Depression, Self-Consciousness, Impulsiveness, Vulnerability)
- ii) **Extraversion** (Warmth, Gregariousness, Assertiveness, Activity, Excitement-Seeking, Positive Emotions)
- iii) **Openness to Experience** (Fantasy, Aesthetics, Feelings, Actions, Ideas, Values)
- iv) **Agreeableness** (Trust, Modesty, Compliance, Altruism, Straightforwardness, Tender-Mindedness)

Conscientiousness (Competence, Self-Discipline, Achievement-Striving, Dutifulness, Order, Deliberation)

3.6.4 Projective Test e.g. The Rorschach Test

In psychology, a projective test is a type of personality test in which the individual offers responses to ambiguous scenes, words or images. This type of test emerged

from the psychoanalytic school of thought, which suggested that people have unconscious thoughts or urges. These projective tests were intended to uncover such unconscious desires that are hidden from conscious awareness.

In many projective tests, the participant is shown an ambiguous image and then asked to give the first response that comes to mind. The key to projective tests is the ambiguity of the stimuli. According to the theory behind such tests, clearly defined questions result in answers that are carefully crafted by the conscious mind. By providing the participant with a question or stimulus that is not clear, the underlying and unconscious motivations or attitudes are revealed. These tests are used in forensic setting in order to find out the underlying psychodynamics of a criminal behaviour.

3.6.5 Psychological and Behavioural Profiling

Criminal Psychological Profiling is a very effective tool in the area of crime investigation in general and specially in the cases where a series of heinous crime (rape, murder, arson, and other violent crime) has occurred and it has not been possible to identify the perpetrator. Construction of criminal psychological profile from the scene of crime, interview of the victims and witnesses may be of immense help in narrowing down to the probable suspects in such cases.

Criminal profiling is a forensic technique which aims at providing the investigating agencies the specific information regarding the personality traits, behavioural tendencies and demographic variable of an offender based on the characteristics of the crime. The crime scene provides ample clue to the personality traits of the criminal. The criminal personality profile has to be drawn from good examination of crime scene and adequate information supplied to the forensic profiler.

Self Assessment Questions

1) Define criminal behaviour?

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2) What is the concept of forensic psychology?

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3) Explain various roles of a forensic psychologist?

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4) What are the various psychological tools of assessment of criminal behaviour?

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3.7 LET US SUM UP

In this unit we have learnt the following concepts:

- The concept and definition of criminal behaviour in the legal perspective.
- Definition, concept, and various roles the forensic psychologist has to play during deliverance of his duties.
- The knowledge and skills required for becoming a forensic psychologist.
- Major components of forensic psychology and role of forensic psychologist in criminal justice system.
- Importance of psychological assessment in the field of forensic psychology.
- Various tools of assessment of an offender in order to assist the court in the decision making process and answer the legal questions raised in respect of a criminal case.

3.8 UNIT END QUESTIONS

- 1) Discuss the various roles of forensic psychologists.
- 2) Define criminal behaviour.
- 3) What is the scope of forensic psychology especially the practical aspects ?
- 4) What are the major components of forensic psychology?
- 5) Discuss the role of forensic psychology in criminal justice system.
- 6) Defining psychological assessment and evaluation, discuss the various types of tests used in forensic investigation.
- 7) Describe MSE and Interview and cognitive testing.

- 8) Elucidate personality testing and how it used in forensic psychology.
- 9) What do you understand by psychological and behavioural profiling?

3.9 SUGGESTED READINGS

Bruce A. Arrigo, *Introduction to Forensic Psychology* (2000), Academic Press, USA.

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UNIT 4 CIVIL PROCEEDINGS AND COMMITMENT

Structure

- 4.0 Introduction
- 4.1 Objectives
- 4.2 Civil Proceedings and Commitments
 - 4.2.1 Definition and Concept
 - 4.2.2 Criteria for Civil Commitment
 - 4.2.3 Section 498 and 498A
 - 4.2.4 Section 113 A
 - 4.2.5 Meaning of Cruelty
 - 4.2.6 Family Courts in India
- 4.3 Maintenance Law
- 4.4 The Hindu Adoption and Maintenance Act, 1956
- 4.5 Civil Commitment
 - 4.5.1 Rights of the Committed Patients
 - 4.5.2 The Process of Commitment
- 4.6 Assessment and Evaluation
 - 4.6.1 Physical and Sexual Abuse
 - 4.6.2 Domestic Violence
 - 4.6.3 Child Custody in Divorce Proceedings
 - 4.6.4 Risk Assessment for Violence
 - 4.6.5 Antisocial Personality Disorder and Psychopathy
 - 4.6.6 Potential for Rehabilitation in Juvenile Court Cases
 - 4.6.7 Childhood Development and Trauma as Mitigating Circumstances in Death Penalty Cases
- 4.7 Let Us Sum Up
- 4.8 Unit End Questions
- 4.9 Suggested Readings and References

4.0 INTRODUCTION

In this unit we will learn the concept and context of commitments in the court of law and decision-making about the commitment during civil proceedings. We will first define civil commitment, follow it up by criteria for the same and deliberate on the various laws that are available to provide justice to the victims. In this context we will also deal with family courts that are specially established for dispensing expeditiously with the family related problems and issues. We will then take up some of the laws that are available to provide justice to the needy such as the maintenance law, the adoption law and the civil commitment especially when a person is mentally ill. Finally we will be dealing with the need for forensic psychological assessment and evaluation especially in regard to physical and sexual abuse, domestic violence and related cases, child custody cases etc.

4.1 OBJECTIVES

After completing this unit, you will be able to:

- Define and conceptualise civil commitment;
- Elucidate the Criteria for civil commitment;
- Explain the provisions under 498 and 498 A sections as well as 113 A section;
- Analyse cruelty in legal terms;
- Explain the role of family courts in India;
- Elucidate the various Maintenance Laws to provide justice to the victims; and
- Describe the various assessment and evaluation techniques.

4.2 CIVIL PROCEEDINGS AND COMMITMENTS

We will be dealing with the civil proceedings and commitments in this section. Let us start with definition and concept.

4.2.1 Definition and Concept

The relatives or friends of a man charged with a crime may attempt to save him from criminal prosecution by having him committed to a mental hospital under the civil statutes. Even if his adjudication to a mental hospital is obtained, the criminal court is not thereby prevented from bringing the man to trial.

Civil statutes providing for the commitment of incompetent or insane persons do not apply to persons who have been charged with a crime. Under civil statutes a court may order commitment to a mental hospital if it finds that a person is mentally ill and likely to injure himself or others if allowed to remain at liberty. Mental illness can have a tremendous effect on one's thought process and can impair one's ability to make rational decisions.

Civil commitment was born out of the need to involuntarily hospitalise mentally ill patients who are assessed to be a danger to themselves or others while maintaining respect for their civil rights. The government has an obligation to protect its citizens and it may require the detention of a mentally ill individual who due to his illness, is perceived to present a danger to others.

4.2.2 Criteria for Civil Commitment

Civil commitment is a process in which a judge decides whether a person who is alleged to be mentally ill should be required to go to a psychiatric hospital or accept other mental health treatment. A person in the process of a commitment sometimes is called an Alleged Mentally Ill Person (AMIP). A civil commitment is not a criminal conviction and will not go on a criminal record.

In India the civil cases include misuse of anti dowry laws, legalisation of abortion. We have family courts in India, domestic violence, child custody, guardianship, maintenance, adoption.

The issue of women's rights and family law reform has been increasingly entangled within the polemics of politics and minority rights. It is true that the hardships and sufferings experienced by woman of all communities, minority as well as majority, cannot be overlooked with the help of persuasive or effective freedom of religion. The life of an average Hindu woman has always been difficult and pitiable due to existing social customs and practices of time.

The beginning of 19th century plays an important role in degrading Indian women till its depth. The fear of insecurity not only envisaged in unmarried young women but also married women. In India, "family" has always been prime importance. Marriage being an important social institution since Vedic period was biased against women. It was regarded as the social alliance between two families instead of two persons. The bride was expected to serve her husband and his family and ensure their happiness and well being. There was no question of her happiness, expectation or content. There were three main objectives of Hindu marriage: dharma or religious duties to be performed by the couple, proja or procreation, and rati or conjugal love.

The exploitation of woman began with the child marriage. A girl too young to take life seriously, a girl too young to understand the meaning of 'life' and 'marriage', had to step into the world of thorns. She was subjugated by her mother-in-law and other members of her husband's family, most of the time including even her husband. She was expected to observe 'purdah', not to speak to elders, speak in low voice to younger members of family, not to speak or meet her husband except midnight and bear all harsh words and sufferings for even minor fault and above all never to express her sorrows or utter a word of distress to anyone.

A woman had no freedom, neither personal nor economic. Traditionally, the Hindu woman had distinct economic right called 'stridhan'.² In order to partially set off the disability suffered under the notion of joint ownership by male members, the smritikars assigned a special category of property to women termed as 'stridhana'.³ The first mention of this term is found in Gautama Dharma sutra. He provided not only for the women's separate property but also distinct and separate rules for its succession. But the definition of 'stridhana' changed over from time to time, granting all the rights and power to husbands. Consent of the girl was not considered to be relevant and hence, she was left with no choice, except to accept all pains and marry.

The traditional concept of marriage has greatly changed and Hindu marriage is considered to be of dual nature i.e. of both religious sacrament and contract, where mutual consent and benefit of both the parties are duly aided by different legal provisions and reforms. Attempts to bring about changes in the status of women either through legislation or judicial activism can achieve little success without a simultaneous movement to transform the social and economic structures and the culture (values, ideologies and attitudes) of society.

One of those attempts to bring changes in status of women and relieve her from her sufferings, pains and gloomy environment is given under chapter XX-A of Indian Penal Code, 1860. Chapter XX – Of offences relating to marriage (Sec. 493 to 498) and of cruelty by husband or relatives of husband (Sec.498-A)

Self Assessment Questions

1) What do you understand by the term civil commitment?

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2) Elucidate the criteria for civil commitment

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3) Describe the various civil cases that are tried in Indian courts of Law.

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4) What are the legal provisions that help to prevent women from being exploited and treated cruelly?

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4.2.3 Section 498 and 498 A

Chapter XX-A of Indian Penal Code, 1860, refers to ‘cruelty by husband or relatives of husband’ and includes section 498-A.

Section 498-A states, that whoever being the husband or relative of the husband of woman, subjects such woman to cruelty shall be punished with the imprisonment for a term which may extend to three years and also be liable to fine.

Explanation — For the purpose of this section, “cruelty” means —

- a) Any willful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- b) Harassment of the woman where such harassment is with view to coercing her or any person related to her meet any unlawful demand for any person related to her to meet such demand.

The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

4.2.4 Section 113-A

This section deals with the presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation — For the purpose of this section ‘dowry death’ shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).

The object for which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short ‘the Cr.P.C’) and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-law’s and relatives. The avowed object is to combat the menace of dowry death and cruelty.

The act of harassment would amount to cruelty for the purpose of this section. Drinking and late coming habits of the husband coupled with beating and demanding dowry have been taken to amount to cruelty within the meaning of this section, but this section has been held not to include a husband who merely drinks as a matter of routine and comes home late.

In a case before Supreme Court it was observed that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty.

4.2.5 Meaning of Cruelty

It was held in ‘Kaliyaperumal vs. State of Tamil Nadu’, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two

sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well.

Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498-A.

In the case of 'Inder Raj Malik vs. Sumita Malik' , it was held that the word 'cruelty' is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.

Kinds of cruelty covered under this section includes following:

- a) Cruelty by vexatious litigation
- b) Cruelty by deprivation and wasteful habits
- c) Cruelty by persistent demand
- d) Cruelty by extra-marital relations
- e) Harassment for non-dowry demand
- f) Cruelty by non-acceptance of baby girl
- g) Cruelty by false attacks on chastity
- h) Taking away children

The presumption of cruelty within the meaning of section 113-A, Evidence Act,1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.

Self Assessment Questions

- 1) Discuss in detail the provisions under Section 498.

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- 2) Elucidate the various provisions under 498 A.

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3) In what way the provisions under 113 A help women in India?

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4) Give the meaning of cruelty and indicate the various forms that are considered cruel.

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4.2.6 Family Courts in India

The number of cases filed in the Supreme Court in India has been on the increase. From 2008 to 2009, the percent of cases increased was 103%. The issues that are considered include family matters and property. There are also marriage related issues. There are number of judicial provisions dealing with marriage and its various aspects. These include misuse of provisions like 498bA of the Indian Penal Code , protection of women from domestic violence act, child custody etc. There are also issues like alimony which become the topic of controversy and cause harassment to families.

The Family Courts Act, 1984, was part of the trends of legal reforms concerning women. It was thought that this Act will facilitate satisfactory resolution of disputes concerning the family through a forum expected to work expeditiously in a just manner and with an approach ensuring maximum welfare of society and dignity of women. Prevalence of gender biased laws and oppressive social practices over centuries have denied justice and basic human rights to Indian women. The main purpose behind setting up these courts was to take the cases dealing with family matters away from the intimidating atmosphere of regular courts and ensure that a congenial environment is set up to deal with matters such as marriage, divorce, alimony, child custody etc. These family courts are also equipped with counselors and psychologists who ensure that the disputes are handled by experts who also look into the human and psychological dimension. The aim of these courts is to form a congenial atmosphere where family disputes are resolved amicably. The family court's main purpose is to assist the smooth and effective disposal of cases relating to family matters. A major drawback of the family court act is that it does not empower courts to grant injunctions to prevent domestic violence.

4.3 MAINTENANCE LAW

In regard to the Maintenance Law, considerable provisions have been made so that the woman does not suffer after divorce or separation from the husband. Obligation of a husband to maintain his wife arises out of the status of the marriage. Right to maintenance forms a part of the personal law. Under the Code of Criminal Procedure, 1973 (2 of 1974), right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however, depends on the husband having sufficient means. Claim of maintenance for all dependent persons is limited to Rs. 500 per month.

Under Hindu Law, the wife has an absolute right to claim maintenance from her husband. But she loses her right if she deviates from the path of chastity. Her right to maintenance is codified in the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956). In assessing the amount of maintenance, the court takes into account various factors like position and liabilities of the husband. It also judges whether the wife is justified in living apart from the husband. Justifiable reasons are spelt out in the Act. Under the Muslim Law, the Muslim Women (Protection of Rights on Divorce) Act, 1986 protects rights of Muslim women who have been divorced by or have obtained divorce from their husbands and provides for matters connected therewith or incidental thereto.

The Parsi Marriage and Divorce Act, 1936 recognises the right of wife to maintenance. The maximum amount that can be decreed by court as alimony during the time a matrimonial suit is pending in court, is one-fifth of the husband's net income. In fixing the quantum as permanent maintenance, the court will determine what is just, bearing in mind the ability of husband to pay, wife's own assets and conduct of the parties. The order will remain in force as long as wife remains chaste and unmarried.

The Indian Divorce Act, 1869 *inter alia* governs maintenance rights of a Christian wife. The provisions are the same as those under the Parsi law and the same considerations are applied in granting maintenance, both alimony *pendente lite* and permanent maintenance.

Maintenance is a right to get necessities which are reasonable from another. It has been held in various cases that maintenance includes not only food, clothes and residence, but also the things necessary for the comfort and status in which the person entitled is reasonably expected to live. Right to maintenance is not a transferable right.

4.4 THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

Maintenance, in other words, is right to livelihood when one is incapable of sustaining oneself. Hindu law, one of the most ancient systems of law, recognises right of any dependent person including wife, children, aged parents and widowed daughter or daughter in law to maintenance. The Hindu Adoptions and Maintenance Act, 1956, provides for this right.

The relief of maintenance is considered an ancillary relief and is available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc. Further, under matrimonial laws if the husband is ready to cohabit with the wife, generally, the claim of wife is defeated. However, the right of a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief has been recognised in Hindu law alone.

A Hindu wife is entitled to reside separately from her husband without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956. The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma. Thus, in order to realise her claim, the Hindu wife must prove that one of the situations (in legal parlance 'grounds') as stated in the Act, exists.

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favour of the wife, maintenance is granted. These grounds are as follows:

- a) The husband has deserted her or has willfully neglected her;
- b) The husband has treated her with cruelty;
- c) The husband is suffering from virulent form of leprosy/venereal diseases or any other infectious disease;
- d) The husband has any other wife living;
- e) The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
- f) The husband has ceased to a Hindu by conversion to any other religion;
- g) Any other cause justifying her separate living;

Apart from the relationship of husband and wife other relations in which there is economic dependency are also considered to be entitled to maintenance by the Hindu Adoptions and Maintenance Act, 1956. Accordingly a widowed daughter-in-law is entitled maintenance from her father-in-law to the extent of the share of her deceased husband in the said property. The minor children of a Hindu, whether legitimate or illegitimate, are entitled to claim maintenance from their parents. Similarly, the aged and infirm parents of a Hindu are entitled to claim maintenance from their children. The term parent here also includes an issueless stepmother.

Self Assessment Questions

1) What is Family Courts?

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2) What purpose do the family courts serve? Explain.
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3) Describe in detail the Maintenance Law in India.
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4) What is the importance of Hindu Adoption and maintenance Bill of 1956?
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4.5 CIVIL COMMITMENT

The main substantive criterion for civil commitment is the presence of a mental impairment. Mental illness and mental defect are necessary but not sufficient reason for commitment. In addition to the presence of mental illness, there are three main potential criteria for civil commitment:

i) *Risk of danger to self*

This may be manifested in form of a suicide attempt, an overt suicidal threat, or behaviour that indicates the individual’s intention to harm his own self (i.e. writing a suicide note or stocking up a lethal medication in overdose), which may occur despite a patient’s denial of suicidal thoughts.

ii) *Risk of danger to others*

Similar to the first criterion that both actions and thoughts allow for a patient to be committed by civil proceedings.

iii) *The patient’s gravely disabled condition or inability to care for self*

This refers to the patient’s inability to provide for his own basic needs, such as food, shelter, clothing, medical care, and personal security secondary to mental illness. On the basis of this assessment and prediction, the clinician is given both

the power and responsibility of placing a person, at least temporarily, in an inpatient facility potentially against his will.

4.5.1 Rights of the Committed Patients

Unless the person has been declared incompetent to exercise some rights, the committed patients have the following rights:

- i) Right to humane care and treatment.
- ii) Right to the highest standard of medical care depending upon the facilities and personnel available.
- iii) Right to the writ of habeas corpus.
- iv) Right to communicate by mail.
- v) Right to receive visitors.
- vi) Right to be employed at a useful occupation depending upon the patient's condition and the available facilities.
- vii) Right to exercise civil rights, including the right to dispose of property, to make contracts.
- viii) Right to vote.

Commitment to a hospital is neither a determination of incompetency nor a deprivation of civil or political rights. Deprivation of civil and political rights has never been part of the civil commitment process although it has been an integral part of the criminal law process.

4.5.2 The Process of Commitment

Once a mental health care provider has taken a decision that an individual has to be committed civilly, the clinician must adhere to the existing procedure. Though the criteria are often the same, the logistics of civil commitment vary between countries and states. In the United States, a delicate balance between psychiatry and the law exists during the commitment process.

All states allow for emergent commitment of patients meeting the abovementioned criteria with little or no involvement of the court system. Therefore, commitment is primarily based on the assessment of the clinician and occurs swiftly. At this time, the patient is provided with the potential duration of the confinement and the point in time when access to counsel and a hearing is granted. The second step in this process involves long term detention and does require judicial approval. Patients who require only brief stabilisation may be discharged before their cases reach court.

Civil commitment in United Kingdom can be enacted to ensure both patients' health and the safety of those around them and is based on an intention to treat patients' mental illness. In England and Wales, a patient can be involuntarily hospitalised, assessed, and treated for a period up to 28 days. If appropriate, after this evaluation period, a patient may be detained for a period up to six months based on the consensus of two medical opinions.

In Scotland, detention beyond the 28 days evaluation period must be sanctioned by a Mental Health Review Tribunal consisting of a lawyer, a psychiatrist, and a

third person with experience in handling mental health issues. In Northern Ireland, the initial evaluation period is only seven days, and this may be extended for another seven days if necessary.

Self Assessment Questions

1) What is civil commitment? What are the risks involved?
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2) What are the rights of the committed patients? Explain.
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3) Describe the process of commitment.
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4.6 ASSESSMENT AND EVALUATION

The methods of assessment and evaluation by forensic mental health personnel for making decision regarding the commitment of an individual.

Most professional forensic literature addresses the assessment of adults yet neglects the necessary differences that arise when working with minors. *Forensic Mental Health Assessment of Children* presents the reader with essential knowledge and practical suggestions regarding the forensic assessment of minors involved in a variety of legal applications. Methods of evaluation are described by leading experts regarding topics frequently encountered and of great importance to the courts including:

4.6.1 Physical and Sexual Child Abuse

The statistics on physical child abuse are alarming. It is estimated hundreds of thousands of children are physically abused each year by a parent or close relative. Thousands actually die as a result of the abuse. For those who survive, the

emotional trauma remains long after the external bruises have healed. Communities and the courts recognise that these emotional “hidden bruises” can be treated. Early recognition and treatment is important to minimise the long term effect of physical abuse. Whenever a child says he or she has been abused, it must be taken seriously and immediately evaluated.

