
UNIT 3 FORENSIC PSYCHOLOGY IN CIVIL AND CRIMINAL LEGAL PROCEEDINGS AND JUVINILE CRIMES

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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 (Cicchone, 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 maleficance*: 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