Children who have been abused may display:

- a poor self image
- sexual acting out
- inability to trust or love others
- aggressive, disruptive, and sometimes illegal behaviour
- anger and rage
- self destructive or self abusive behaviour, suicidal thoughts
- passive, withdrawn or clingy behaviour
- fear of entering into new relationships or activities
- anxiety and fears
- school problems or failure
- feelings of sadness or other symptoms of depression
- flashbacks, nightmares
- drug and alcohol abuse
- sleep problems

Often the severe emotional damage to abused children does not surface until adolescence or even later, when many abused children become abusing parents. An adult who was abused as a child often has trouble establishing lasting and stable personal relationships. These men and women may have trouble with physical closeness, touching, intimacy, and trust as adults. They are also at higher risk for anxiety, depression, substance abuse, medical illness, and problems at school or work.

Early identification and treatment is important to minimise the long-term consequences of abuse. Qualified mental health professionals should conduct a comprehensive evaluation and provide treatment for children who have been abused. Through treatment, the abused child begins to regain a sense of self-confidence and trust. The family can also be helped to learn new ways of support and communicating with one another. Parents may also benefit from support, parent training and anger management.

Physical abuse is not the only kind of child abuse. Many children are also victims of neglect, or sexual abuse, or emotional abuse. In all kinds of child abuse, the child and the family can benefit from evaluation and treatment from a qualified mental health professional.

4.6.2 Domestic Violence

Domestic violence and abuse can happen to anyone, yet the problem is often overlooked, excused, or denied. This is especially true when the abuse is psychological, rather than physical. Emotional abuse is often minimised, yet it can leave deep and lasting scars.

Noticing and acknowledging the warning signs and symptoms of domestic violence and abuse is the first step to ending it. No one should live in fear of the person they love.

Domestic abuse, also known as spousal abuse, occurs when one person in an intimate relationship or marriage tries to dominate and control the other person. Domestic abuse that includes physical violence is called *domestic violence*.

Domestic violence and abuse are used for one purpose only, that is to gain and maintain total control over the person concerned. An abuser does not “play fair.” Abusers use fear, guilt, shame, and intimidation to wear the person down and keep her under his or her thumb. The abuser may also threaten, hurt, or hurt those around the person.

Domestic violence and abuse does not discriminate. It happens among heterosexual couples and in same-sex partnerships. It occurs within all age ranges, ethnic backgrounds, and economic levels. And while women are more commonly victimised, men are also abused, especially verbally and emotionally, although sometimes even physically as well.

Domestic abuse often escalates from threats and verbal abuse to violence. And while physical injury may be the most obvious danger, the emotional and psychological consequences of domestic abuse are also severe. Emotionally abusive relationships can destroy the victim’s self worth, lead to anxiety and depression, and make the victim feel helpless and alone. No one should have to endure this kind of pain, and the first step to breaking free is recognising that a certain situation is abusive. Once the person acknowledges the reality of the abusive situation, then the victim can get the needed help.

There are many signs of an abusive relationship. The most telling sign is fear of the partner. If a person has to constantly watch what she says and does in order to avoid a blow-up, the chances are that the relationship is unhealthy and abusive. Other signs that the victim may be in an abusive relationship include a partner who belittles her or tries to control her, and the victim herself having feelings of self-loathing, helplessness, and desperation.

4.6.3 Child Custody in Divorce Proceedings

Child custody is a term used in family law courts to define legal guardianship of a child under the age of 18. During divorce or marriage annulment proceedings, the issue of child custody often becomes a matter for the court to determine. In most cases, both parents continue to share legal child custody but one parent gains physical child custody. Family law courts generally base decisions on the best interests of the child or children, not always on the best arguments of each parent.

In general, courts tend to award PHYSICAL child custody to the parent who demonstrates the most financial security, adequate parenting skills and the least disruption for the child. Both parents continue to share legal child custody until the minor has reached the age of 18 or becomes legally emancipated. Legal custody means that either parent can make decisions which affect the welfare of the child, such as medical treatments, religious practices and insurance claims. Physical child custody means that one parent is held primarily responsible for

the child's housing, educational needs and food. In most cases, the non-custodial parent still has visitation rights. Many of the religions practicing in India have their own personal laws and they have their different notion of custody.

In the Hindu Law, all the personal law matrimonial statutes make provisions for dealing with the issue of child custody. The provisions in the matrimonial Acts can, however, be invoked only when there are some proceedings pending under the Act.

Hindus have an additional Act, viz. the Hindu Minority and Guardianship Act, 1956 (HMGA). Apart from this, there is the Guardians and Wards Act, 1890 (GWA). This is a secular law for appointment and declaration of guardians and allied matters, irrespective of caste, community or religion, though in certain matters, the court will give consideration to the personal law of the parties.

The provisions of the HMGA (and other personal laws) and the GWA are complementary and not in derogation to each other, and the courts are obliged to read them together in a harmonious way.

In determining the question of custody and guardianship, the paramount consideration is the welfare of the minor. The word 'welfare' has to be taken in its widest sense, and must include the child's, moral as well as physical well-being, and also have regard to the ties of affection.

The English and Indian decisions are replete with such statements that :

- i) the children of tender years should be committed to the custody of the mother,
- ii) older boys should be in the custody of the father, and
- iii) older girls in the custody of the mother. But these are judicial statements of general nature and there is no hard and fast rule. As to the children of tender years it is now a firmly established practice that mother should have their custody since father cannot provide that maternal affection which are essential for their proper growth. It is also now recognised that for proper psychological development of children of tender years mother is indispensable.

The Hindu Minority and Guardianship Act, 1956 contains a provision which lays down that custody of a child upon the age of five should ordinarily be with the mother. Under other personal laws, though it is no such statutory provision, the Indian courts have consistently taken this view.

In respect of older children our courts take the view that the male children above the age of sixteen years and female children above the age of fourteen years, should not ordinarily be compelled to live in the custody to which they object. However, even the wishes of the mature children will be given consideration only if they are consistent with their welfare.

Ordinarily, custody should be given to either of the parents. But where welfare so requires, custody may be given to a third person.

4.6.4 Risk Assessment for Violence

It is well known that prisons contain substantial numbers of individuals with psychiatric disorders, substance abuse problems, and personality disorders. Research has shown that the rates of severe mental illness for incarcerated

populations are 3 to 4 times higher than those of the general population. It has also indicated that substance abuse and personality disorders can range from 5 - 20% higher in incarcerated populations.

Actuarial instruments as well as clinical assessments consider a number of factors in their assessment of risk potential magnitude, imminence and frequency. Research has indicated that the following factors have predictive value:

1) **Base Rates**

- refers to the frequency of violence in a given population
- one of the most highly predictive actuarial factors
- does not relate specifically to mental disorder
- can “over-predict” (e.g. can incorrectly identify some offenders as potential killers)

2) **Demographic Factors Associated with Increased Risk**

- men more highly represented in criminal and violent populations (though not necessarily in psychiatric areas)
- age: crime (especially violent) tends to occur more in younger than in older men
- unemployment: low socio-economic status, low educational achievement correlate with violence
- race and ethnicity: although these can be factors, they tend to dissipate when the other factors taken into account statistically

3) **Past History of Violence**

- violent history: one of most powerful indicators of future violence potential
- nature of the violence: always important to consider (e.g. types of victims, environmental and contextual issues, etc.)

4) **Substance Abuse**

- drugs and alcohol are major contributors to violence amongst both mentally disordered and non-mentally disordered offenders
- prevalence of substance abuse in mentally disordered offender tends to be higher than in general (non-incarcerated) population
- substance abuse is important risk factor in psychotic individuals
- doubles the lifetime risk of violence among the severely mentally disordered, particularly if substance abuse had early onset

5) **Psychiatric Diagnosis and Risk of Violence**

- earlier research linked violence with schizophrenic patients in particular but later studies have been more equivocal about this
- however, recent meta-analyses suggest that risk of violence is three-fold among those with psychosis
- much more relevant to look at psychiatric *symptoms* as opposed to diagnosis:

6) Acute Psychiatric Symptoms

- a) **Mania (and Violence):** Mania is a form of serious mental illness characterised by elevated mood or irritability, sense of grandiosity and/or invincibility, racing thoughts and speech patterns and can result in threatening and assaultive behaviour but serious intentional violence is rare
- b) **Depression (and Violence):** The characteristics of major depression include feelings of worthlessness or inappropriate guilt, indecisiveness, lack of concentration, loss or gain of weight and appetite, persistently depressed mood, persistent need for more sleep, loss of energy and general fatigue, persistent lack of interest and pleasure in activities, sometimes there are thoughts of death or suicide

Violence can be either self-directed (suicide) or directed to others, usually those close to the individual

examples: depressed mothers who kill their children; depressed men who kill family members and then themselves

- c) **Delusions (and violence):** This refers to fixed false beliefs that cannot be reasoned away, usually out of keeping with the individual's educational, social and cultural background. Research indicates consistent links between violent behaviour and delusions particularly noteworthy are delusions of being threatened by others, paranoid delusions of personal control being overridden delusions can be categorised into main sub-sets:

Erotomania: Individual believes that someone outside their normal sphere of interaction (e.g. television personality) is in love with them and is sending them coded messages supporting and encouraging a relationship

- *Erotomania and Violence:* Erotomanics are more often male than female. Fewer than 5% are violent. The person who gets in the way is the most likely to be injured, followed by the person who is the "love object"
- *Pathological Love:* Different from erotomania in that the individual perceives the unattainable person as the "best person for me, if only I could meet her." Individual tends to follow the object of their affection, hoping for glimpses or chance meetings.
- *Pathological Jealousy:* Exhibited by individuals who cannot accept rejection. Attitude of "if I can't have you, no one will".
- *Paraphiliacs:* Individuals with sexual deviations who become particularly fixated on particular targets.
- *Stalkers who Kill Strangers:* These individuals tend to be more often mentally disordered than otherwise. Believe themselves to be unique, tend to identify with other stalkers, collect newspaper clippings, etc. They research their target victims thoroughly. Often fanatical about keeping records, diaries, photographs of their stalking activities. May even purchase a weapon for the particular "mission" they are on. Targets of their attentions can change.

- d) Hallucinations (and violence) This refers to false perceptions (e.g. hearing things that are not there)

Command Hallucinations: A hallucination/voice that tells someone to do something — risk of violence stemming from a command hallucination is increased if the “voice” is familiar (e.g. mother)

Violent Fantasies: approximately 70% of males in general population have had violent fantasies or homicidal thoughts at one time or another persistent violent thoughts are associated with violence in patients with severe substance abuse but no mental disorder (i.e. people other than the acutely psychotic are most worrisome), reporting of violent thoughts associated with diagnosis of psychopathy.

4.6.5 Antisocial Personality Disorder and Psychopathy

In addition antisocial personality disorders may also make a person at risk to kill. For instance higher prevalence of it in severely mentally ill population and in prison population (50-70%). There is a strong association with substance abuse, is a strong predictor of criminal recidivism, particularly violent recidivism, and especially in women.

Psychopathy

Another condition called psychopathy overlaps with antisocial personality disorder. Psychopathy is

- characterised by combination of traits from APD and Narcissistic Personality Disorder: self-centredness, egocentricity, lack of empathy, etc.
- treatment of psychopathy problematic and research has shown can be counterproductive (Penetanguishene MHC)
- degree of psychopathy measured effectively by Hare’s Psychopathy Checklist-Revised (PCL-R)
- high scores on PCL-R consistently correlate with violence in incarcerated offenders and forensic patients
- PCL-R score incorporated as key feature in the Violence Risk Assessment Guide (VRAG) which assesses violence risk potential

Biological factors

Also in certain cases biological factors may contribute to such violence and risk to violence behaviour and these are as given below:

- frontal lobe deficits
- neurotransmitter abnormalities
- perinatal neurological damage
- behavioural genetics

4.6.6 Potential for Rehabilitation in Juvenile Court Cases

The juvenile justice system is the structure of the criminal legal system that deals with crimes committed by minors, usually between the ages of 10 and 18 years. The upper age of eligibility is determined by the juvenile law of each state, which varies. A juvenile crime is any offense that could be committed by

an adult but that is committed by a juvenile. There are also “status offenses” that may only be committed by a juvenile, such as curfew violations, running away, truancy, and underage alcohol consumption. In the juvenile justice system, youth offenders are not tried as adults, and their cases are heard in a separate court designed for juveniles.

The juvenile justice system operates according to the premise that youth are fundamentally different than adults, both in terms of level of responsibility and potential for rehabilitation. The treatment and successful reintegration of youth into society are the primary goals of the juvenile justice system, along with overall public safety.

Special education

Special Education is that component of education which employs special instructional methodology (Remedial Instruction), instructional materials, learning and teaching aids as well as equipment to meet educational needs of children with specific learning disabilities.

Remedial instruction or Remediation aims at improving a skill or ability in a student. Techniques for remedial instruction may include providing more practice or more explanation, repeating information, and devoting more time to working on the skill.

For example, a student having a low reading level could be given remediation via one-on-one reading instruction, phonic instruction, or practice in reading aloud. Special education teachers work with children and youths who have a variety of disabilities. A small number of special education teachers work with students with mental retardation or autism, primarily teaching them life skills and basic literacy.

However, the majority of special education teachers work with children with mild to moderate disabilities, using the general education curriculum, or modifying it, to meet the child’s individual needs. Most special education teachers instruct students at the elementary, middle, and secondary school level, although some teachers work with infants and toddlers.

Special educators provide programs for specific learning disabilities, speech or language impairments, mental retardation, emotional disturbance, multiple disabilities, hearing impairments, visual impairments, autism, combined deafness and blindness, traumatic brain injury, and other health impairments. Students are classified under one of the categories, and special education teachers are prepared to work with specific groups. Early identification of a child with special needs is an important part of a special education teacher’s job. Early intervention is essential in educating children with disabilities.

4.6.7 Childhood Development and Trauma as Mitigating Circumstances in Death Penalty Cases

Mitigating circumstances, or mitigating factors, are facts which, though they do not exonerate the defendant, may serve to reduce the charge or the punishment. In civil actions, for instance, the defense will often ask the jury to consider mitigating circumstances in order to reduce the damages or the extent of the defendant’s liability.

As for mitigating circumstances in criminal law, these are most often brought to bear in cases where the death penalty is among the forms of punishment available. Mitigating circumstances could include mental illness, the youth of the defendant, economic hardship, and childhood abuse. Though the use of mitigating circumstances often generates little sympathy among the population as a whole, the Supreme Court has ruled that juries must consider mitigating circumstances in death penalty cases.

Self Assessment Questions

1) Explain assessment and evaluation.

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2) How is child abuse and sexual abuse evaluated and assessed?

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3) How do we assess domestic violence.

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4) What is meant by antisocial personality disorder/ How is it assessed in terms of criminal Q. behaviour?

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5) Describe how are psychiatric disorders and violence / crime are related?

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4.7 LET US SUM UP

In this unit we have learnt about the concept of civil proceedings and commitment. These concepts were defined and explained and the criteria for civil commitment was also put forward. The provisions under sections 498 and 498 A were discussed and so also the provisions under the section 113 A. While discussing the violence the term cruelty was defined and explained as per the law. Then we discussed about how the family courts were established and their purpose and the manner in which they deal with all the cases pertaining to family conflicts. These courts were also supposed to render speedy justice. Then we discussed about the Maintenance law in regard to women who divorce or separated etc. The Hindu Adoption and maintenance bill was also presented with all its provisions. This was followed by civil commitment especially where a person is mentally ill. The many rights of such patients committed were also put forward in detail. This was followed by the manner in which the commitment is carried out. The next section dealt with the assessment and evaluation in which we discussed how the physical sexual abuse are assessed, how domestic violence is evaluated, what kind of assessment is done in order to adopt a child and have the custody of the child in divorce proceedings. We then learnt about how to assess the risk of violence and the various issues related to the same were dealt with.

4.8 UNIT END QUESTIONS

- 1) Define and conceptualise civil proceedings and commitment.
- 2) Discuss in detail the establishment and purpose of family courts in India?
- 3) Critically examine the Maintenance Law in India?
- 4) What are the important contributions of the Hindu Adoption and Maintenance Act of 1956?
- 5) Discuss critically the civil commitment? What are the rights of the committed patient?
- 6) Discuss assessment and evaluation as important components of rendering justice to victims.
- 7) Discuss assessment and evaluation of the following:
 - Physical and sexual abuse
 - Domestic violence
 - Child custody in divorce proceedings
 - Risk assessment for violence
 - Anti social personality disorder and psychopathy
 - Potential for rehabilitation in juvenile court cases
 - Childhood development and trauma as mitigating
 - circumstances in death penalty cases

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UNIT 1 POLICE PSYCHOLOGY

Structure

- 1.0 Introduction
- 1.1 Objectives
- 1.2 Introduction to Police Psychology
 - 1.2.1 Duties of Police Psychologists
 - 1.2.2 Definition of Police
- 1.3 Police Structure and Organisation in India
 - 1.3.1 The Organisational Structure
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- 1.5 Becoming A Police Officer
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1.9.4 Programme for Young People

1.9.5 Assistance for the Homeless

1.10 Working with Crime Victims

1.11 Let Us Sum Up

1.12 Unit End Questions

1.13 Suggested Readings

1.0 INTRODUCTION

This unit will look at the role of the police in society, including the crime-fighting role, the order-maintenance role, the ambiguity of the police role, etc. It will discuss the goals and objectives of the police. It will explore the police role and its many interpretations. It will introduce the goals and objectives of policing. It will illustrate the meaning of police-community relations and their importance to the safety and quality of life in a community.

The unit will explore public attitudes regarding the police and efforts undertaken around the nation to improve public perceptions. It will describe various minority populations and some of their issues regarding police interactions. The unit will present the challenges faced by various populations, including the aging population, youth, the homeless, crime victims, and the physically challenged, etc. The unit will also put forth all the efforts that are being made to better serve these populations.

1.1 OBJECTIVES

After completing this unit, you will be able to police psychology:

- Define police psychology;
- Elucidate the duties of police psychologists;
- Define police and their organisational structure;
- Describe the duties of police officers;
- Explain the selection and recruitment process;
- Describe the characteristics of good police officers;
- Explain the training process;
- Analyse the causes of stress amongst the police personnel; and
- Describe the need for police and community relationships.

1.2 INTRODUCTION TO POLICE PSYCHOLOGY

Many law enforcement agencies are seeking the expertise of Forensic Psychologists, and some even hire in-house Police Psychologists for a variety of duties. The world of Psychology has a very diverse cluster of specialties.

Forensic Psychology, in particular, deals with law enforcement including court systems, child and family services, correctional facilities, and victimology. Police

Psychologists are subtype in the Forensic Psychology specialty. The term “police” can be a little misleading because Police Psychologists are involved in all aspects of law enforcement including local, state, and federal government agencies. They are not limited to just police departments.

1.2.1 Duties of Police Psychologists

In India, police and law enforcement agencies hire Psychologists as consultants, but a psychologist employed or hired on a fulltime basis may be called as “in-house” Police Psychologist. They do not necessarily have to become police officers, but it is vital that a clear understanding of the nature of police work is acquired.

Police Psychologists can play vital roles in the employment and maintenance of police forces, where they will assess and evaluate the potential, personality, intelligence, and overall fitness for the line of work.

In addition to pre-employment evaluations, Police Psychologists may assist with scheduling, educating officers to deal with stress and anger management and also assist police officers in dealings with mentally disabled persons. Police Psychologists also provide services with critical incidents, excessive force issues, shootings, police suicides and psychological issues, fitness-for-duty evaluations, and also with special unit evaluations.

Police Psychologists might also be called upon to provide counseling services for officers as well as their families, which can include family and marital issues, divorce, loss, injury, and stress.

1.2.2 Definition of Police

The law enforcement system, which concerns the order of the community; the internal regulation of a state.

The organised body of civil officers in a city, town, or district, whose particular duties are the preservation of good order, the prevention and detection of crime, and the enforcement of the laws are termed as the Police.

1.3 POLICE STRUCTURE AND ORGANISATION IN INDIA

1.3.1 The Organisational Structure

Each state and union territory of India has its own separate police force. Article 246 of the Constitution of India designates the police as a *state subject*, which means that the state governments frame the rules and regulations that govern each police force. These rules and regulations are contained in the police manuals of each state force.

The head of the police force in each state is the Director General of Police (DGP), who is responsible to the state government for the administration of the police force in each state, and for advising the government on police matters. The DGP represents the highest rung in the police hierarchy.

The hierarchical structure of the police in India follows a vertical alignment consisting of senior officers drawn, by and large, from The Indian Police Service (IPS) who do the supervisory work, the “upper subordinates” (inspectors, sub-inspectors, and asst. sub-inspectors) who work generally at the police station level, and the police constabulary who are delegated the patrolling, surveillance, guard duties, and law and order work. The constabulary accounts for almost 88% of total police strength.

1.3.2 Police Legislation in India

Various legislations govern the establishment and functioning of the police. Key amongst these is the Police Act (1861), the Indian Penal Code (IPC), the Code of Criminal Procedure (Cr.P.C) and the Indian Evidence Act, 1872. The 1861 Act was established directly after the Indian Mutiny of 1857 to impose a regime police force upon their subjects, which could be used solely to consolidate and perpetuate the British rule in the country.

The advent of Indian independence transformed the political system, but the police system retained its colonial underpinnings.

The years after independence witnessed the enactment of new legislation in several states of the country. The first to come into force was the Bombay Police Act (1951), followed by Kerala Police Act (1960), Karnataka Police Act (1963), and lastly the Delhi Police Act (1978).

1.4 ROLE OF POLICE

The Police Role and Police Discretion are presented in this section.

1.4.1 The Police Role

Two major views of the role of the police exist.

- The Police are crime fighters concerned with law enforcement (crime fighting).
- The police are order maintainers concerned with keeping the peace and providing social services to the community (order maintenance)

In regard to the crime fighting role, the police themselves also emphasise their role as crime fighters and play down their Job as peacekeepers and social service providers. The vast majority of crime fighting the police do is related to maintenance of law and order than serious crime.

In regard to the Order Maintenance Role, the police maintain order and provide services. People call the police to obtain services or to get help in maintaining order.

1.4.2 Goals and Objectives of Policing

The Primary Goals and Objectives of the police are given below. The police are expected to perform many civic duties that in earlier times were the responsibility of every citizen keeping the peace, performing emergency medical care, and dealing with civil emergencies. Today, we leave those tasks to the police.

While the primary goals are as given above, there are also many secondary goals which are given below. There are six secondary goals and objectives toward which police resources and activities are used to meet the primary two objectives.

- Preventing crime
- Arresting and prosecuting offenders
- Recovering stolen and missing property
- Assisting the sick and injured
- Enforcing non criminal regulations
- Delivering services not available elsewhere in the community.

The police attempt to prevent crime by trying to create a sense of omnipresence through routine patrol; responding to calls by citizens to deal with problems that may cause crime; and establishing and participating in police-citizen partnerships designed to prevent crime.

Due to their availability 7 days a week and 24 hours a day and because they are highly mobile, the police generally are the closest government agency to any problem.

So far we discussed the role of the police in India. It discussed two major ways of looking at the police role, viz., the crime-fighting role (law enforcement) and the ordermaintenance role (peacekeeping and providing social services).

Two primary goals and objectives of police departments are maintaining order and protecting life and property. Secondary goals may include preventing crime, arresting and prosecuting offenders, recovering stolen and missing property, assisting sick and injured people, enforcing non-criminal regulations, and delivering services not available.

Self Assessment Questions 1

1) Define police psychology.

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2) What are the duties of police psychologists?

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3) Describe the police structure and organisation in India.

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4) Explain the basic difference between the crime-fighting role and the order-maintenance role of the police.

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5) List the major goals and objectives of the police.

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6) What are the roles of the police in India?

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1.5 BECOMING A POLICE OFFICER

The Recruitment Process

To attract more qualified candidates, particularly among minority group, the Commission on Accreditation for Law Enforcement Agencies has recommended a number of standards that department should adhere to regarding recruiting candidates for selection as police officers. Among these standards are.

- These regulation should ensure that race, gender, ethnicity and religion will not affect a persons' chances of being hired or promoted.
- The law enforcement agency should seek recruitment assistance.

- The agency should have an equal employment opportunity plan.
- The agency's recruitment literature, if any, should depict women and minorities in law enforcement roles.

1.5.1 The Selection Process

The police selection process is lengthy, difficult and competitive. The police selection process is a series of examinations, interviews and investigative steps designed to select the best candidate to appoint to a police department from the many who apply.

Police agencies utilise procedures like Written aptitude testing, Personal Interview, Physical agility, Polygraph exam, Voice stress analyser, Psychological evaluation, Drug testing, Medical Exam, Background Investigation, etc.

After the successful completion of the written test, an internal review panel determines which applicants proceed further in the process. These candidates continue on to the physical agility exam, and the internal panel then reconvenes and determines which applicants proceed to the oral interview in front of a panel.

The remaining steps include a thorough background investigation, an interview with the Chief of Police, ride along with a Field Training Officer, personality assessment, and other interviews with departmental personnel. Eventually a conditional Job offer will be made to the selected candidates, which will be followed by a thorough medical exam conducted at states' expense.

1.5.2 Characteristics of Good Police Officers

There have been a number of efforts to determine the specific criteria that predict future police performance. Performance on written civil service entrance tests was the best predictor of subsequent police performance. This Police performance as arrest activity, investigative skills, evidence gathering, and crime scene management, performance on written civil service exams, associated with future supervisory ratings and career advancement. Factors, such as oral interviews, prior work experience, numerical ability, intelligence quotient (IQ), age, and education, also predict performance of an individual as a police officer.

1.5.3 Written Entrance Examination

A police department's written entrance examination is usually a pen-and-pencil test administered in schools or police facilities near prospective candidates' homes. Some departments test at regular intervals, such as once a year or once every four years; other departments test continually as candidates' appear.

Most written police tests used to screen large numbers of entry-level candidates are incapable of bringing in the right types of applicants and culling from the field those who are ill-suited to perform the duties of today's police officer, because these exams primarily test for cognitive abilities, rather than common sense. Testing for common sense and public service orientation will go a long way toward identifying candidates who can cope with the demands placed on those ultimately selected to serve and protect.

Some measure candidates' ability to take quick and reasonable action in stressful situations, with correct answers determined by analysing responses given by

experienced, qualified police officers. Other tests provide candidates with Job-related materials-memos, reports, and procedural guides – and ask them to make decisions on the basis of these materials.

1.5.4 Oral Interview

A board of ranking officers, a psychologist, the police chief, or an investigator can conduct the oral interview in the police selection process. There often are multiple oral boards or interviews conducted by numerous representatives of the department. The goal is to solicit input from many stakeholders in the organisation and to minimise the chance of a personality conflict that might result in an applicant being kept out of the selection pool. The oral interview may merely discuss the candidate's application and background or may be used to test the candidate's ability to deal with stressful situations.

1.5.5 Psychological Appraisal

Psychological testing has become very important in the police selection process. Job-related stress is a major health problem, especially in law enforcement. There is a need for a thorough background investigation, along with a comprehensive psychological-psychiatric evaluation, in order to eliminate candidates with psychiatric problems, personality disorders, problems with impulse control, substance abuse, etc. Police departments often use sophisticated screening devices, such as the Wechsler Adult Intelligence Scale-Revised (WISC-R), to measure intelligence or MMPI to evaluate personality structure and determine whether recruits have any disorders that would adversely affect their functioning.

1.5.6 Medical Examination

Police department generally want candidates who are in excellent health, without medical problems that could affect their ability to perform the police job. There are long range and short-range reasons for using medical examinations in the police selection process. The short – range purpose is to ensure that candidates can do the police job. The long-range purpose is to ensure that candidates are not prone to injuries that may lead to early retirement and an economic loss to the department. Every applicant should be given a complete and thorough medical examination to detect any disqualifying diseases (such as diabetes, epilepsy, or heart disease) or any physical abnormalities or medical conditions (such as back problems or high blood pressure).

1.5.7 Physical Agility Test

It is common knowledge that police departments are interested in police candidates who are physically fit.

1.5.8 Background Investigation

In an effective background investigation, a candidate's past life, past employment, school records, medical records, relationships with neighbours and others, and military record are placed under a microscope.

1.5.9 Standards in Police Selection

Each police department sets standards, or necessary qualifications, that it requires in selecting its prospective police officers. The police standards cover physical,

age, and education requirements, criminal record restrictions, and residency requirements.

1.5.10 Age Requirements

Until recently most police department required that an officer be between the ages of 21 and 29 at the time of appointment. Anyone over the age of 29 was considered too old for employment. Sometimes, exceptions were made for those with previous military or police experience.

1.5.11 Educational Requirements

Police Department required a high school diploma; some type of college requirement and some may required a college degree. It should be noted that the minimum high school diploma requirement may not necessarily reflect actual selection practices.

Higher levels of education have also been associated with fewer on-the-job injuries, fewer injures by assault, fewer disciplinary actions from accidents, fewer sick days per year, and fewer physical force allegations. Other research has shown that higher education results in higher aspirations decreased dogmatism, authoritarianism, rigidity, and conservatism; fewer disciplinary problems; fewer citizen complaints; increased promotions; greater acceptance of minorities: decreased use of discretionary arrests; increased perception of danger; and a better ability to tolerate job-related excitement.

1.5.12 Criminal Record Restrictions

Obviously, people wishing to become police officers must respect the rules of our society and must adhere to these rules. The lack of a significant criminal record is a requirement to become a police officer. However, police departments distinguish between arrests and conviction. Along with the issue of criminal records is undetected criminal activity. This is explored during the background investigation, polygraph exams, and interviews.

<p>Self Assessment Questions 2</p> <p>1) What are the important requirements for becoming a police officer?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>2) Describe the characteristics of a good police officer.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

3) Describe the oral interview and the psychological appraisal in the selection process of the police officer.

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4) What are the standards involved in police selection?

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5) What is meant by Criminal record restrictions?

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1.6 THE POLICE TRAINING PROCESS

Once an individual has been chosen to be a member of a police department, he or she begins months of intensive training. Recruit training and in-service training programs vary from department to department, and, in reality, police training never ends.

1.6.1 Recruit Training

Recruit training is the initial training a police officer receives. It teaches officers the state laws and state procedures and educates them in the goals, objectives, and procedures of the department. It provides them with the knowledge skills, and abilities to do the job. New officers must attend a formal training course at an academy operated by, or associated with the department. Field training is on-the-job training of recently graduated recruits from the police academy. The training is provided by specially selected patrol officers and is designed to supplement the theory taught at the police academy with the reality of the street. They are also provided firearms training.

1.6.2 Probationary Period

A probationary period is the period of time that a department has to evaluate a new officer's ability to perform his or her job effectively. Generally, a probationary

officer can be dismissed at will without proof of specific violation of law or department regulations. Once officers are off probation, civil service rules often make it very difficult to dismiss them. Probationary periods can last anywhere from six months to three year.

Thus numerous jobs are available in policing on the federal, state, local, and private levels. The police selection process can be complicated and time consuming. Before selection actually begins, a department must conduct a job analysis to determine the type of candidate the department wants to hire. Next comes the actual selection process. This process can include a written entrance examination, an oral review, a psychological appraisal, a polygraph examination, a medical examination, a physical agility test, and a background investigation.

The standards required to become a police officer have changed significantly in recent years to allow more females and minorities entry into policing. The current standards to be a police officer are high and rigorous in most agencies. Newly hired police officers generally receive academy training and field training. A probationary period must then be served. In addition, officers continue their education throughout their careers through in-service, management; and specialised training programs.

Self Assessment Questions 3

1) What is the training process involved in training police recruits?

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2) Why is field training programme important for police officers?

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3) What is probationary period and why is vital for police training?

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1.7 THE POLICE CULTURE AND POLICE PERSONALITY

This section will discuss such concepts as the police culture or subculture, the police personality, police cynicism, the Dirty Harry problem, police stress, police suicide, and “suicide by cop.” Police stress is a serious issue facing the police. Therefore, this chapter will attempt to define it and to show why it occurs, how it exhibits itself, and how police agencies can deal with it.

This chapter will also discuss police suicide and “suicide by cop” and how these problems can be dealt with.

1.7.1 The Police Culture or Subculture

Numerous academic studies have indicated that the nature of policing and the experiences officers go through on the job cause them to band together into their own subculture, which many researchers call the police culture or police subculture.

The police culture or police subculture, then, is a combination of shared norms, values, goals, career patterns, lifestyles, and occupational structures that is substantially different from the combination held by the rest of society.

Due to challenging work schedules, police officers often socialise more frequently with other officers than with the average citizen. Though this might increase isolation, in some cases it can be beneficial for stress reduction by providing a healthy opportunity to ventilate and exercise.

Loyalty is a major part of the police subculture, and police loyalty is extremely intense. The word *backup* occurs often in police officer conversations. Backup involves not only assisting other officers in emergency situations but also coming to their aid when they are challenged.

The ideal officer, then, according to the police subculture, takes risks (honor), is first on the scene to aid a fellow police officer (loyalty), and is able to handle any situation by doing it her or his own way (individuality). The idea of danger permeates the police subculture.

1.7.2 The Police Personality

The police subculture leads to what scholars call the police personality, or traits common to most police officers.

Scholars have reported that this personality is thought to include such traits as authoritarianism, suspicion, hostility, insecurity, conservatism, and cynicism.

This section will attempt to describe the characteristics of the police personality, what shapes the police personality and the causes and effects of police cynicism.

1.7.3 Definition of Police Personality

There are three important features of an officer’s working personality: danger, authority, and isolation from the public.

Some researches have found that police officers are actually psychologically healthier, less depressed and anxious, and more social and assertive than the general population.

Two opposing viewpoints on the development of the police personality exist. One says that police departments recruit people who by nature possess those traits that we see in the police personality. The second point of view holds that officers develop those traits through their socialisation and experiences in the police department.

1.7.4 Police Cynicism

Police cynicism is an attitude that there is no hope for the world and a view of humanity at its worst. This is produced by the police officer's constant contact with offenders and what he or she perceives as miscarriages of justice, such as lenient court decisions and plea-bargaining.

Cynicism is an emotional plank deeply entrenched in the ethos of the police world and it serves equally well for attack or defense. For many reasons police are particularly vulnerable to cynicism. When they succumb, they lose faith in people, society, and eventually in themselves.

Self Assessment Questions 4

1) Define police culture.
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2) What are the important characteristics of police culture and subculture?
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3) Is there something called as police personality? Describe and explain.
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4) What kind of cynicism is there in the police? How is to be handled?
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1.8 POLICE STRESS

1.8.1 Definition of Stress

Stress is the body's reaction to internal or external stimuli that upset the body's normal state. A stimulus that causes stress (stressor) can be physical, mental, or emotional. The term *stress* is used to refer to both the body's reaction and the stimuli that caused it. The body's reaction to highly stressful situations is known as the flight-or-flight response.

Some experts say that stress alone probably does not cause illness, but it contributes to circumstances in which diseases may take hold and flourish. Stress weakens and disturbs the body's defense mechanisms and may play a role in the development of hypertension, ulcers, cardiovascular disease, and as research indicates, probably cancer.

1.8.2 The Nature of Stress in Policing

Although most people have stress in their careers or lives, studies have found evidence of particularly high rates of stress in certain professions. Some have called policing the most stressful of all professions.

1.8.3 Mental and Physical Problems Associated with Stress

Psychiatric problems

- Posttraumatic stress syndrome
- Neuroses
- Transient situational disturbances

Immunology problems

- Reduced resistance to infection
- Tumors

Cardiovascular problems

- Heart attacks
- Coronary artery disease
- Hypertension
- Stroke

Genitourinary problems

- Failure to menstruate
- Impotence
- Incontinence

Gastrointestinal problems

- Ulcers

Researchers have identified four general categories of stress with which police officers are confronted:

- 1) *External stress*. Stress produced by real threats and dangers, such as responding to gun runs and other dangerous assignments and taking part in auto pursuits.

- 2) *Organisational stress*. Stress produced by elements inherent in the quasi-military character of the police service, such as constant adjustment to changing tours of duty, odd working hours, working holidays, and the strict discipline imposed on officers.
- 3) *Personal stress*. Stress produced by the interpersonal characteristics of belonging to the police organisation, such as difficulties in getting along with other officers.
- 4) *Operational stress*. Stress produced by the daily need to confront the tragedies of urban life: the need to deal with derelicts, criminals, the mentally disturbed, and the drug addicted; the need to engage in dangerous activity to protect a public that appears to be unappreciative of the police; and the constant awareness of the possibility of being legally liable for actions performed while on duty.

A recent study of police stress found significant levels of physical stress among police officers. Using heart rate, coupled with observed physical-activity data, researchers found the highest physical stress to occur during officers' physical enforcement activities; marked psychosocial stress when responding to critical incidents, particularly during the interaction with a suspect both during the critical incident and then during each subsequent interaction with suspects for the remainder of the shift. The evidence also suggests that officers anticipate stress as they conduct their work, experiencing anticipatory stress at the start of each shift.

1.8.4 Factors Causing Stress in Policing

According to researchers, factors leading to stress in police work include poor training, substandard equipment, poor pay, lack of opportunity, role conflict, exposure to brutality, fears about job competence and safety, and lack of job satisfaction. Researchers also say that the pressure of being on duty 24 hours a day leads to stress and that the police learn to cope with that stress by becoming emotionally detached from their work and the people they are paid to serve. Fatigue can also affect officers' stress. Working long hours and overtime produces fatigue and consequently stress in officers.

1.8.5 Sources of Law Enforcement Stress

External stressors

- Lack of consideration by courts in scheduling officers for court appearances
- Public's lack of support
- Negative or distorted media coverage

Internal stressors

- Policies and procedures that are offensive
- Poor or inadequate training and
- Inadequate career development opportunities
- Lack of identity and recognition
- Poor economic benefits and working conditions
- Excessive paperwork
- Inconsistent discipline
- Perceived favouritism

Stressors in law enforcement work itself

- Rigors of shift work
- Role conflict
- Frequent exposures to life's miseries
- Boredom
- Fear
- Responsibility for protecting other people
- Fragmented nature of the job
- Work overload

Stressors confronting the individual officer

- Necessity to conform
- Necessity to take a second job
- Altered social status in the community

1.8.6 Effects of Stress on Police Officers

Police officers face the stress created by always being ready for danger day in and day out. In addition, the working hours of police officers and the resultant living conditions have a further negative effect on their health.

Effects:

- Emotional detachment From various aspects of daily life
- Reduced efficiency
- Absenteeism and early retirement
- Excessive aggressiveness (which may trigger an increase in citizen complaints)
- Alcoholism and other substance abuse problems
- Marital or other family problems (for example, extramarital affairs, divorce, or domestic violence)
- Posttraumatic stress disorder.
- Heart attacks, ulcers, weight gain, and other health problems
- Suicide

1.8.7 Stress and Police Families

Police work not only affects officers; it also affects their families, loved ones, and friends.

- 1) *Family disruption due to rotating shifts:* Problems caused by rotating shifts include providing childcare, unavailability on holidays and at other family events, and physical problems caused by overtime and shift work, which cause irritability and increased tension.
- 2) *Unpredictable work environment:* The constantly changing work setting of the police officer leads to crisis and emergency responses, as well as fear of death or injury and of being the target of internal investigations.
- 3) *Job related personal change and family relationships:* An officer' is forced to see much human tragedy and is always personally affected. Changes in the officers personality and attitudes, in turn, affect the family.

- 4) *Community expectations and demands:* The public seems to hold police officers to a higher standard of behaviour in comparison with other workers. Neighbours often expect their police officer neighbours to take care of neighbourhood problems and be available for emergencies.

Intrusion into family life. The police officer may have to carry parts of his or her job home. For example, police officers generally carry weapons, which they must secure in a safe place at home. Officers also must be available 24 hours a day.

1.8.8 Police Suicide

Closely associated with the problem of stress in policing is the problem of police suicide, which seems to worsen over the years. Despite all the programs existing to deal with officer problems that may cause suicide, the toll continues to mount. Studies indicate that the suicide rate among police officers is anywhere from two to three times higher than that of the general population/and the rate of police suicides doubled in the 1990s.

The police culture and the reluctance of police officers to ask for help complicate the problem of police suicide. His study revealed that police are at higher risk for committing suicide for a variety of reasons, including access to firearms, continuous exposure to human misery, shift work, social strain and marital difficulties, drinking problems, physical illness, impending retirement, and lack of control over their jobs and personal lives.

- Police work is a male-dominated profession, and men have higher suicide rates than women.
- The use, availability, and familiarity with firearms by police in their work make it fairly certain that suicide attempts will be successful.
- There are psychological repercussions to being exposed to potential death on a constant basis.
- Long and irregular working hours do not promote strong friendships and strain family ties.
- There is constant exposure to public criticism and dislike toward the police.

Compounding the stress problems of police officers is the phenomenon known as suicide by cop, in which a person wishing to die deliberately places an officer in a life-threatening situation, causing the officer to use deadly force against that person.

The Dirty Harry Problem is the conflict over whether to use illegal means to accomplish good ends. It is a problem that seems to permeate many aspects of policing.

Self Assessment Questions 5

1) Explain what the police subculture is and how it expresses itself.

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2) Define the police personality and discuss how it expresses itself.

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3) List some reasons for the existence of a police subculture and a police personality.

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4) Give some reasons why police officers experience high levels of stress.

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5) Discuss what police departments can do to deal with the high levels of stress present in their officers.

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1.9 POLICE AND THE COMMUNITY

1.9.1 The Need for Proper Police-community Relationships

The police are needed to handle emergencies, maintain order, regulate traffic, and promote a sense of security within the community. To accomplish this, the police must be part of the community. They cannot be viewed as mercenaries or as an army of occupation. When the police see themselves as an occupying army or are seen as one by the community, urban unrest results. The police can best serve the community when they are regarded as part of the community both by the residents and themselves.

The police and community need each other to help communities to be as vibrant and safe as possible. Police-community relationships must be two-way partnerships. Additionally, in a democratic society, the legitimacy of the police depends on broad and active public acceptance and support. Police chiefs or police commissioners have the responsibility and obligation to educate the public about the many causes of crime and the inability of the police, acting alone and on their own, to control crime.

1.9.2 Human Relations, Public Relations and Community Relations

Human relations thus connotes treating others with respect and dignity and following the Golden Rule – acting toward others as you would want others to act toward you.

While its well known the police have a difficult job, the role of the. Police has always been somewhat ambiguous; the perception of the police mission by police leaders as well as the community leaders has varied over the last few decades. With the adoption of the community policing philosophy, many law enforcement agencies have seen their roles expand to include activities that previously were not viewed as police functions.

The police role continues to be viewed in two primary areas— crime fighters and order maintainers as well as service providers.

Further confusing perceptions, any conflicts or negative issues that arise are played out repeatedly in the media and the community.

1.9.3 Police and Special Populations

As we have seen, the community the police serve is extremely divers. Special populations offer unique challenges for police departments. Some of the groups with special needs are senior citizens, young people, the homeless, crime victims and the disabled.

Senior citizens experience particular problems that necessitate special attention from the police. Although seniors have the lowest criminal victimisation rates of all age groups, they experience a tremendous fear of crime, often refusing to leave their homes because of the fear of being a victim. Additionally, many senior citizens are infirm and require emergency services. Often police provide special programs and services for senior citizens. The increasing number of older persons, coupled with their fear of victimisation, yields new problems for law enforcement. Fear of victimisation and perceptions of rising crime rates rank high among the concerns of the elderly.

It is important for officers to understand the physical, emotional, and social, challenges that people face as they age. They can then adapt some of their procedures to minimise the affect of some of the physical, challenges (changes in vision, hearing, and mobility) on their interactions with older people. An officer who understands the psychological and social issues will be able to understand an unexpectedly emotional reaction to what he or she perceives as a routine event.

1.9.4 Programs for Young People

It is believed that if children learn something early enough in life, it will stay with them forever, thus reaching out to them earlier is important. Young children are special targets of police community relations programs because of their impressionable age. The problem of crime and young people is very serious.

There are numerous special police programs for young people. The most important, perhaps, are antidrug programs

1.9.5 Assistance for the Homeless

Police departments are generally the only agency available 24 hours a day, 7 days a week. Therefore, the police are frequently called to deal with alcoholics, the mentally ill, and the homeless (street people). Tremendous numbers of people live on the streets today. Many of these people are often in drug or alcoholic stupors or frenzies, or they exhibit wild and chaotic behaviour.

Handling the mentally ill is, perhaps, the single most difficult type of call for law enforcement officers. Police officers usually found themselves saddled with sole responsibility for suspected mentally ill persons whose public behaviour warranted some form of social intervention.

Many of the homeless who come to the attention of the police do so as a result of committing a crime or being the victim of a crime. Typically these incidents include drinking in public, disturbing the peace, fighting, and more serious offenses including sex crimes, robberies, and murders.

The homeless issue today is a multifaceted one and requires many organisations working together to attempt to solve the underlying problems. Many police departments have realised this and have taken a proactive approach.

1.10 WORKING WITH CRIME VICTIMS

Many efforts have been undertaken to assist victims of crime, including victims' rights laws, victim assistance programs and crime compensation funds. Recently, law enforcement has realised that by working more closely with these victims, not only can they better serve the victims and enhance community support, but they can also help to advance the law enforcement mission and goal of reducing and solving crime and reducing fear of crime.

Victims have traditionally been considered law enforcement clients, as they receive law enforcement services. Police also have instituted special investigative units over the past decades and use special tools to make the investigative process less threatening to victims of crime.

New procedures, training, or counseling can be employed to make changes. Some departments are reassured when they find out there is not a bias-based policing problem and in fact the data can help them counter allegations of unfair treatment. Having the data available is a starting point toward improvement, if there is a need for it, and documentation to defend the department's practices, if no problems is detected. Community support and relationships can be enhanced when the community has faith in the unbiased behaviour of their police officers.

1.11 LET US SUM UP

In this unit we started with the definition of police psychology and followed it up by defining police. We learnt about the structure of the police organisation and the role of police in the society. We also learnt about the goals and objectives of police in India. Then we looked into the aspects of what all is required to become a effective and good police officer. We learnt that for this the police undergoes considerable training. Initially they all go through a selection process, written entrance examination, face an oral interview, and they all are asked to undergo a medical examination and agility tests etc. They are also given a psychological appraisal and their background is checked for criminality and related issues. Age and educational levels are also checked and every effort is made to find out if the person has had any criminal record . We also learnt about the two types of training, viz., recruitment training and probationary period after the individual has been placed. We then discussed about the typical police culture and related issues and we brought out the typical personality of a police personnel as a result of the culture in which the individual is brought up and made to interact with. Following this, we discussed stress in the police force and in the police officers and in the police organisations. We discussed the various mental and physical health problems that arise as a result of stress. The issue was also discussed in terms of the police families. Finally we discussed the relationship between the police and the community and stressed upon the need to have a congenial relationship between the police and the community.

1.12 UNIT END QUESTIONS

- 1) Define and describe police psychology and bring out the characteristic features of the same.
- 2) What are the important features of the structure and organisation of police in India?
- 3) Describe the entire processes involved in becoming a police officer. Discuss the goals, objective and role of police in the society.
- 4) What is meant by police culture and subculture. Elucidate.
- 5) What kind of stresses the police faces? Describe in detail
- 6) What are the various problems related to police stress?
- 7) How are the police families affected by police stress?
- 8) Explain the need for proper police and community relationships.
- 9) What roles police play in regard to the special populations and their needs.?

1.13 SUGGESTED READINGS

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UNIT 2 ASSESSMENT OF EYEWITNESS AND THEIR STATEMENTS

Structure

- 2.0 Introduction
- 2.1 Objectives
- 2.2 Eyewitness Assessment
 - 2.2.1 Definition of Eyewitness
 - 2.2.2 Role of an Eyewitness
 - 2.2.3 Assessment of Eyewitness
 - 2.2.4 Forensic Psychology and Eyewitness Assessment of Eyewitness and their Statement
- 2.3 Approaches to the Study of Eyewitness Assessment
- 2.4 Methodological Limitations
- 2.5 Nature of Eyewitness Testing
 - 2.5.1 Recall of Details and Perpetrator Identification
 - 2.5.2 Procedures to Assess Eyewitness
 - 2.5.3 Types of Variables Studied
- 2.6 Tools and Methods Used by Forensic Psychologists in India
 - 2.6.1 Polygraph Test
 - 2.6.2 Brain Electrical Oscillation Signature Profiling (BEOSP)
 - 2.6.3 Narcoanalysis
- 2.7 Post Event Information
- 2.8 Relation Between Accuracy and Confidence
 - 2.8.1 Improvement of the Reliability and Accuracy of Witness Statement
 - 2.8.2 Cognitive Interview
- 2.9 Let Us Sum Up
- 2.10 Unit End Questions
- 2.11 Suggested Readings and References

2.0 INTRODUCTION

In this unit we will be dealing with the definition of eyewitness and the role of eyewitness in a crime. We will be dealing with also role of eyewitness assessment in a court of law. The relationship between forensic psychology and eyewitness assessment will be then discussed. This unit will then cover the various approaches to the study of eyewitness assessment and indicate the many methodological limitations. The nature of eyewitness testing will then be taken up with recall details and perpetrator identification. The many procedures to assess eyewitness will then be put forward. The number of variables studied in this regard will be listed out and explained. This unit will then take up some of the tools and methods used by forensic psychologists in India which includes the polygraph test, narcoanalysis and BEOSP. There will then be a discussion on post event information and how far there is a relationship between eyewitness accuracy and confidence. Then the many methods for improving the reliability and accuracy

will be put forward. Finally there will be a discussion about the cognitive interview.

2.1 OBJECTIVES

After completing this unit, you will be able to:

- Define eyewitness;
- Describe Eyewitness testimony;
- Explain the methods of assessment of eyewitness testimony;
- List out the methodological limitations;
- Describe the various tools and methods used by forensic psychologists in India;
- Define Post event information; and
- Analyse the methods by which reliability and confidence on the tools could be improved.

2.2 EYEWITNESS ASSESSMENT

2.2.1 Definition of Eyewitness

Simply put an eyewitness is someone who has been a spectator of a dramatic event or a crime scene first hand, the one who can give an account of the event. For example if I am walking down the street and I notice a brawl happening between two individuals. There is crowd gathered and I join the crowd. Suddenly it gets ugly and police has to be called. Now even though I may not know any of these individuals but I am an eyewitness to the event along with others gathered around.

2.2.2 Role of an Eyewitness

In a Democracy like India the role of the judiciary is significant. Judiciary administers justice according to law. Thus when a crime takes place justice is sought by examining the truth regarding the crime and handing penalty accordingly. Eyewitness account or testimony has a strong impact on criminal investigations and courtroom verdicts.. Although sorting out credibility and making judgments about the truth of witness statements by the opposing counsel follows.

2.2.3 Assessment of Eyewitness

By now we know how crucial eyewitness account is during a case trial. But what about the fact that an eyewitness is a human and thus is subject to all sorts of human errors? Or what if the eyewitness deliberately tries to mislead the case? So to minimise or control these loopholes experts in memory, forensic psychology, neuroscience and the law aim to come up with a versatile toolkit that will help police officers and judges evaluate the likely reliability of individual witnesses. Thus assessment of eyewitness and their statements has become an entire body of research.

2.2.4 Forensic Psychology and Assessment of Eyewitness and their Statement

Forensic psychology is the intersection between psychology and the criminal justice system. An important aspect of forensic psychology is the ability to testify in court, reformulating psychological findings into the legal language of the courtroom, providing information to legal personnel in a way that can be understood and evaluation of witness credibility. So assessment of eyewitness and their statement becomes an important task for a forensic psychologist.

2.3 APPROACHES TO THE STUDY OF EYEWITNESS ASSESSMENT

In order to test and maintain the credibility of eyewitness, it is important to assess the statements and information scientifically. Two very important premises that a scientific approach aims to assess is reliability and accuracy i.e. How reliable and accurate are the eyewitness statements?

Reliability and accuracy

Investigators focus on information related to the actions, words, and characteristics of the perpetrator as well as to the details of the context and the roles played by other people. Eyewitness account facilitates the investigator in unwinding the truth. Thus to gain maximum from an eyewitness account the investigator has to keep questioning the reliability and accuracy of the same.

Victim as witness

In a lot of cases the witnesses may also be victims. In such cases the investigators have to be appropriately inclined to investigate. Although assuming bystander to a crime scene as an unaffected witness could be questioned, but when the victim gets into the role of an eyewitness it becomes more complex. As a victim the demands of the perpetrator and the degree of threat leveled at them increases. As a result, one focus of their research has been the level of arousal and stress experienced by witnesses to and victims of crime.

Children as witness

The use of children as eyewitness in criminal and civil legal proceedings has long been a controversial issue. Children are generally assumed to be less accurate and more suggestible than adults in recalling memories. From laboratory studies it seems reasonable to conclude that the problem with young witnesses is not their ability to accurately perceive but rather in their ability to accurately and meaningfully report their recollection of these events. The younger witness can have difficulty in reporting the event unless he/she receives some external prompts or cues. Thus many questions related to issues like the age limit of witness, kind of questions to be asked to child witness, reliability of child's account as compared to an adult, etc. are crucial to investigators.

2.4 METHODOLOGICAL LIMITATIONS

There is an abundance of studies on eyewitness assessment. These studies are based on two sources: real-world observations of witnesses/victims and research

simulations of criminal acts. Both these sources have their pros and cons as explained below:

Real world observations

Recollections of real victims and witnesses are an important piece of literature to study eyewitness testimony. But in order to assess the accuracy of eyewitness testimony it is necessary to have independent knowledge of the events as they occurred. Unfortunately, in most real-world events this ground truth can never be known because independent records of events in natural contexts are rarely made. The investigators cannot know the exact truth related to the crime, they only have an approximate image of it.

Although real world observations are crucial to research but they have their own set of limitations. Such as the independent knowledge of events to compare witness recall of it is absent or limited. Also there is presence of numerous extraneous variables that make it difficult for the investigators.

Research simulations of criminal acts

To circumvent this problem and to be assured of access to the ground truth, eyewitness researchers often present simulated events to witnesses (staged or on videotape) that can be later recalled. When scientists control the events to be experienced by witnesses, they also have invaluable control over most other variables relevant to the scenario. For example, researchers can manipulate the type and duration of the event, the specific features of the perpetrator(s), the age, gender, and race of the witnesses, the presence of weapons or threat, and the types of recall and identification tests. In real crimes of course, all of these are outside the control of the researcher and assessment of the credibility of a witness's allegation or a defendant's statement about an event falls to triers-of-fact (judges and jurors) in the courtroom. Depending upon the researcher's creativity, a crime simulation may be very realistic.

However, the very features that distinguish eyewitness events from mundane real world events are, for the most part, missing in the laboratory simulations; specifically, surprise, threat, and high emotional involvement. Research participants must give their informed consent before taking part in scientific experiments and ethical considerations preclude the possibility of their being exposed to highly emotional, disturbing, or life-threatening events. For these reasons, virtually all of the simulation work on eyewitness testimony is open to the criticism that it incorporates, to a greater or lesser degree, insufficient ecological validity; that is, the results may not necessarily be generalisable to eyewitness events in the real world.

2.5 NATURE OF EYEWITNESS TESTING

The unpredictable nature of human perception, memory, and decision-making were well known to philosophers, scientists, police, and judges. However, psychologists did make a unique contribution to this knowledge base: systematic data collection that allowed measurement of the magnitude and frequency of human errors in the recollections of brief events.

2.5.1 Recall of Details and Perpetrator Identification

Two categories of eyewitness information of special interest to researchers are the details of the crime and of the perpetrator. It is recognised that the measurement of accuracy of recalled details is highly dependent upon the types of questions used to elicit responses. For example, police investigators regularly interviewed witnesses and victims, yet their interviews were usually not based upon techniques known to enhance recall in cognitive and social psychology. As of 1983 this situation began to change as researchers applied cognitive principles to police interviewing. One result was a specific interview protocol known as the cognitive interview (Fisher and Geiselman 1992) that has well demonstrated its superiority in gathering more correct information from both adults and children without increasing the numbers of errors.

The misidentification of an innocent person is a particularly dramatic kind of eyewitness error because of its serious consequences for a person's freedom. Indeed, legal opinion in most countries has emphasised the dangers of convictions based upon eyewitness testimony evidence alone (Cutler and Penrod 1995). As increasing numbers of demonstrably faulty convictions were studied, it became readily apparent that simple manipulations of photos and test instructions could have large effects upon the identification decisions of eyewitnesses. For example, Loftus (1979) showed that presenting a photo with a unique quality or different alignment in a photospread significantly raised the number of misidentifications of the person depicted in the photo. Analyses of both live and photo lineups in real cases have shown many to be poorly constructed and when so constructed, heavily biased against the police suspect (Wells and Bradfield 1998). Further, minor wording changes in the instructions given witnesses before they view a lineup dramatically raise the rate of false positive errors or selections of an innocent person. Indeed, false positive rates of 50 percent or more are not uncommon and Wells and Bradfield (1998) recently reported that when instructions encouraged witnesses to believe falsely that the perpetrator was in the photospread, all witnesses selected someone.

Similarly, social pressure from an authority figure or from other witnesses can influence lineup decisions. In particular, information may be subtly conveyed from investigators to witnesses by the kinds of questions asked of the witnesses and the investigator's responses to answers given. Wells and Bradfield (1998) have shown that when research participants were informed falsely that their identification choices had been correct, their descriptions of the perceptual qualities of the event itself were dramatically altered, for example, how much time and attention they had directed to the perpetrator, the ease and confidence of their identification, and their willingness to testify in court.

2.5.2 Procedures to Assess Eyewitness

There are a variety of procedures that researchers adopt to assess witness. Some of them are:

Real life cases

Some researchers take up real life cases to study eye witness assessment. It helps the researcher study some important aspects like personal threat, stress, emotional arousal etc. which are not feasible in laboratory studies.

As real life cases can also have their disadvantage as lack of control of extraneous variables a lot of researchers assess eyewitness by simulated studies in laboratory.

Videotape clip

The instructor can make a video clip of a staged crime or can show video clip of a crime from some movie or so.

Staged live demonstration

Instructor can create a staged live demonstration in which an actor or a group of actors interrupt a class and perform an act.

As the eyewitness witnesses the crime or event either in real life or laboratory setting it is then decided how to assess the witness. Some of the procedures to assess certain variables of eyewitness like memory the researcher adopts a method like:

Live lineup

A live lineup or identity parade is a process by which a crime victim or witness identifies the perpetrator. The perpetrator might or might not be present in the lineup.

Photo Spread method

It is simultaneous presentation of photographs out of which perpetrator has to be identified by the witness.

Sequential Photo Presentation

It involves showing a witness a single photograph or a single suspect at a time rather than a traditional simultaneous presentation

2.5.3 Types of Variables Studied

Factors of interest to researchers may be classified as either estimator or system variables (Wells 1993)

i) *Estimator Variables*

In real world these variables are not under the control of either the criminal investigator or the criminal justice system and their effects upon eyewitness identification accuracy may only be estimated, for example, the age, sex, and race of the witnesses and the lighting conditions at the scene of the crime may be related to reliability of eyewitness testimony but they are inherent to the crime itself. Knowledge of the effects of these variables may assist us to better characterize the average performance levels that are obtained by specific types of people in particular environmental and viewing conditions.

ii) *System Variables*

On the other hand these variables are under the control of the criminal justice system, for example, the size, type, and quality of the lineup or photospread, the instructions given the witnesses, and the temporal interval between the crime and the identification task.

Wells (1993) has argued vigorously that researchers should dedicate more effort understanding system variables because the accuracy and reliability of eyewitness testimony can be improved by manipulating features of the system itself.

A striking example of this kind of improvement may be seen in the recommendation (Lindsay and Wells 1985, Wells 1993) that lineup or photospread members be presented one at a time to an eyewitness rather than together. Although simultaneous presentation of lineup and photospread members has been normative in North America and the UK for many years, doing so is well known to encourage the use of a relative judgment strategy by which witnesses attempt to choose the person who best fits their memory of the perpetrator. The difficulty with relative judgments is that every lineup or photospread necessarily includes someone who looks most like the perpetrator and, therefore, someone will virtually always be chosen. Mistaken identifications will necessarily comprise a subset of these choices. Indeed, the high levels of false positives reported for identification tests are a likely consequence of just such a strategy.

In contrast, a sequential lineup presents each member one at a time and the goal is to force witnesses to rely upon an absolute judgment strategy. For each lineup member shown, the witness must indicate whether this person matches the representation of the perpetrator in memory. Once a person or photo has been presented, it may not be viewed again. To further reduce the opportunity to make relative judgments, witnesses are not informed of the number of people in the lineup. Thus, for the witness who attempts to use a relative judgment strategy, there remains the possibility that there may yet be someone who is even more like the perpetrator among the as yet unseen lineup members.

In research comparing sequential to simultaneous lineup performance the two presentation procedures yield identical hit rates (correct identifications of the target) for target-present lineups (when the guilty person is included). However, in target-absent lineups (in which the perpetrator is not present), significantly fewer false positives are made with the sequential than the simultaneous lineup. Thus, when police investigators employ a sequential procedure, innocent persons are better protected from misidentifications than with the simultaneous presentation.

2.6 TOOLS AND METHODS USED BY FORENSIC PSYCHOLOGISTS IN INDIA

With the increasing number of crimes, physical evidence left on the crime scene is nil or negligible and thus it becomes relatively difficult for the investigating agencies to gather evidences which will lead them to the perpetrator of the particular crime. Further, although the investigating agency may reach a particular suspect in a crime, it has to be proved in the court of law by the prosecution that the suspect is involved in the crime. For this purpose, the legal system has placed emphasis on oral or documentary evidences, to convict an individual of a particular crime (Puranik, Joseph, Daundkar and Garad, 2009).

Recently, there has been a lot of emphasis on newer scientific techniques which are used as an aid to an investigation process. Some of the tools used in India are Polygraphy Test, Brain Electrical Oscillation Signature Profiling (BEOSP) and Narco analysis.

2.6.1 Polygraph Test

It is an instrument that measures and records several physiological indices such as blood pressure, pulse, respiration, and skin conductivity. It is based on the foundation that deceptive answers/information will produce physiological responses that can be differentiated from those associated with non-deceptive answers/information.

A polygraph examination consists of three separate and distinct phases. These are:

- 1) **Pre-test Phase:** In this phase the examiner does the necessary formalities and procedures which are required before starting the test. These are:
 - Inform the examinee of the specific issue that is being investigated;
 - Advise the examinee of his or her constitutional rights, of their right to an attorney and of the voluntary action of submitting to a polygraph examination;
 - Complete the necessary documentation;
 - Provide the examinee with a detailed explanation of the polygraph instrumentation with its components and how these work;
 - Answer any questions that the examinee may have;
 - Obtain the examinee's version of the facts regarding the specific issue under investigation;
 - Formulate and review with the examinee all the questions that will be asked of him or her during the polygraph examination.

Before moving on to the in-test phase, the examiner will fasten various painless components to and around the examinee's body, thereby connecting him or her to the polygraph instrument. These components are equipped with sensors that serve to collect, measure and record, onto polygraph charts, the examinee's physiological data obtained from three major systems in the body, as he or she answers the set of previously formulated and reviewed questions during the course of the polygraph examination.

- 2) **In-test Phase:** The polygraph examination takes place during this phase. Once the examination is underway, the examiner will administer a minimum number of three separate tests each lasting approximately 5 minutes — and a maximum number of six tests — wherein the examinee's physiological data will be continuously collected, measured and recorded, onto polygraph charts, as he or she answers the set of questions that were formulated and reviewed during the pre-test phase.

The examinee will have a two-minute relaxation period between each test. Upon completion of the in-test phase, the examiner will analyse, interpret and evaluate the examinee's physiological data collected during the polygraph examination

- 3) **Post-test Phase:** During this last phase, the examiner will give the examinee the result of the polygraph examination. If the physiological data recorded on the charts shows reactions on the part of the examinee to the relevant questions that were asked, he or she will be given the opportunity to explain these reactions.

Once the post-test phase is finished, the examiner will provide the client with a verbal report of the polygraph examination and its result. This will be followed, in a timely manner, by a written report containing a factual account of all the information developed during the polygraph procedure, as well as the examiner's professional opinion of the examination results based on the analysis, interpretation and evaluation of the polygraph data.

2.6.2 Brain Electrical Oscillation Signature Profiling (BEOSP)

Brain Electrical Oscillation Signature profiling is a technique developed by Dr. C.R. Mukundan in the year 2003 after lot of research. It is a process of eliciting electro physiological evidence of a suspect's participation in the crime. It is non-invasive scientific technique with a great degree of sensitivity. It is a Neuropsychological method of interrogation and is also referred to as 'brain fingerprinting'.

The human brain receives millions of arrays of signals in different modalities all through the waking periods. These signals are classified and stored in terms of their relationship perceived as function of experience and available knowledge base of an individual as well as new relationship produced through sequential processing. The process of encoding is primarily when the individual is directly participating in an activity or experiencing it.

It is considered secondary, when the information is obtained from a secondary source viz. books, conversations, hearsay, etc. in which there is no primary experiential component and the brain deals mainly with conceptual aspects.

Primary encoding is deep seated and has specific source memory in terms of time and space of occurrence of the experience, as the individual himself/herself has shared or participated in the experience/act/event at certain time in his life in a certain place.

It is found when the brain of an individual is activated by a piece of information of an event in which he or she has taken part, the brain of the individual will respond differently from that of a person who has received the same information from secondary sources (non-experiential).

BEOSP is based on this principle, thereby intending to demonstrate that the suspect who have primary encoded information or those who have participated in the suspected events will show responses indicating first hand (personally acquired) knowledge of the event.

BEOSP procedure

- i) Pretest interview with the suspect
- ii) The suspect is acquainted with BEOSP test procedure
- iii) Informed Consent is obtained

There are no questions presented to the subject during the test, rather the subject is walked through a narration of the possible crime scenario, and analysis is done to see if the Brain produces Experiential Knowledge. That is remembrance of the events narrated. There are no questions asked and no answers expected from the subject. Thus the rights of the suspect remain well preserved and protected

2.6.3 Narcoanalysis

It is psychotherapy conducted while the patient is in sleeplike state induced by barbiturates or other drugs, especially as a means of releasing repressed feelings, thoughts or memories.

Its use is restricted to circumstances when there is a compelling immediate need for the subject's response. This technique is also used in Forensic cases and is also sometimes called the "truth serum".

In forensic setup, narcoanalysis is conducted only when there is a jurisdictional court order for carrying out the test as it is an invasive procedure used for non medical purposes.

Various information is referred for conducting narcoanalysis on the subject. Records such as Post Mortem report, F.I.R, Inquest Panchanama, Crime scene photographs, brief summary of the case submitted by the Investigating Officer are gathered and read.

- i) Pre-test Interview is conducted
- ii) Informed consent is obtained
- iii) After all pre-test formalities are completed the team comprising of anesthetist, psychiatrist and forensic psychologist administer the narcoanalysis by injecting a drug (pentothal Sodium) and conducting Narco Interview.

In case the subject refuses to give the informed consent, no narcoanalysis is carried out and the same is informed to the jurisdictional court.

- iv) Post test interview is conducted

2.7 POST EVENT INFORMATION

Many factors influence a person's recall of a brief event and because human memory is assumed to involve both constructive and reconstructive processes, information considered or received by the witness following the event may also contribute to the specifics of what is ultimately recalled. For example, in postevent misinformation studies, participants view a video event, then hear a narrative about it that contains incorrect information about details in the film (e.g., the getaway car was blue rather than green).

Later, they are asked to recall details from the original video they viewed. The typical finding is that participants often incorporate information from the narrative by recalling (or recognising) details that are consistent with the misleading information.

Going well beyond distortion of minor details, research participants have also constructed complete but false autobiographical events as a result of similar suggestive misinformation techniques.

The ease with which such memories may be manipulated or constructed has contributed to the development of an entire new field of false memory research, a field whose topics often overlap with those of eyewitness testimony research.

Social scientists and legal practitioners have long recognised that suggestive forensic (or therapeutic) interview practices are a major cause of inaccuracies in eyewitness memory. Indeed, there is an extensive scientific literature demonstrating that exposure to misinformation can lead to false memories for details and even entire events that were never actually experienced.

Loftus's (1979) misinformation paradigm, in particular, has translated traditional verbal-learning research findings (e.g., Keppel & Underwood, 1962) into an ecologically relevant setting, showing that eyewitnesses' memories are malleable and can be influenced by exposure to misinformation.

Loftus's paradigm (e.g., Lindsay, Allen, Chan, & Dahl, 2004; Loftus, Miller, & Burns, 1978) includes three phases:

- i) First, subjects witness an event (e.g., by watching a video).
- ii) Second, they are exposed to a narrative description of the witnessed event that contains misinformation.
- iii) Third, subjects are tested on their memory for the event.

The typical finding is that subjects who have been exposed to misinformation in this way are less likely to recall the correct details than are those who have received no misinformation.

Other post-event mental activities such as rehearsal, verbal coding, and image generation can similarly contribute to altered recollections of the event or person. The Wells and Bradfield (1998) research dramatically demonstrated these kinds of changes as do the detrimental effects of both postevent verbal (Schooler and Engstler-Schooler 1990) and conceptual rehearsal of events and people. These kinds of retrospective reconstructions or reframing of events are likely to form the basis of much additional research in the field.

2.8 RELATION BETWEEN ACCURACY AND CONFIDENCE

Analyses of jurors decision-making processes have indicated that of all the factors influencing their judgments of credibility of a witness, the confidence expressed by the witness is most influential. When witnesses claim to be absolutely certain of their statements their evidence is given more weight than that from other witnesses who expresses less certainty. Assignment of greater evidential weight to the first than to the second group of witnesses would be reasonable if subjective confidence was predictive of accuracy.

Although it is clear that the triers-of-fact do believe there is a strong relationship between accuracy and confidence, the research evidence has been equivocal. Whereas a minority of studies has demonstrated moderate to strong relationships between the two variables, the majority have not. Indeed, the obtained relationship has been generally so low as to provide virtually no predictive value from confidence to accuracy.

Witnesses subjective confidence is an estimator variable because it reflects a witness's characteristics, such as age and gender. Nonetheless, its expression by a witness may be seen also as a system variable because it can be altered by the

criminal justice system. For example, witnesses may be encouraged by others to assign high confidence to their in-court opinions, often much higher than they provided at the time of the identification. As a result, many researchers have argued that some standardised assessment of confidence should be taken by the investigating officer at the time of a witness's identification decision (Wells et al. 1998).

Therefore confidence appears to be influenced by post identification factors such as repeated questioning, briefings in anticipation of cross-examination, and feedback about the behaviour of other witnesses (Penrod and Cutler, 1995). There is widespread agreement among researchers that the correlation between identification accuracy and confidence in identification judgments is weak. For this reason, many experts caution against heavy reliance on confidence when evaluating identification accuracy (Sporer, Penrod, Read and Cutler, 1995).

2.8.1 Improvement of the Reliability and Accuracy of Witness Statement

In a scientific study focus is laid on the reliability and accuracy of the results. Reliability is the consistency of your measurement, or the degree to which an instrument measures the same way each time it is used under the same condition with the same subjects. Accuracy in general, refers to precision and/or exactness. In the fields of science, engineering, industry and statistics, accuracy is the degree of conformity of a measured or calculated quantity to its actual (true) value. But reliability and accuracy in eye witness study in forensic psychology has a different dimension to it because of the following reasons:

Cases where the exact truth is known to the investigator are rare. Thus there is no actual data based on which eyewitness account can be compared for accuracy. There are many factors involved which lead to minor or major changes in eyewitness statements after the incidence takes place. Thus the reliability factor in eyewitness assessment is highly prone to doubts.

A witness may, for some reason, want to deceive the investigator. In such cases even if the statements are consistent throughout the investigation but they are not accurate.

Since eyewitness testimonies are very crucial for legal case investigations there has been a lot of researches to facilitate better reliability and accuracy. In India tools and methods like Polygraphy Test, Narco analysis and BEOS are used by Forensic Psychologists. These tools and methods help the investigator to systematically and scientifically assess the eyewitness and their statements.

However, in the initial phase of a case investigation the police personnel are assigned the duty of extracting information from the eyewitnesses. It is ironical that although the quality of a witness's or victim's report is of paramount importance in solving criminal cases, police investigators often have minimal guidance in developing effective interview techniques to facilitate memory retrieval.

A standard interview procedure is carried wherein the eyewitness statements are recorded. A lot of research points out that the Standard Interview procedure lacks in efficiency. The cognitive interview technique (CI) has received considerable

attention as one of the most successful interview techniques applied to real-life investigations. It was devised by Geiselman, Fisher, Firstenberg, Hutton, Sullivan, Avetissian and Prosk in 1984 to improve eyewitnesses' memory by using mnemonic strategies which ask witnesses to think about what happened and encourage them to make as many retrieval attempts as possible.

2.8.2 Cognitive Interview

In this condition, the interviewers are to describe four general memory-retrieval techniques to the subjects or the eyewitness before the questioning began. A four-item list of the techniques is placed in full view of the witness during the entire interview as a reference guide.

Otherwise, the format of this interview was the same as that for the standard interview starting with each "witness" was to be asked first to describe in their own words what they remembered (open-ended report). The following descriptions of the techniques were read by the interviewer to the subject verbatim at the beginning of the interview:

- i) *Reinstate the Context:* Try to reinstate in your mind the context surrounding the incident. Think about what the surrounding environment looked like at the scene, such as rooms, the weather, any nearby people or objects. Also think about how you were feeling at the time and think about your reactions to the incident.
- ii) *Report Everything:* Some people hold back information because they are not quite sure that the information is important. Please do not edit anything out of your report, even things you think may not be important.
- iii) *Recall the Events in Different Orders:* It is natural to go through the incident from beginning to end. However, you also should try to go through the events in reverse order. Or, try starting with the thing that impressed you the most in the incident and then go from there, working both forward in time and backward.
- iv) *Change Perspectives:* Try to recall the incident from different perspectives that you may have had, or adopt the perspectives of others that were present during the incident. For example, try to place yourself in the role of a prominent character in the incident and think about what he or she must have seen.

Thus with all its complexities eyewitness assessment can lead to a more reliable and accurate information collection by using interview procedure like cognitive interview. Tools and methods like Polygraphy Test, BEOS and Narco analysis have proved out to be a great help in the field of Forensic Sciences.

2.9 LET US SUM UP

Eyewitness is someone who has been a spectator of a dramatic event or a crime scene first hand, the one who can give an account of the event. . Eyewitness account or testimony has a strong impact on criminal investigations and courtroom verdicts. Assessment of eyewitness and their statement becomes an important task for a forensic psychologist.

To gain maximum from an eyewitness account the investigator has to keep questioning the reliability and accuracy of the same.

Eyewitness assessment has to be differently approached when the witness is a child or himself/herself a victim to the crime.

Eyewitness assessment studies are based on two sources: real-world observations of witnesses/victims and research simulations of criminal acts. Both of these have their advantages and limitations.

Researchers use real life cases, video clips and/or simulated stage demonstration in eye witness studies wherein the witness is assessed using live line up, sequential photo presentation and/or photospread methods.

Some of the tools and methods used by Forensic Psychologists in India during legal case investigation are the Polygraphy test, BEOS and Narco analysis.

Polygraph is an instrument that measures and records several physiological indices. It is based on the foundation that deceptive answers/information will produce physiological responses that can be differentiated from those associated with non-deceptive answers/information.

BEOSP is a non-invasive scientific technique with a great degree of sensitivity. It is a Neuro-psychological method of interrogation and is also referred to as 'brain fingerprinting'.

Conducted while the patient is in sleeplike state induced by barbiturates or other drugs, especially as a means of releasing repressed feelings, thoughts or memories.

Factors of interest to researchers may be classified as either estimator or system variables. Estimator variables are not under the control of either the criminal investigator or the criminal justice system. On the other hand these variables are under the control of the criminal justice system

Post event information may lead to misinformation in eyewitness memory. Researches on the same have come to the conclusion that going well beyond distortion of minor details, research participants have also constructed complete but false autobiographical events as a result of suggestive misinformation techniques.

There is widespread agreement among researchers that the correlation between identification accuracy and confidence in identification judgments is weak. For this reason, many experts caution against heavy reliance on confidence when evaluating identification accuracy

With all its complexities eyewitness assessment can lead to a more reliable and accurate information collection by using interview procedure like cognitive interview. Tools and methods like Polygraphy Test, BEOS and Narco analysis have proved out to be a great help in the field of Forensic Sciences.

2.10 UNIT END QUESTIONS

1) Who is an eyewitness? What is her/his role in criminal investigation?

- 2) How does an eyewitness's being the victim of the crime or a child affect assessment?
- 3) Compare advantages and limitation of real life crime case and research simulations of criminal acts as sources of eyewitness assessment study.
- 4) Write a brief note on misidentification of an innocent person by an eyewitness.
- 5) What are the procedures and methods used by researchers in assessing eyewitness and their statements?
- 6) What is polygraphy test? What is the procedure in which it is conducted?
- 7) What is BEOSP? What is the principle behind it?
- 8) How does post event information affect Eyewitness memory?
- 9) Elaborate your understanding on relation between eyewitness confidence and their accuracy.
10. What is Cognitive Interview?

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UNIT 3 FORENSIC PSYCHOLOGY IN CIVIL AND CRIMINAL LEGAL PROCEEDINGS AND JUVINILE CRIMES

Structure

- 3.0 Introduction
- 3.1 Objectives
- 3.2 Forensic Psychology
 - 3.2.1 Definition of Forensic Psychology
 - 3.2.2 Psychology in the Law
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 - 3.2.4 Psychology of the Law: Legal Issues and Processes
- 3.3 Application of Forensic Psychology to Civil, Legal Proceedings
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- 3.4 Competency in the Court of Law
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- 3.8 Juvenile Delinquency
 - 3.8.1 Definition of Delinquency
 - 3.8.2 Nature and Extent of Juvenile Delinquency
 - 3.8.3 Delinquency Prevention and Treatment
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 - 3.8.5 School and Recreational Activities
 - 3.8.6 The Role of Police
 - 3.8.7 Creation of Social Responsibilities in Children
- 3.9 Let Us Sum Up
- 3.10 Unit End Questions
- 3.11 Suggested Readings

3.0 INTRODUCTION

In this unit we will learn about the concept and definition of forensic psychology and relate it to the legal system. We then take up application of forensic psychology to civil and legal proceedings. This will be followed by a discussion on the philosophical underpinnings of domestic courts and issues in family law. The competency to stand trial in the court of law will then be taken up for which forensic psychologists will do the needed assessment. We will learn about the procedures of assessment in addition to defining competency. Then there will be a discussion on the competency of professionals, witnesses and the person on trial. Then we will take up the application of forensic psychology to civil and criminal proceedings including juvenile crimes. Evaluation of eyewitness both children and adults will be taken up. This will be followed by the juvenile crimes committed and the various assessment and intervention procedures to prevent juvenile and other crimes. Then the ethical issues related to forensic psychology will be spelt out. This will be followed by a discussion of delinquency, what it is, the causative factors leading to the same and the many remedial measures to prevent delinquency.

3.1 OBJECTIVES

After completing this unit, you will be able to:

- Define Forensic psychology;
- Describe its characteristic features;
- Elucidate the philosophical underpinnings behind forensic psychology;
- Explain the rationale behind constituting family courts;
- Define competency;
- Explain the assessment of competency in professionals, eyewitness and the accused;
- Analyse the methods of evaluation of eyewitness both adults and children;
- Describe the application of forensic psychology in civil and criminal proceedings;
- Define delinquency and its characteristic features related to crime; and
- Analyse the various measures of prevention of delinquency.

3.2 FORENSIC PSYCHOLOGY

Forensic Psychology is the application of psychology to the criminal and civil justice systems. Many people confuse Forensic Psychology with forensic science. Although the two are closely related, there are many differences. The primary difference is that while forensic scientists are in the business of applying the chemical and biological sciences to law enforcement, national security, defense, or intelligence work, forensic psychologists delve into the psychological perspectives of human behaviour and apply them to the legal systems.

Forensic Psychology knowledge is used in various forms, such as in treating mentally ill offenders, consulting with attorneys (e.g., on picking a jury), analysing a criminal's mind and intent, and practicing within the civil arena. A forensic

psychologist may also chose to solely focus his/her career on research, ranging anywhere from examination of eyewitness testimony to learning how to improve interrogation methods. Another form of Forensic Psychology work is in public policy, where researchers can help in the design of correctional facilities and prisons.

3.2.1 Definition of Forensic Psychology

In the past several decades, collaboration between psychology and law has grown prodigiously. The number of journals, textbooks, and continuing education workshops available in forensic psychology has increased. In recent years, there has been a shift in the focus of clinical psychology from investigating anxiety (neurotic) and schizophrenic conditions to studying character disorders, examining externalising versus internalising styles of personality, generally, and criminal and violent behaviour specifically. As the public's interest in crime increased, clinical psychologists broadened their interests to include forensic questions and criminal behaviour.

There are three ways in which psychology and law interact:

- i) The practice of psychology in legal settings, (psychology in the law)
- ii) The effects of law on the practice of psychology (Psychology by the law)
- iii) Research and scholarly inquiry as applied to legal issues (Psychology of the law)

There are epistemological differences between law and psychology. Both lawyers and psychologists need to understand these differences for their collaborations to meet with success. We can establish a functional definition of forensic psychology by describing in the above three ways psychology and law interact: psychology in the law, psychology by the law, and psychology of the law. Let us deal with these three ways in some detail.

3.2.2 Psychology in the Law

Some psychologists practice in a legal setting and must be aware of and knowledgeable about legal issues; expert witnesses are an example. Expert witnesses must be familiar with legal standards, definitions, and tests and the procedures by which the law operates. They must be aware of specific ethical parameters that govern forensic psychology practice, particularly where such practice differs from traditional clinical or experimental practices .

3.2.3 Psychology by the Law

Psychologists must be aware of the way law has increased its influence on their daily functioning, whether in clinical practice, in academia, or in research contexts. The psychologist must continue to follow refinements in the law as they affect practice and, because state law and local customs shape legal and ethical practice, to learn about the law as applicable where the psychologist practices.

3.2.4 Psychology of the Law: Legal Issues and Processes

The third area that is subsumed under forensic psychology concerns scholarly inquiry into what has been termed “psycholegal issues.” Psychologists have applied research methodologies to a number of legal questions and practices. Literature concerning juror selection and jury dynamics, privacy, and discretion show applications of psychology studying the law.

3.3 APPLICATION OF FORENSIC PSYCHOLOGY TO CIVIL LEGAL PROCEEDINGS

Understanding the civil nature of crime requires an understanding of the traditional and constitutional principles related to domestic jurisprudence. It must be understood that psychologists have to offer beyond common sense and clinical lore certain highly professional inputs so as to help the judgement to be fair and justified. For the psychologist to effectively contribute to the domestic courtroom, he or she first needs to know how the court functions.

3.3.1 Philosophical Underpinnings of Domestic Court

Traditionally, the domestic court protected and supported the integrity of the family unit. Domestic jurisprudence relied on common law concepts of the family as the basis for decisions in domestic proceedings. Common law, or English case law, enforces long standing customs and traditions. The focus of the contemporary domestic court has shifted in the past 150 years from the extended family to the family in society. The former educational, social, and economic safety nets of the extended family are now the province of social agencies and government.

Simultaneously, the Industrial Revolution, changing concepts regarding the roles of women, children, and families, and efforts to establish a more pluralistic democracy marked changes in domestic law. As society became more integrated with a philosophical and economic stake in the child, changes occurred in the role of education and equal participation in social institutions, and the perception of children as under the dominion of parents shifted to the family as a socialising agent of the greater society. This shift can be seen in the decreased reliance on common law theory and the increase in statutory provisions. In each of these areas, jurisdiction, procedures, and disposition, the court may call on the advice of expert witnesses such as social workers and psychologists. The psychologist may be asked to assess the present mental status, cognitive and personality profiles and living conditions.

3.3.2 Issues in Family Law

Themes such as *parens patriae*, the basic right of people to marry, the contractual nature of marriage, competency or fitness as a parent, and the obligations existing between parents and children are woven throughout domestic law. An awareness of how these themes contribute to the normative family and the laws regarding proper relationships between family members is useful for the practitioner. There are issues like marriage, divorce, child custody, domestic violence, child abuse, spouse abuse, child sexual abuse, etc. related to civil nature crime and Civil Competency

3.4 COMPETENCY IN THE COURT OF LAW

3.4.1 Definition of Competency

Provisions allowing for a delay of trial because a defendant was incompetent to proceed have long been a part of the legal due process. English common law allowed for an arraignment, trial, judgment, or execution of an alleged capital

offender to be stayed if he or she “be[came] absolutely mad” (Hale, 1736, cited in Silten & Tulis, 1977, p. 1053).

Although the concept of competency to stand trial has been long established in law, its definition, as exemplified by the ambiguities of Dusky, has never been explicit. What is meant by “sufficient present ability”? How does one determine whether a defendant “has a rational as well as factual understanding”?

The problems in defining and assessing competency lead to a broad range of interpretations of the Dusky standard. Because the courts and legislatures have given mental health professionals a large share of the responsibility for defining and evaluating competency, it should not be surprising to find that mental status issues, such as presence or absence of psychosis, have played (historically at least) a dominant role in the findings of evaluators.

In fact, evaluators initially involved in assessing competency seemed to equate psychosis with incompetency. Furthermore, evaluators in the past rarely took into account the specific demands of a defendant’s case. This has begun to change. In the past, evaluators were employed typically in state mental hospitals (the site of the majority of competency evaluations at that time) and had no training either in the assessment of competency or in matters of law. Research provided evidence that the presence of psychosis was not sufficient by itself for a finding of incompetency (Roesch & Golding, 1980), and modern empirical studies of competency reports demonstrate that evaluators rarely make that simple concept.

The past 15 years has also seen the development of better training programs for professionals in forensic psychology and psychiatry. Many graduate psychology programs and law schools cooperate to provide instruction in psychology as well as law, and a number of departments of psychology include forensic psychology as an area of expertise.

3.4.2 Assessment of Competency

Though there has been some confusion over the definition of competency, there nevertheless appears to be generally good agreement among evaluators about whether a defendant is competent or not. The few studies of reliability that have been completed report that pairs of evaluators agree in 80% or more of the cases (Goldstein & Stone, 1977; Poythress & Stock, 1980; Roesch & Golding, 1980; Skeem et al., 1998). When evaluators are highly trained and use

Semi structured competence assessment instruments, even higher rates of agreement have been reported. High levels of reliability do not, of course, ensure that valid decisions are being made.

Two evaluators could agree that the presence of psychosis automatically leads to a finding of incompetency. As long as the evaluators are in agreement about their criteria for determining psychosis, the reliability of their final judgments about competency will be high. It is quite possible that the criteria used by many evaluators inappropriately rely on traditional mental status issues without considering the functional aspects of a particular defendant’s case.

Validity is difficult to assess because of the criterion problem. Criterion related validity is usually assessed by examining concurrent validity and predictive validity (Messick, 1980).

Predictive validity is impossible to assess fully because only defendants who are considered competent are allowed to proceed. It is feasible to look at the predictive validity of decisions about competent defendants, but not possible, of course, to assess the decisions about incompetent defendants, as they are referred for treatment and judicial proceedings are suspended.

Concurrent validity is also difficult to determine because it does not make sense to look simply at correlations with other measures (e.g., diagnosis, intelligence) if one adopts a functional, case-by-case assessment of a defendant's competency. For these reasons, then, there is no "correct" decision against which to compare judgments.

The courts usually accept mental health judgments about competency. Does this mean that the judgments are valid? Not necessarily so, as courts often accept the evaluator's definition of competency and his or her conclusions without review, leading to very high levels of examiner-judge agreement

3.4.3 Competency of a Professional

The word "profession" comes from the Latin *profiteri*, "to profess," meaning to make a public dedication to the ideals and practices associated with a learned calling. Professionalism involves several elements, viz., (i) fidelity to ethics and integrity as a meaningful commitment, (ii) service with competence and dedication, (iii) meaningful education, and (iv) civility.

Most of the current law on professional competence concerns physicians and lawyers, but the general standards gleaned from those contexts apply to psychologists as well. Every professional organisation, in one way or another, must face up to the incompetency of a member. However, the degree of proof necessary to justify loss of membership suspension varies from state to state and from profession to profession.

3.4.4 Competency of a Witness

As a general rule, in civil and criminal cases, every adult witness is presumed competent to testify unless it can be shown that the witness does not have personal knowledge of the matters about which he or she is to testify, that he or she does not have the ability to recall the subject matter, or that he or she does not understand the duty to testify truthfully (Rule 601 of the Federal Rules of Evidence).

Any objection to the competency of a witness must be raised at the time the party is presented as a witness; absent objection at that time, the claim of incompetency is waived. A witness may be found competent despite the fact that in another case, the witness may have been found criminally insane or incompetent to stand trial. At present, there is no fixed age below which a witness is deemed incompetent, although children under age 10 are routinely examined by the court. The question in each case is whether the witness understands the obligations of the oath and has sufficient intelligence to give evidence. Age is considered along with the child's understanding of all the facts and circumstances of the case. It is often essential that the child has an understanding of the obligation of an oath and the obligation to tell the truth.

3.4.5 Competency to Stand Trial

This is a concept of jurisprudence allowing the postponement of criminal proceedings for those defendants who are considered unable to participate in their defense on account of mental or physical disorder or retardation. Because trial competency issues are raised substantially more often than the insanity defense, psychologists involved in forensic assessment and consultation are likely to have frequent experience with it.

3.5 APPLICATION OF FORENSIC PSYCHOLOGY TO CIVIL AND CRIMINAL PROCEEDINGS

3.5.1 Civil Proceedings

Making the right choices and acting on those individual choices are considered to be most fundamental rights of any human being. Choices or actions that are not restricted or prohibited by criminal law are considered to be private to an individual. Civil law is concerned with civil or private rights and legal remedies rather than the public concern of crime (Ciccone, 2003; Howitt, 2002). They are sometimes referred to as private law because it regulates private relationships between individuals in our society and deal with the rights and obligations of people and what is needed to protect them (Standler, 1998). In civil law, a private party such as an individual or a corporation files the law suit and becomes the petitioner. Civil matters include contract law, family law, tort law, property, and labour law etc. and civil disputes usually involve some harm, loss or injury to one party of their property.

If a civil case is successful, the defendant is held responsible for the wrongful action and said to be “liable” or “not liable” for damages. A defendant in civil litigation is never incarcerated, unless fails to compensate, and never executed. So-called punitive damages are never awarded in a civil case unless the defendant conduct is found to be egregious and had either (1) malicious intent (i.e. desire to harm others), (2) gross negligence (i.e. conscious indifference), or (3) a wilful disregard for the rights of others (Standler, 1998). This section would include domestic law related to adults and children, assessment of children and adolescents, evaluation of civil competency, personal injury, work-related compensation issues, disability, and trauma caused by sexual harassment and rape.

3.5.2 Criminal Proceedings

The broad purpose of criminal law is to prevent certain undesirable conduct and, thereby, to protect various interest of the society. Criminal law is framed to impose punishment for the undesirable conduct with an intention to rehabilitate offenders to protect the society. In a criminal case, the state takes upon itself the responsibility to file the litigation, investigate and collect evidence with the help of police, to fight the case in court, through a public prosecutor and enforce the punishment. The procedure by which a law trial is conducted is also quite different from the processes involved in a civil trial. An important difference is that the “standard of proof” required in criminal cases is much higher than the civil cases. Since criminal law is centrally linked with issues of punishment, allegations and facts must be proven “beyond reasonable doubt” so that innocent people are not punished (Standler, 1998).

In criminal law, a guilty defendant is punished by either (1) incarceration in a jail or prison, (2) fine paid to the government, or, in exceptional cases, (3) execution of the defendant: the death penalty. Crime are divided into two broad classes: felonies: that have a maximum possible sentence of more than one year incarceration, and misdemeanours: that have a maximum possible sentence of less than a years incarceration. Punishment in criminal cases is awarded with a notion that the threat of punishment will deter criminal conduct, an assumptions that humans are rational beings. However, in practice, it has been shown that individuals get involved in criminal activities are either impulsive (i.e., not rational) or believe that they will not be caught by the police (Public Legal Education Association of Saskatchewan, 2002). This section involves psychological evaluation in areas such as Competency to Stand Trial, Criminal Responsibility and Insanity, Assessment of Diminished Capacity, Risk and Dangerousness and Eye Witness Testimony.

3.5.3 Juvenile Crimes

Many juvenile offenders exhibit individual psychological problems, and other have been raised in problematic or dysfunctional families. Psychological evaluation of juveniles offenders is an essential part of the family court system, because the thrust of the juvenile justice system is to provide rehabilitation. A juvenile offenders may need psychological treatment, educational assistance, or treatment for a substance abuse problem. Provision of these needed rehabilitation services will reduce the possibility of recidivism. The juvenile justice system will often direct the necessary psychological treatment, or mandate other agencies or individuals (including the juvenile and his/her parents) to provide assistance to the juvenile.

Psychological evaluation of juvenile offenders can provide valuable information to the court, which can be used in developing and effective treatment and rehabilitation plan for the juvenile. This treatment plan can then be incorporated into sentencing or probation requirements. These evaluations may be ordered by the court at the request of either the prosecution or the defense, or the defense may simply choose to have an evaluation completed and submitted to the court for consideration in sentencing.

The evaluation process includes a review of all charges pending against the juvenile, plus a review of all past charges on the record. It includes academic school records, including attendance records, and child study team evaluations or classifications. The juvenile is seen for clinical interview to assess his/her psychological status, and to identify any behavioural disorders. If indicated, personality test and other psychological disorders may. Depending on the circumstances of the case, family members may also be interviewed.

A comprehensive report summarizes the finding of the evaluation. Additionally, the report will present conclusions, based on the test results, regarding any connection between the identified psychological problem and the juvenile's criminal activity. The psychologist will make specific recommendations for treatment of the juvenile, and will present a prognosis regarding the likelihood to repeat offences in the future, with and without treatment.

The instrument to be reviewed vary widely in the level of expertise required for their administration and interpretation. Some of the measures, particularly the

rating scales and checklists, do not require social background or training beyond a familiarity with instructions accompanying the measure. This is true, for example, measures of behavioural psychology as e.g. child Behaviour Checklist (Achenback, 1991, 1999) other instruments require a higher level of training and background in psychological testing are required for certain tests such as of Wechsler's Intelligence Scale for Children – III (WISC-III), Wechsler, 1991) and the Millon Adolescent Clinical Inventory (MACI; Millon, Millon & Davis, 1993).

3.5.4 Evaluating Eyewitness Testimony in Adults and Children

The issue here is how accurate is the eyewitness testimony? Part of the fascination with this question derives from the fact that people's fate may hang on human memory, which is known to be fallible.

Not only the fate of the accused rests on witness accuracy, but so may the fate of the victim, as for instance, if an accurate victim is not believed, the victim may endure further assaults by the perpetrator and disillusionment with the legal system.

Nevertheless, our legal system necessarily relies on witness testimony, making its study of substantial practical importance. It has profound theoretical significance as well. Research on eyewitness testimony informs theories of memory and has led to new insights about the workings of the human mind. Given the crucial nature of these issues, it is not surprising that the study of eyewitness memory is an active and at times controversial endeavor. Courts currently show a surprising inclination to permit psychologists to educate judges and jurors about eyewitness testimony.

In educating the court, psychologists may testify as expert witnesses about relevant research findings or provide an evaluation of a specific witness. Experts in the court help to decide on the basis of scientific proof. When it comes to knowledge, the court calls for the expert opinion. The experts give opinions based on the experiments done in the laboratories. They are scientifically proved results. At the same time they use their knowledge and skills to give opinion. In this way experts play a very important role to serve the court.

3.6 INTERVENTION STRATEGIES FOR OFFENDERS

3.6.1 Punishments and Alternate Routes to Crime Prevention

Three Developments have contributed to the appearance of a new face in crime prevention over the past decade. The first has been a noticeable increase in the public's willingness to punish juveniles with increasing severity. The second development has been the advent of the Campbell Collaboration, an international group of researchers who link results of studies regarding particular forms of intervention to a general assessment of results that could be useful in making policy. Thus, systematic reviews are expected to provide reasonable bases for estimating probable effects in a variety of environments. The third development has been recognition that interventions to reduce crime have had some adverse effects, particularly when these bring young misbehaving teenagers together.

Adverse effects have been found in counseling programs, in programs that attempt to target lack of social skills among delinquents, in programs that provide after school activities for youth, and in programs that have sought to deal specific messages to youth that might inspire them to avoid further misbehaviour. These three developments have not radically altered the general picture of crime reduction policies as requiring, at the individual level, either punishments or treatments in order to deter crime. These approaches, those that are punitive and those oriented toward treatment, have been based on a conception of crime as developing from a flawed character—one for which the flaws have probably been of long standing.

3.6.2 Punishment as Prevention

The view that fear of punishment reduces crime is as old as Western thought. Plato (Plato, 1956) attributed to Protagoras the argument: He who desires to inflict rational punishment does not retaliate for a past wrong which cannot be undone; he has regard to the future, and is desirous that the man who is punished and he who sees him punished may be deterred from doing wrong again. If fear of punishment deters crime, increasing sanctions should reduce criminality. So obvious had the link between pain and motivation appeared that its scientific scrutiny awaited the second half of the twentieth century. Measures of the relationship between criminal activities and indices of the certainty and severity of punishment therefore offered promise for testing the role of hedonic calculations in motivations for crime. Criminologists have bifurcated expected effects of punishment: Those that influence the punished are considered to be specific deterrents; those that influence others who might commit crimes are considered to be general deterrents. As a specific deterrent, punishment is expected to prevent repetitions. When repetition occurs, theory suggests that punishment has been too lenient. This view has a deceptively obvious appearance.

Possibly, criminals who receive long sentences learn to accept the pro-criminal values expressed by convicts. Also, longer sentences perhaps increase resentment or decrease the socialising values that could control aggressive desires, driving further antisocial development. Furthermore, as the opponent process theory suggests, punishments or the rewards of criminality acquire positive incentive value through time. Stated differently it may be that punishments are irrelevant, serving only to endorse the image of “hardman” that many criminals find desirable.

Although severe punishments seem no more effective as crime deterrents than mild ones, the fear of pain continues to be thought of as an essential motivator. If street crimes are committed by youngsters proving their courage, perhaps confirming the risks they are taking should not be expected to deter them. Perhaps, when people consider whether to commit a crime, they ignore potential sanctions. Effective punishments would seem to require that the individual at risk for punishment knows what would be punished. Studies of young children suggest that the timing of punishment as well as its regularity influence this knowledge. Fear of punishment could be ineffective in deterring further crime among criminals and nevertheless effectively reduce the probability that others would commit crimes. There are other measures like environmental manipulation and cognitive approaches, diversion and counseling used as preventive methods.

3.6.3 Diversion as Prevention

To avoid increasing crime through expectations imposed when a youngster was adjudicated delinquent, courts were urged to avoid using a stigmatizing label, and police departments instituted a variety of crime prevention strategies that were designed to give children another chance. Until recently, the belief that the probability for further delinquency was reduced by diverting youngsters away from the courts seemed too obvious to require evaluation. Typically, studies report that the diversion programs tend to bring new groups of people into the criminal justice system.

3.6.4 Counselling as Prevention

A handful of carefully designed evaluations of counseling programs suggest that such results may not be accidental. Many courts in the United States have volunteer programs to provide adult guidance to probationers. One of these, the Volunteers in Probation program, agreed to an evaluation in which consenting probationers were randomly assigned to the volunteer program or to a control group (Berger, Crowley, Gold, Gray, & Arnold, 1975). Two out of three (randomly selected) probationers received the special services of group counseling, individual counseling, and tutoring given by the volunteers. Those in the control group received the ordinary services of the court. Evaluations occurred after 6 months and again after 12 months. Both self-reports and official records showed that participation in the program had iatrogenic effects. Those assigned to the control group and those who had been assigned to the volunteer program but had not participated in it decreased their rates of crime. Those who participated in the volunteer program, however, increased the number of crimes they reported, and their records showed increases in the number of their police contacts.

3.6.5 Cognitive Approaches as Prevention

Several short-term evaluations have provided evidence that teaching children special skills, even without parent training, may be a valuable tool for reducing their criminality. Guerra and Slaby (1990) taught incarcerated violent offenders that aggression was often counterproductive. As compared with both a group tutored in reading and mathematics who received the same amount of attention and a no-attention control group, those who received the training regarding the counter productivity of aggression were rated by their supervisors (who were blind regarding the treatment condition of those they rated) as less aggressive, impulsive, and inflexible.

Experiments have shown that training children to view television critically can reduce imitative aggression (Eron, 1986) and that academic tutoring can have social consequences for low-achieving children (Coie & Krehbiel, 1984). The results of experiments with such children indicate, however, that not all such training is beneficial. The evidence suggests that when a delinquent fails to receive penalties supporting the law, delinquency is likely to continue. Yet, the evidence does not show that serious penalties have more potent effects than mild penalties.

It seems reasonable to interpret the receipt of penalties as a type of information from which youths can learn how society expects them to act. Although a labeling effect seems to account for some criminal behaviour, diversion programs have had only minor success. A recent intervention that may be particularly appropriate for reducing recidivism among juveniles has been developed from the work of

Braithwaite (1989). Known both as re-integrative shaming and restorative justice, the program seeks to find a way for the guilty person to admit wrongdoing and yet to avoid being an outcast.

The program is being evaluated through experimental designs in Canberra, Australia (Sherman Punishments and Alternate Routes to Crime Prevention 717 & Strang, 1997), and in Great Britain (personal communication). The philosophic as well as practical issues involved with this movement are described in Strang and Braithwaite (2000).

Too little is known about how to produce socialised behaviour. Counseling programs have typically been ineffective or damaging. Family training may be helpful, though keeping families in programs long enough to change parental behaviour is a problem. Some, but not all, educational programs have had beneficial results. Those that seem effective should be replicated. New programs, designed for appropriate evaluation, should be started. Perhaps more important, new ways of thinking about how people become criminals and how they turn from crime to more socially accepted forms of behaviour need to be considered (Laub & Sampson, 2003; McCord, 2004; Messner & Rosenfeld, 2004; Wikstrom, 2004). As a consequence, it may become possible to regard intervention as crime prevention.

3.7 PROFESSIONAL ISSUES: PRINCIPLES, ETHICAL CODES AND GUIDELINES

Professions use ethics codes to regulate, educate, and inspire their practitioners. When the public grants a trust to a profession, the profession assumes an obligation to practice in a way that serves the public and not merely the individual professional's appetites. Privileged communication is granted to allow the public to consult professionals without fear that their intimate disclosures will be revealed. Surgeons are allowed to cut into human flesh to serve the patient's medical needs. This trust is not granted irrevocably or unconditionally; the conditions are that the profession regulate itself by developing norms, values, standards, and practices that shape the individual practitioner. The profession does not genetically produce the next generation of practitioners, but it does produce its next generation of professionals through socialisation. Although the ultimate responsibility for ethical conduct is and must remain with the individual practitioner, the promotion of ethical conduct is the province of the profession.

Yet, codes are restrictive and conserve a profession's values. While preserving minimal skill levels to practice, they can be used to stifle creativity and foster greed.

3.7.1 Principles, Codes, Guidelines, Standards for Forensic Psychologists

There are five principles and 10 standards in the APA (2002) Principles and Code. The five principles are these:

- 1) *Beneficence and malfesance*: Safeguard the welfare and rights of others and maintain vigilance in seeing the psychologist's influence is not misused.

- 2) *Responsibility*: Establish trust with clients, clarify roles and obligations, coordinate services with other professionals to the client's benefit, see to the general ethical probity of colleagues, and provide some measure of pro bono service.
- 3) *Integrity*: Promote truthfulness in research, teaching, and service, avoid dishonesty, deception, subterfuge, and misrepresenting, and where any such activities are necessary, be sure the benefits outweigh the costs and client damage is minimised or repaired.
- 4) *Justice*: Allow equal access to services by the advantaged and the disadvantaged alike, and take reasonable care that any biases and limitations to competence or expertise do not harm recipients of the services.
- 5) *Respect for people's rights and dignity*: Respect the dignity, worth, and rights of all people to privacy and autonomy, apply safeguards to protect the vulnerable or impaired, maintain awareness for cultural, individual, and role-driven differences so biases do not adversely affect the client.

When applying the principles to cases, it becomes clear that they have considerable overlap and that cases illustrating one principle frequently have applicability to others. It is only a bit less entangling to see how the ethical standards help guide the forensic psychologist.

3.8 JUVENILE DELINQUENCY

Delinquency is behaviour against the criminal code committed by an individual who has not reached an age of adulthood.

3.8.1 Definition of Delinquency

Term 'Delinquent' and 'Delinquency'

The concept of juvenile delinquency has in fact undergone a radical change and today the term 'juvenile delinquent' has such a connotation not subject to the jurisdiction of the normal courts of criminal procedure, but to the special laws and courts that have been recently devised for him and that deal with him differently from the adult criminal. They were before whom the adults were arraigned but also vested with the same severe penalties including death. It involves wrong doing by a child or by a child or a young person who is under an age specified by the law of the place. Psychological definition includes conduct disorder and antisocial behaviour. Legally, juvenile delinquents are one who commits an act defined by law as illegal and who is adjudicated delinquent by an appropriate court. The legal definition is usually restricted to persons under eighteen, but states vary in their age distinctions.

Juvenile courts are part of the civil court system and differ significantly from criminal courts in both terminology and procedure. For example, juvenile courts accept petition of delinquency rather than complaints. Juvenile Court proceedings are not open to the public. However, juveniles are still protected by many due process, safeguard associated with criminal trials, such as written notice of charges, legal representation, the right to confront and cross examine witness and protection against self-incrimination.

Prime Minister: Late Mr. Morarji Desai “Juvenile delinquency is not so much hereditary as it is an acquire trait in a wrong environment in which children are left to grow without proper care.

“When a person under the age of sixteen years commits an offence not punishable with death or imprisonment for life, he may be tried by the court of Chief Judicial Magistrate or by any court specially empowered under the Children Act, 1960 or any other law providing for the treatment training and rehabilitation of such offender.

3.8.2 Nature and Extent of Juvenile Delinquency

Unlawful acts committed by delinquents are placed into five major categories.

Unlawful acts against person: Most referrals to juvenile court are for crimes against the public.

- 1) Unlawful acts against property – 46%.
- 2) Drug offence – 5%
- 3) Offences against the public order – 21%
- 4) Status offences – 17%
- 5) Order is 21 %.

The first four categories are comparable in definition to crime committed by adults. Typical status offences range from misbehaviour, such away from home, and truancy, to subjectively, such as unruliness and unmanageability. Adolescent girls have been detained for running away from home.

3.8.3 Delinquency Prevention and Treatment

There has been an increasing awakening of public interest throughout the world in the problems of the socially handicapped: exploited and victimised juveniles. There is unanimity of opinion, among our social workers and planners as regards the urgent need to promote the physical, mental, cultural and emotional growth of juvenile delinquents. The whole burden of modern psychological investigation points to the fact that a child needs love, security and opportunity for self-expression. Deprivation of any of these may prevent or divert the flow of life-energy and causes mental illness, the cause of which neither the child nor the family is aware of. To-day it is widely recognised that there is no such thing as a “delinquent type”, rather, a delinquent is an ordinary boy or girl who is a product of his environment, including his family relationship and his training at home, his neighbourhood, school and associates, his poor intelligence or his own unhappiness or combination of both his environment and his personality. In general, delinquency of children includes ‘acts, that, if committed by adults would be considered criminal, as well as patterns of behaviour that are peculiar to childhood, principally truancy, waywardness and incorrigibility.

What is the object of considering juvenile delinquency and studying the means of its prevention? The obvious answer is surely that we are seeking to combat adult delinquency with all its seeking train of consequences. Its form and scope will be that of a vast mental health campaign. The battle against juvenile delinquency also appears as the opportunity, unique in its kind, for assembling under a common banner and in a common team-activity, parents and professional

educationists. If prevention is to be effective there must first in early detection for maladjustment in children. Secondly, remedies must be found for the environment and any cause present in the family or society which leads to delinquency must be eliminated.

3.8.4 Family System: Broken Homes

The new way of life and lack or loss of social control, which due to a number of causes, chief among which are the effects of rapid urbanisation, industrialisation and scientific advancement, have made deep dens in the family affecting the vitally important husband-wife and parent-child relationships. The consequential social change has contributed adversely to the continuance of unified life in a family. Thus there is a general weakening on the family front even our tradition-loving society of a given society, the family is the principal agency for handing down the cultural heritage. The behaviour of an individual is regulated also by social control groups, to which he belongs, primarily on account of the fear of the opinions or ridicule of others. Whether we look to the history of man, to literature, or life in general, it is apparent that the adult world is governed by human emotions; and emotions are breaking down of homes, and in all that vast, intricate net of work of human relationships which result in clashes and alliances between individuals, groups and nations. We must, therefore, pay the closest attention to the emotional life of a child. In the case of a parent's death in a well knit-family, the child loses a companion, a sympathetic friend and guide and this has a disastrous effect on its emotional life and its development. The orderly pattern of life at home is thus often disturbed the unknowing abruptness and the child is left adrift emotionally. A child reaction to the phenomenon of separation bears a similarity to the well known "Grief-reaction".

The break-up of the joint-family system is also a very powerful operative factor. 'Today the older traditions are passing out and this brings in the imperative need to find out new traditions to replace the older ones especially the older home and older family life. It is believed that many older traditions have failed to come up to the level of the new thinking and realisation about the human relationships, human dignity of men, women and children. These require modifications, i.e., a change in family life. At the same time the old values of character and personality need to be revived by constant efforts in order to bring about harmony between the old and the new.

It is quite a new thing that the attention of the Government and that of private agencies in our country is usually directed towards treatment and rehabilitation rather than towards prevention of juvenile delinquency. There are about sixteen reformatory schools and also a number of aftercare institutions, but very few of these are equipped with trained personnel, who can give psychological, medical, case-analytical services to the young offenders.

3.8.5 School and Recreational Activities

Any school can contribute to delinquency prevention and control by becoming a better school. Ideally the school should have some link with health, welfare and recreation agencies that exist in the community. Adequate playgrounds, gardens, gardens properly supervised are lacking in our cities. Absence of recreational facilities in the home and in the locality is a common deficiency in the poor area. Careful case analysis and diagnosis, including the delinquent's own story and

facilities for such studies are indispensable phases of the treatment process. We are in need of treating them with sympathetic understanding, considering them as diseased persons. Research action in India should be mainly devoted to methods of investigation and protection. This requires a careful checking of case-analysis method, record keeping and techniques of treatment. The earlier the delinquent tendencies are detected, the better it would be for its prevention and correction. Child welfare programs, intake, child welfare board system, promoting education, health and hobbies etc. are the various techniques of preventing delinquency. All these begin with the community. The “child guidance approach” in preventing the efficiency of the approach remains unexamined; there should be continuity by a community, a close cooperation between private and government agencies. The teacher may be able to detect signs that the child has difficulty in seeking personal ends without infringing on the rights of others.

3.8.6 The Role of Police

The basic functions of the police are to control violations of the law and to enforce regulations, but their activities are preventive as well as protective. The juvenile poses special problems for the police because of the generally held view that the anti-social acts of children should be treated as behaviour problems rather than as crimes.

Police department as a law enforcement agency can and must play an important part in delinquency control. It is the duty of the State and the public to safeguard the rights of the children, in whose hands the destiny of the nation will be in future. The police have been of considerable help to the juveniles in distress and difficulty. It is not the number but the quality of the police which is essential for the control of delinquency. All agencies working for the prevention of delinquency should, in liason with the police, find solution of this problem, effective court system and adequate juvenile law are equally important. The police law is a statutory responsibility with regard to prevention of crime. This is not only meant prevention of crime by the adults but also by the juvenile.

3.8.7 Creation of Social Responsibilities in Children

Parents, poor or rich, take care of the health of their children as fairly as possible, although nowadays in under-developed and poor areas they are hardly doing it in view of their low income. Many children are thus exposed to the hazards of dangerous disease. But there are certain qualities, inseparably connected with the life of the human beings, which are as important as health. The young and tender minds of the children should be protected from the unhealthy atmosphere as they are easily susceptible to bad than good, the seriousness of which will come into existence only in the later part of their life.

3.9 LET US SUM UP

In this unit we learnt the definition of forensic psychology and its roles and functions. We also dealt with in detail psychology and its relationship to the law, legal issues and legal processes. We then discussed the application of forensic psychology to civil and legal proceedings. We then described the domestic court in India and brought out the philosophical ideology behind the constituting of the family court. This was followed by the various issues pertaining to family

law. Another important aspect of forensic psychology application is in the area of competency in the court of law. In this regard we dealt with definition of competency, assessment of competency, and what all competency should a professional have and the assessment of competency in a person to stand trial in the court. Also taken up was the topic of application of forensic psychology to civil and criminal proceedings as well as to juvenile crimes. It was pointed out as to what kind of assessment are made in civil proceedings, criminal proceedings and cases related to juvenile delinquency. Application of psychology to eyewitness testimony was taken up next and the areas in which assessments are made were discussed in detail. Juvenile delinquency was then defined, and its nature and extent were discussed in addition to how to treat and prevent juvenile delinquency. Since juvenile delinquency cases do not require any punishment as such but more of rehabilitation, the details regarding the same were discussed, especially with a focus on prevention. The various intervention strategies towards prevention of crime were taken up and the many alternate routes to punishment were discussed. More importantly the ethical issues were discussed and the ethical guidelines that are pertinent to forensic psychologists were discussed.

3.10 UNIT END QUESTIONS

- 1) Define forensic psychology and discuss psychology as related to law and legal issues.
- 2) Discuss the application of forensic psychology to civil and legal proceedings.
- 3) Elucidate the various issues that pertain to family law.
- 4) Define competency. What are the various issues related to competency in the court of law.
- 5) Discuss application of forensic psychology to civil and criminal proceedings.
- 6) How do forensic psychologists assess the cases of juvenile delinquency? What are the important aspects of evaluation in the case of delinquent crimes?
- 7) Put forward the various intervention strategies in regard to juvenile offenders.
- 8) Elucidate the various ethical principles and guidelines that govern forensic psychologists.

3.11 SUGGESTED READINGS

Bartol, C.R. and Bartol, A.M. (2008). *Introduction to Forensic Psychology. Research and Application*. (2nd edition). Barnes & Nobles, NY.

Veeraraghavan, Vimala (2009). *Handbook of Forensic Psychology*. Select Scientific Publishers, New Delhi

UNIT 4 ASSESSMENT OF RISK, DANGEROUSNESS, RECIDIVISM, CRIMINAL PROFILE

Structure

- 4.0 Introduction
- 4.1 Objectives
- 4.2 Assessment
 - 4.2.1 Testing and Assessment
 - 4.2.2 Definition of Psychological Testing and Assessment
 - 4.2.3 Tools of Assessment
- 4.3 Assessment in Different Settings
 - 4.3.1 Educational Setting
 - 4.3.2 Geriatric Settings
 - 4.3.3 Counselling Setting
 - 4.3.4 Clinical Psychology
 - 4.3.5 Business and Military Settings
 - 4.3.6 Governmental and Organisational Credentialing
 - 4.3.7 Other Settings
- 4.4 Assessment in Forensic Psychology
- 4.5 Forensic Psychology Evaluation
- 4.6 Ethics in Forensic Psychology
- 4.7 Functions and Roles of Forensic Psychologists
- 4.8 Risk Assessment on an Individual Case Under Study and Law
- 4.9 Let Us Sum Up
- 4.10 Unit End Questions
- 4.11 Suggested Readings

4.0 INTRODUCTION

In this unit we will be learning about psychological Assessment, the difference between testing and assessment, and defining both testing and assessment. We then deal with tools of assessment like various tests that would be used by forensic psychologists. The next area will be to discuss about assessment in different settings, such as the educational settings, geriatric, counselling, clinical, business, governmental and related settings. There will be detailed discussion on assessment in forensic psychology and how the evaluation is done in forensic psychology. An account of ethical issues related to forensic psychology will be put forth along with functions and roles of forensic psychologists. In this unit we will be dealing with risk assessment on individual cases regarding the dangerousness etc., and the laws related to the same.

4.1 OBJECTIVES

After completing this unit, you will be able to:

- Define assessment;

- Distinguish between testing and Assessment;
- Elucidate tools of Assessment;
- Describe assessment in different settings;
- Explain assessment in forensic psychology;
- Analyse Forensic psychology evaluation;
- Elucidate the ethical issues in forensic psychology;
- Explain the Functions and roles of forensic psychologists; and
- Analyse Risk assessment on an individual case under study and Law.

4.2 ASSESSMENT

All fields of human endeavour use measurement in some form, and each field has its own set of measuring tools and measuring units. If you're recently engaged or thinking about becoming engaged, you may have learned about a unit of measure called the carat. If you've been shopping for a computer, you may have learned something about a unit of measurement called a byte. And if you're in need of an air conditioner, you'll no doubt want to know about the Btu (British thermal unit). Other units of measure you may or may not be familiar with include a mile, a nautical mile, miles per hour, and cycles per second. Professionals in the fields that employ these units know the potential uses, benefits, and limitations of such units in the measurements they make. So, too, users and potential users of psychological measurements need a working familiarity with the commonly used units of measure, the theoretical underpinnings of the enterprise, and the tools employed.

4.2.1 Testing and Assessment

The roots of contemporary psychological testing and assessment can be found in early twentieth-century France. In 1905, Alfred Binet and a colleague published a test designed to help place Paris schoolchildren in appropriate classes. Binet's test would have consequences well beyond the Paris school district. Within a decade, an English language version of Binet's test was prepared for use in schools in the United States. When the United States declared war on Germany and entered World War I in 1917, the military needed a way to screen large numbers of recruits quickly for intellectual as well as emotional problems. Psychological testing provided this methodology. During World War II, the military would depend even more on psychological tests to screen recruits for service. Following the war, more and more tests purporting to measure an ever widening array of psychological variables were developed and used.

4.2.2 Definition of Psychological Testing and Assessment

The world's receptivity to Binet's test in the early twentieth century spawned not only more tests but more test developers, more test publishers, more test users, and the emergence of what, logically enough, has become known as a testing industry. *Testing* was the term used to refer to everything from the administration of a test (as in "Testing in progress") to the interpretation of a test score ("The testing indicated that . . ."). During World War I, the process of testing aptly described the group screening of thousands of military recruits. We suspect it was at that time that *testing* gained a powerful foothold in the vocabulary of

professionals and lay people. The use of *testing* to denote everything from test administration to test interpretation can be found not only in post war textbooks (such as Chapman, 1921; Hull, 1922; Spearman, 1927) but in varied test-related writings for decades thereafter. However, by World War II a semantic distinction between *testing* and a more inclusive term, *assessment*, began to emerge.

Military, clinical, educational, and business settings are but a few of the many contexts that entail behavioural observation and active integration by assessors of test scores and other data. In such situations, the term *assessment* may be preferable to *testing*. The term *assessment* acknowledges that tests are only one type of tool used by professional assessors, and that a test's value is intimately linked to the knowledge, skill, and experience of the assessor. As Sundberg and Tyler (1962) observed, "*Tests are tools. In the hands of a fool or an unscrupulous person they become pseudoscientific perversion*" (p. 131, emphasis in the original). In most evaluation contexts, it is the process of assessment that breathes life and meaning into test scores.

Psychological Assessment, a measurement textbook by Maloney and Ward (1976), echoed the uneasiness of psychologists with the anachronistic use of "psychological testing" to describe their many varied assessment related activities. By articulating several differences between testing and assessment, Maloney and Ward clarified the rich texture of the thoughtful, problem-solving processes of psychological assessment, that is "unclumping" it from the more technician-like tasks of psychological testing.

The term *assessment* is preferable to *testing* for various evaluation situations. Consider, for example, an evaluation of a student's intelligence designed to answer referral questions about the student's ability to function in a regular classroom. Such an evaluation might explore not only the student's intellectual strengths and weaknesses but also social skills and judgment. By contrast, testing "could take place without being directed at answering a specific referral question and even without the tester actually seeing the client or testee" (Maloney & Ward, 1976, p. 9).

The semantic distinction between *psychological testing* and *psychological assessment* is blurred in everyday conversation, even in many published textbooks that make little distinction between the two terms. Yet the distinction is important. Society at large is best served by clear definition of and differentiation between these two terms as well as related terms such as *psychological test user* and *psychological assessor*.

We define psychological assessment as the gathering and integration of psychology related data for the purpose of making a psychological evaluation, accomplished through the use of tools such as tests, interviews, case studies, behavioural observation, and specially designed apparatuses and measurement procedures. We define psychological testing as the process of measuring psychology related variables by means of devices or procedures designed to obtain a sample of behaviour.

4.2.3 Tools of Assessment

There are many tools of assessment such as the test, the interview, the portfolio, the case study, behavioural observation, role play, computer as tools. Let us deal with these in some detail one by one.

The test

A test may be defined simply as a measuring device or procedure. When the word *test* is prefaced with a modifier, it refers to a device or procedure designed to measure a variable related to that modifier. Consider, for example, the term *medical test*, which refers to a device or procedure designed to measure some variable related to the practice of medicine (including a wide range of tools and procedures such as X-rays, blood tests, and testing of reflexes).

In a like manner, the term psychological test refers to a device or procedure designed to measure variables related to psychology (for example, intelligence, personality, aptitude, interests, attitudes, and values). And whereas a medical test might involve the analysis of a sample of blood, tissue, or the like, a psychological test almost always involves the analysis of a sample of behaviour.

The behaviour sample could range from responses to a pencil-and-paper questionnaire to oral responses to questions to performance of some task. The behaviour sample could be elicited by the stimulus of the test itself, or it could be naturally occurring behaviour (under observation).

Psychological tests and other tools of assessment may differ on a number of variables such as content, format, administration procedures, scoring and interpretation procedures, and technical quality.

The interview

Another widely used tool in psychological assessment is the interview, a word that may conjure images of face-to-face talk. But the interview as a tool of psychological assessment involves more than talk. If the interview is conducted face to face, the interviewer probably notes nonverbal as well as verbal behaviour, such as the interviewee's dress, manner, and eye contact. An interview may be conducted over the telephone, in which case the interviewer might make inferences about what is said as a function of changes in the interviewee's voice quality. Interviews need not involve speech, as when they are conducted in sign language. Interviews may be conducted by means of electronic media, such as e-mail. In its broadest sense, then, we can define an interview as a method of gathering information through direct communication involving reciprocal exchange.

Interviews differ with regard to many variables, such as their purpose, their length, or other restrictions under which they are conducted, and the willingness of the interviewee to provide information candidly. Interviews may be used by psychologists and others in clinical, counseling, forensic, or neuropsychological settings to help make diagnostic or treatment decisions.

School psychologists and others in educational settings may use interviews to help make decisions about the appropriateness of various educational interventions or class placements. An interview may be used to help human resources professionals make more informed recommendations about the hiring, firing, and advancement of personnel. In some instances, the process takes the form of a panel interview, wherein more than one interviewer participates in the assessment of personnel.

The portfolio

In recent years, the popularity of portfolio (work sample) assessment in many fields, including education, has been rising. Some have argued, for example, that the best evaluation of a student's writing skills can be accomplished not by the administration of a test but by asking the student to compile a selection of writing samples. From the perspective of education administrators, portfolio assessment also has distinct advantages in assessing the effectiveness of teachers. By examining teachers' portfolios and seeing how teachers approach their coverage of various topics, educational evaluators have another tool to help anchor judgments to work samples.

Case history data

In a general sense, case history data refers to records, transcripts, and other accounts in written, pictorial, or other form, in any media, that preserve archival information, official and informal accounts, and other data and items relevant to an assessee. Case history data may include files or excerpts from files maintained at institutions and agencies such as schools, hospitals, employers, religious institutions, and criminal justice agencies. Other examples of case history data are letters and written correspondence; photos and family albums; newspaper and magazine clippings; and home videos, movies, and audiotapes. Work samples, artwork, doodlings, and accounts and pictures pertaining to interests and hobbies are yet other examples.

Behavioural observation

If you want to know how someone behaves in a particular situation, observe his or her behaviour in that situation. Such "down-home" wisdom underlies at least one approach to evaluation. Behavioural observation as it is employed by assessment professionals may be defined as monitoring the actions of others or oneself by visual or electronic means while recording quantitative and/or qualitative information regarding the actions.

Behavioural observation may be used in a variety of settings for a variety of assessment objectives. It may be used, for example, as a diagnostic aid in a clinical setting or as a means of data collection in basic research. Observations may be made in laboratory or otherwise structured settings. An example of this is a researcher's observation of a child who is asked to perform some task as part of an experiment. Observation may also occur in the natural setting in which the behaviour would typically be elicited or expected to occur. This variety of behavioural observation is referred to as naturalistic observation.

Role-play tests

If you have ever enjoyed the television program *Whose Line Is It Anyway*, you may appreciate just how entertaining improvisation can be. Beyond entertainment, however, improvisational acting has a place in the context of psychological assessment. In this context, role play may be defined as acting an improvised or partially improvised part in a simulated situation. A role-play test is a tool of assessment wherein assesseees are directed to act as if they were in a particular situation. Assesseees may then be evaluated with regard to their expressed thoughts, behaviours, abilities, and other variables.

Computers as tools

Professionals who specialise in psychological and educational assessment have long recognised the value of computers in administering, scoring, and interpreting tests. As early as 1930, electromechanical scoring was available for at least one psychological test, the Strong Vocational Interest Blank (SVIB) (Campbell, 1971). By 1946, thanks to the efforts of a Minneapolis engineer named Elmer Hanks, profiling of the SVIB could be done by machine. And by the late 1950s, computers were used not only for scoring and profiling but also for test interpretation (Rome et al., 1965). With the advent of the personal computer in the 1970s, office-based test administration, scoring, and interpretation became reality. As technology has flourished, the use of computers has burgeoned.

Other tools

Varied instruments can be applied as tools of assessment. Psychologists and others who devise tools to assess people with disabilities and members of other special populations have been most innovative. For example, Wilson et al. (1982) developed a mechanism for test response involving a dental plate activated by the tongue. Useful to test takers who lack the capacity for speech or control of their limbs, the device permits five kinds of response.

Self Assessment Questions 1

1) Define Testing and Assessment?

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2) Write about the historical prospects of Testing and Assessment?

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3) State the difference between Testing and Testing?

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4) What are the tools of Assessment? Write a brief description on each one of the assessment tool?

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5) What are the variables that differ from one psychological test to the other?

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6) List the various verbal as well as non-verbal cues that can observed during an interview.

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7) Name the different settings under which an interview may be useful and in what way?

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8) Name in various forms in which one can avail of the case history data.

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9) List the situations under which behavioural observations can be useful?
10) By 1946, thanks to the efforts of a Minneapolis engineer named, profiling of the SVIB could be done by machine.

4.3 ASSESSMENT IN DIFFERENT SETTINGS

4.3.1 Educational Settings

You know from your own experience that a diagnosis may be defined as a description or conclusion reached on the basis of evidence and opinion. Typically, this conclusion is reached through a process of distinguishing the nature of something and ruling out alternative conclusions. As its name implies, a diagnostic test is a tool of assessment used to help narrow down and identify areas of deficit to be targeted for intervention. Diagnostic tests of reading, mathematics, and other academic subjects may be administered in educational settings by teachers, school counselors, and school psychologists to assess the need for educational interventions as well as eligibility for special education programs.

Schoolchildren receive grades on their report cards that are not based on any formal assessment. For example, the grade next to “Works and plays well with others” is probably based more on the teacher’s *informal evaluation* in the classroom than on scores on any published measure of social interaction. We may define informal evaluation as a typically non systematic assessment that leads to the formation of an opinion or attitude.

Informal evaluation is, of course, not limited to educational settings; it is very much a part of everyday life.

4.3.2 Geriatric Settings

Old individuals may live at home, in special housing designed for independent living, in housing designed for assisted living, or in long-term care facilities such as hospitals and hospices. Wherever older individuals reside, they may at some point require psychological assessment to evaluate cognitive, psychological, adaptive, or other functioning.

4.3.3 Counselling Settings

Assessment in a counselling context may occur in environments as diverse as schools, prisons, and government – or privately-owned institutions. Regardless of the particular tools used, the ultimate objective of many such assessments is the improvement of the assessee in terms of adjustment, productivity, quality of life, or some related variable. Measures of social and academic skills and measures of personality, interest, attitudes, and values are among the many types of tests that a counsellor might administer to a client. Because the test-taker is in many

instances the primary recipient and user of the data from a test administered by a counsellor, it is imperative that the counsellor understand the strengths and limitations of the findings and be able to competently convey the test results to the client.

4.3.4 Clinical Psychology

Tests and many other tools of assessment are widely used in clinical settings such as public, private, and military hospitals, inpatient and outpatient clinics, private-practice consulting rooms, schools, and other institutions. These tools are used to help screen for or diagnose behaviour problems. What types of situations might prompt the employment of such tools? A few examples are given below:

- A private psychotherapy client wishes to be evaluated to see if the assessment can provide any non-obvious clues regarding his maladjustment.
- A school psychologist clinically evaluates a child experiencing learning difficulties to determine what factors are primarily responsible for it.
- A psychotherapy researcher uses assessment procedures to determine if a particular method of psychotherapy is effective in treating a particular problem.
- A psychologist consultant retained by an insurance company is called on to give an opinion as to the reality of a client's psychological problem. Is the client really experiencing such problems, or just malingering?
- A court-appointed psychologist is asked to give an opinion as to a defendant's competency to stand trial.
- A prison psychologist is called on to give an opinion regarding the extent of a convicted violent prisoner's rehabilitation.

The hallmark of testing in clinical settings is that the test or measurement technique is employed with only one individual at a time. Group testing is used primarily for screening; that is, identifying those individuals who require further diagnostic evaluation.

4.3.5 Business and Military Settings

In business, as in the military, tests are used in many ways, perhaps most notably in decision making about the careers of personnel. A wide range of achievement, aptitude, interest, motivational, and other tests may be employed in the decision to hire, as well as in related decisions regarding promotions, transfer, job satisfaction, and eligibility for further training. For a prospective air traffic controller, successful performance on a test of sustained attention to detail may be one requirement of employment. For promotion to the rank of officer in the military, successful performance on a series of leadership tasks may be essential.

Another application of psychological tests involves the engineering and design of products and environments. Engineering psychologists employ a variety of existing and specially devised tests in research designed to help people at home, in the workplace, and in the military. Products ranging from home computers to office furniture to jet cockpit control panels benefit from the work of such research efforts.

Using tests, interviews, and other tools of assessment, psychologists who specialise in the marketing and sale of products are involved in taking the pulse of consumers— helping to predict the public’s receptivity to a new product, a new brand, or a new advertising or marketing campaign.

4.3.6 Governmental and Organisational Credentialing

One of the many applications of measurement is in governmental licensing, certification, or general credentialing of professionals. Before they are legally entitled to practice medicine, physicians must pass an examination. Law school graduates cannot hold themselves out to the public as attorneys until they pass their state’s bar examination. Psychologists, too, must pass an examination entitling them to present themselves to the public with the title “psychologist.” Members of some professions have formed organisations with requirements for membership that go beyond those of licensing or certification requirements.

Psychologists specialising in certain areas may be evaluated for a diploma from the American Board of Professional Psychology (ABPP) to recognise excellence in the practice of psychology. Another organisation, the American Board of Assessment Psychology (ABAP), awards its diploma on the basis of an examination to test users, test developers, and others who have distinguished themselves in the field of testing and assessment.

4.3.7 Other Settings

Many different kinds of measurement procedures find application in a wide variety of settings. For example, the courts rely on psychological test data and related expert testimony as one source of information to help answer important questions such as “Is this defendant competent to stand trial?” and “Did this defendant know right from wrong at the time the criminal act was committed?”

Tools of assessment can be found in use in research and practice in every specialty area within psychology. For example, consider health psychology, a specialty area that focuses on understanding the role of psychological variables in the onset, course, treatment, and prevention of illness, disease, and disability (Cohen, 1994).

Health psychologists are involved in teaching, research, or direct-service activities designed to promote good health. Individual interviews, surveys, and paper-and-pencil tests are some of the tools that may be employed to help assess a current state of affairs with regard to some disease or condition, gauge treatment progress, and evaluate outcome of intervention.

Of course, psychological testing and assessment is not confined to health psychology. It is very much a part of *all* specialty areas within psychology and education. Further, what constitutes a “test” may take many different forms. There you will find a very small sample of the tens of thousands of measurement methods that have been used in one situation or another. They are not presented here to illustrate the most typical kinds of assessment procedures, but rather to illustrate the diversity of measuring tools that have been created for varied uses. In short, if a need exists to measure a particular variable, a way to measure that variable will be devised.

4.4 ASSESSMENT IN FORENSIC PSYCHOLOGY

The forensic assessment has to be in extreme detail and follow certain uniform rules and regulations. Not only the crime scene visited needs to be recorded in detail with the help of experts, there is also a need to review the relevant information and the related files in regard to a particular case. Both secondary and primary data have to be collected so as to deliver fair justice to the person concerned. For instance the information from secondary source to be obtained include:

- Crime and police reports.
- History of psychiatric illness and related records of the person concerned.
- Records in regards to serving a term or two in the prison for the crime committed as a juvenile or as an adult.
- If the person had been institutionalised in a mental hospital, records pertaining to the same have been obtained.
- If the individual had undergone any psychiatric treatment, the same should be given in detail.
- Educational history of the individual.
- As for the information form primary sources, a detailed personal interview is to be conducted with the person concerned.

Test that are used in Forensic Psychological Assessment:

- Intelligence test
- Achievement and Aptitude Test.
- The MMPI Test
- The Rorschach Test
- Thematic Apperception Test
- House, Tree, Person Test
- The Kinetic Family Drawing
- Beck's Depression Inventory
- Neuropsychological Test

4.5 FORENSIC PSYCHOLOGY EVALUATION

A “Forensic Psychology Evaluation” involves more than a standard psychological evaluation. The forensic psychologist is trained in psychometry and so is an expert who has extensive experience in administering a wide range of psychological tests that aim to answer certain legal questions. Many of these evaluations are related to criminal Proceedings which include the following:

- Trial Competency
- Waiver of Miranda Rights
- Criminal Responsibility
- Death Penalty Mitigation

- Impact of Mental Illness or Substance Abuse on Behaviour
- Malingering
- Civil Proceedings and Commitment
- Personal Injury
- Mental Disability
- Employment Discrimination
- Professional Malpractice
- Neuropsychological functioning (e.g. Memory problems, dementia).

Self Assessment Questions 2

1) What are the different settings under which assessment is usually conducted and describe each one of them in 2 sentences?

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2) What is a diagnostic test?

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3) Define informal evaluation.

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4) What is the objective of assessment in counselling settings?

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5) Name 3 situations wherein clinical assessment is carried out and for what purpose?

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6) List the wide range of utilisation of assessment in business and military settings?

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7) Name any 5 Test utilised in Forensic setting?

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8) List a few legal questions that a forensic psychologist should be able to answer in the court of law?

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4.6 ETHICS OF FORENSIC PSYCHOLOGY

There has always been an agreement among the professionals on a need to have a set of ethical guidelines and code of conduct to regulate, educate and inspire the practitioners (Grisso, 2005; Committee on Ethical Guideline for Forensic Psychologists, 1991). Hess (2006) urges the forensic psychologist to assume an obligation to practice the profession in a way that serves the public and not merely the individual profession. Various authorities that regulate the field of forensic psychology have articulate principles, codes, guidelines and standards for the practitioners.

For example the APA has described five principle of practice including

- 1) Beneficence and malfeasance,
- 2) Fidelity and Responsibility,
- 3) Integrity,
- 4) Justice and
- 5) Respect for people rights and dignity.

There are a number of standards for practicing forensic psychologists, covered by most of the regulating bodies including the test suggested by the APA, briefly described below:

- 1) *Responsibility*: This reflects the need for service to be provided in a forthright, responsible manner, reflecting the high standards of the profession.
- 2) *Competence*: This stresses that the services should be provided only if the person has specialised education, knowledge, skills, and / or experience along the necessary cultural competence.
- 3) *Relationship*: This urges the need to focus on the well-being of the client and also stresses the importance of the informed consent by providing information on their rights, anticipated costs, etc.
- 4) *Privacy and Confidentiality*: This reminds that efforts should be made to maintain confidentiality of information that does not bear directly on their legal purpose of services provided.
- 5) *Advertising and Public Statements*: This reminds the profession to avoid false claims and of the need of claims to be modest without guaranteeing any outcome.
- 6) *Methods and Materials*: This recommends accepted clinical and scientific standards for scholarly / empirical investigation, need for active testing of plausible rival hypothesis, minimising reliance upon hearsay, and exercising extreme caution in preparing reports or other documentation, applying such details and quality to the documentation so that the standards is higher than that for a general clinical practice.
- 7) *Research Methodology and Publication*: This cautions the professional of the ethics in using data that can go against those who gave consent for studies, 'assistants' interacting with clients in large scale studies and revelation of sensitive information while publishing.
- 8) *Communications*: This recommends every reasonable effort to be made to avoid any misunderstanding, misuse, or misinterpretation of services, evidence, and testimony, however, avoiding any out-of-court statements, considering the seriousness of the legal matters in hand.
- 9) *Education and Training*: This basically stresses the need for quality in terms of level of education and training required to handle delicate and sensitive issues like legal matters.

An analysis of these standards clearly reflects the need for integrity and social responsibility in forensic psychology as essential components of an ethical practice. It is vital for a practitioner to know the principles and ethical guidelines to offer quality services based on high level of proficiency achieved through knowledge, skills, education, training, and experience.

4.7 FUNCTIONS AND ROLES OF A FORENSIC PSYCHOLOGISTS

Criminal profiling of the offenders

This is done by the forensic psychologist using information of the crime, interviews and psychological instruments and also witness accounts, to infer characteristics about the likely offender. The defence uses this information and the forensic psychological report to formulate their legal arguments in front of the judge.

Forensic psychologist deal in both civil and criminal cases, such as compensation when one person / party has interfered with another's rights. In such cases compensation is the remedy, for which considerable expert psychological evidence is required. In certain cases identifying symptoms of; post traumatic stress disorder from the basis of compensation.

Dealing with sexual harassment of cases

Another area in which the forensic psychologists contribute in the criminal cases such as sexual harassment. The forensic psychologists assess the mental and emotional damage caused to the victim as a result of sexual harassment. For instance, anxiety, depression, withdrawnness, suicidal tendencies, drug and alcohol abuse, and other acting out behaviours are assessed by the forensic psychologist. He has to determine whether any of these conditions exists and to what extent they may be related to the sexual harassment alleges in the lawsuit.

Assessment of competency to stand trial

Forensic psychology contributes to the assessment of the client as to whether he has the competency to stand trial. That is, if the client is fit enough mentally to plead his case, whether possesses cognitive abilities to defend himself, etc. The forensic psychologist after making such assessment provides evidence in the court regarding the competency of the incumbent to stand trial and defend himself as well as medical, psychiatric or psychological status of the client.

Assessment of cases that come before the Family Law

Family law is the area, which is relatively a new area wherein the forensic psychologist provides evidence in the court. This deals with modern family problems and protection of children. The Forensic Psychologist investigates facts relating to physical and sexual abuse of a child, domestic violence, foster care, and child custody. After due assessment and investigation, he provides evidence in the court regarding these aspects and helps the court to decide in the best interest of the family. Using techniques like anatomical doll, interviews, play sessions, drawing and painting, the psychologist is able to understand the trauma caused to the child by the physical and sexual abuse and presents these as evidence in the court. In certain cases where the children need protection and care, they

may also advocate foster for which these cases children who need a substitute family and presents their recommendations to the justice system in order to secure a safe and healthy environment for the children to proper and grow.

Assessment of victims of domestic violence

In India and elsewhere most domestic violence that are reported, or come under the purview of the legal system, take the form of spousal abuse and may at times overlap with child abuse too. The Forensic Psychologist through many techniques and assessment tools is able to ascertain the extent of damage or harm caused mentally and physically to the victims and uses these findings as evidence in the court so that justice could be ensured to the victim.

Assessment in regard to child custody cases

Forensic Psychologists are also called upon to assist in child custody cases. This often includes custody disputes which may arise when the divorcing parents are not able to agree on residential and parenting arrangements of their children or when one parent uses the issue as a wedge against an unfavourable divorce outcome. Custody disputes often involve determinations about visitations. Sometimes, the Forensic Psychologist evaluates a visitation dispute, rather than an argument over custody.

In certain cases, they may have involved in mediating if couples are motivated to be child-centered in their custody negotiations and both parents are able to trust and work with the mediator. Mediation has been heralded by some as an important alternative to the adversarial system of custody disputes.

Self Assessment Questions 3

1) What does Hess urge a forensic psychologist to assume?

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2) As per the APA what are the 5 principles of practice with regards to forensic psychology?

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3) What are the standards as per the APA for individuals practicing forensic psychology? Describe each one of them in brief?

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4) What are the two essential components of an ethical practice in forensic psychology?

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5) State the role of a forensic psychologist in the competency of an individual to stand trial?

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6) Mention the examples wherein the application of forensic psychological assessment can be of utmost use.

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4.8 RISK ASSESSMENT ON AN INDIVIDUAL, CASE UNDER STUDY AND LAW

Risk assessment is a dangerous tool in its infancy despite having been part of forensic and criminal psychology. Traditionally, recidivism has been the crucial topic. This is the likelihood that an offender will reoffend after release or some other stage in the future.

Conceptually, there is an obvious distinction made between the statistical risk of the occurrence of an event in the future and the dangerousness of the event. The prediction of dangerousness seems to refer to two distinct professional activities (Hodgins, 1997):

- a) Deciding which patient or clients or offenders will behave violently or aggressively or criminally.
- b) Identifying the particular condition in which a specific individual is likely to behave violently, aggressively or criminally.

There are many different activities by knowing more about the condition encouraging violence, say, in particular individual, we may be in a position to make more accurate predictions of their dangerousness.

There is imply no universal predictor of future behaviours and the factors predicting different types of behaviours are different.

For criminal behaviours and other behaviours, a number of effective but simple predictor variables have been established. These are largely associated with the age of the offender – youthful offender are more likely to reoffend – and criminal history – those with most criminal offences are the most likely to reoffend. Such indicators are readily, systematically measureable and are prime aspects in predicting future behaviour (Clark, 1999). One difficulty is the non-dynamic nature of these predictions. They would give the prisoner the same likelihood of reoffending when his term of imprisonment starts as when it finishes. Thus, if the prisoner has received therapy within the prison context, there will be perhaps should be some adjustment to the prediction (i.e. successful therapy might reduce reoffending) but the data available are not sophisticated enough to allow that to be done.

Care should be taken to distinguish between:

- 1) Those factors that predict dangerousness in an individual, and
- 2) The factors that caused that particular individual to be a danger to others (Hodgins, 1997)
- 3) This distinction between predictors and causes is important.

The predictors of dangerousness are often very simple factors such as age and previous history of crime. The causes of crime are multiple and complexity interrelated. Genetic is one of the causes but it does not mean that we have the technology to identify precisely what genes are involved - thus we have no genetic test. Research may show that a long history of crime is strongly correlated with future violence. We can use history of crime as an indicator of likely future violence. Some predictors may turn out to be causes of violence.

Risk and dangerousness prediction is at the moment rather inexact and we are unlikely ever to have perfect predictors. In particular, at this time we do know how stable risk factors are across different forensic population (types of offenders, location of offenders). This sort of uncertainty led Monahan (1993) to argue that all organisations dealing therapeutically or otherwise with potentially dangerous client population (including all forensic settings) should adopt the following principles:

Experts in assessing client dangerousness should be employed in all.

All therapist should collect data on the risk demonstrated by their client pool as part of an effort to extend knowledge in the field.

Data on risk and dangerousness are potentially of value to the practitioners. Consequently it is incumbent on practitioners to communicate their findings to other practitioner's decision makers working with potentially dangerous client populations.

Some authors stress the positive aspects of risk assessment (e.g. Glover, 1999). If risk had only negative outcomes (such as general public suffering violent assaults) then there would be no reason to take that risk. Just leave the offender behind bars which reduces the risk to the general public to the very minimum. It is because we want the positive benefits of taking the risk that we rake that risk. For example, we may feel it more humane to release prisoners into the community whenever possible or we may seek the economic benefit of not having to pay the high financial costs of keeping the offender in prison.

Self Assessment Questions 4

1) What are the two professional activities that can predict dangerousness?

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2) What are the predictive variables of criminal as well as other behaviours?

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3) State the principles listed by Monahan (1993) towards all organisations dealing therapeutically or otherwise with potentially dangerous client population?

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4.9 LET US SUM UP

The decisions that are made by practitioners about the disposal of offenders may increase the chances of public becoming victims. Risk and dangerousness assessment is a technique developed to limit the levels of risk and danger while at the same time providing less restrictive arrangements for offenders.

This is not a precise science though empirical studies have demonstrated that certain variables predict future behaviours reasonably well. These include historical factors such as background of violent offending. Some psychological measures such as the psychopathy checklist are also effective.

Different types of offences require different predictor variables. So the predictors of sexual reoffending. The predictors of suicide may also be different.

The criteria stipulated that define recidivism may have a big influence on the likelihood of recidivism. Thus, for sex offenders, the likelihood of committing any type of crime may have much higher than committing a sexual crime.

Clinical approaches tend to be varied. These are methods that rely in part on the skills of the psychiatrist or psychologist. Generally, the clinical approach is regarded as ineffective. This seems to be more true of unstructured clinical work. There is evidence that structured guides to risk and dangerousness assessment may be very effective in some circumstances. Generally speaking, one should be little cautious concerning the criticism of the clinical method since there is good reason to think that some clinical variables ought to increase the accuracy of predictions. One should not confuse sloppy and bad practices with the best clinical work can do. It should be stressed that many clinicians do not see things this way

Mistakes are inevitable in predictions. It is harder to predict rare events than common events. The number of false positives and false negatives are important. False negatives are the offenders who are declared safe but actually reoffend. False positives are those who are declared a risk but do not offend. Prediction is easier for common events than uncommon events.

4.10 UNIT END QUESTIONS

- 1) What is assessment? Distinguish assessment from testing? Give suitable examples.
- 2) What are the various tools of assessment? Describe
- 3) Elucidate forensic psychology assessment in educational and counselling settings.
- 4) What are the important features of forensic psychology assessment in geriatric setting?
- 5) Compare forensic psychology assessment in business and government settings.
- 6) What are the important ethical considerations in forensic psychology assessment?
- 7) Define risk assessment and bring out the typical forensic psychology assessment in this regard.

4.11 SUGGESTED READINGS

Howitt, Dennis (2002). *Correlates of Crime*. Pearson Education, NY

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