

THE USE OF PSYCHOLOGY IN THE ADMINISTRATION OF JUSTICE IN SRI LANKA - A Point of View -

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Psychology and its specialities

Psychology is a science concerned with the study of behavior, both human and animal, and is therefore interrelated with other disciplines including philosophy, biology and sociology (Myers, 1996). In the minds of most though, psychology is connected with mental disorders (clinical psychology) or with assisting the resolution of relationship problems (counselling psychology). Seemingly there is a lack of understanding that psychology – as the study of human and animal interactions – also encompasses how these organisms perceive the world around them and how they react to these perceptions. Interactions of this kind may be observed in all areas of human activity. The areas of investigation for psychologists are therefore vast and varied as illustrated by the many specialized fields of psychology open for study, such as; Organizational Psychology, Environmental Psychology, Educational Psychology, Forensic Psychology and Sports Psychology.

Central to the psychological inquiry are the answers to the question *why*. From this core question stems the development of psychological theories of human functioning, often expounding new approaches to current knowledge. It can thus clearly be seen that both ‘normal’ and ‘abnormal’ behavior are within the domain of psychologists (Myers, 1996). Although psychology is a comparatively young science, it is very fluid, and hence may influence other disciplines, particularly those focused on elements of human interactions, such as: Engineering, Management and Law. However, the

cornerstone of psychological practice still revolves around the investigation, intervention and treatment of mental, behavioral and emotional problems, whatever its source; be it stress associated with ones’ working environment, trauma or shock following a catastrophic life event or the development of a particular mental illness such as social phobia. From here either autonomously or within a multidisciplinary team, psychologists seek to offer up answers and formulate methods for intervention.

A professional may only be deemed a psychologist if she or he has a first degree in psychology and further post graduate training in psychology to masters or doctoral level (Marzillier & Hall, 1999). In Sri Lanka, recognition as a psychologist requires training to masters level, however, in other countries training to doctoral level is the norm (e.g. United Kingdom and The United States of America). As highlighted above, Psychology is a vast discipline with numerous specialties and sub-specialties. For instance, clinical psychologists possess specialized training in working with people with mental illness. They either may work independently or in a team setting (with other mental health professionals such as psychiatrists and social workers) and subsequent to assessing and diagnosing patients, they may provide psychotherapy to their clientele (Marzillier & Hall, 1999). Organizational psychologists on the other hand are those with specialized knowledge on the human facets in an organizational or institutional setting. Typically, their work may involve, among others, trade union negotiations, psychological testing for employee recruitment and, executive

coaching. Educational psychology, another specialty in psychology, links with education and hence these psychologists may be involved in work such as designing curriculum and pedagogy to ensure students are able to learn in the most effective way, including those with learning difficulties. Though these and other specialties of Psychology are distinct, due to the nature of their training in the human mind and behavior, there is considerable overlap between the work undertaken by these different types of psychologists. In Sri Lanka, the number of psychologists is small; figures indicate there are only about 20 psychologists (of varying specialties) working in the entire country (De Zoysa & Ismail, 2001). Hence, in many contexts where the services of a psychologist are required, there may not be a suitably qualified person to fulfill this need.

The speciality of Forensic Psychology

The specialty of forensic psychology is most closely linked with the administration of the justice system. Forensic psychology (sometimes also referred to as legal psychology or criminal psychology) is concerned with the psychological dimensions of legal processes. Key tasks undertaken by forensic psychologists include crime analysis and criminal profiling; presenting expert evidence in court, particularly in relation to the mental status of an alleged victim or perpetrator; providing research evidence to support the dispensation of criminal and civil justice; undertaking statistical analysis for prisoner profiling; piloting and implementing treatment programs for offenders; modifying offender behavior; advising parole boards and mental health tribunals; and responding to the changing needs of prison staff and prisoners. Forensic psychologists may be employed by the prison service, the police service, in the social service (including young offenders units and the probation service), in the health service (including rehabilitation units and secure hospitals), and in university

departments or in private consultancy (British Psychological Society, 2010).

Within the criminal justice system, in addition to psychiatrists, forensic psychologists, may also work with persons of questionable mental status. These two disciplines are closely related, yet each has a distinct focus. Forensic psychology is involved with understanding a suspects', or an accused persons' or a prisoners' mental status. Forensic psychiatrists, on the other hand, are focused on diagnosis and management of a mental illness, identifying, and categorizing the specific symptoms of mental disorders etc. Forensic psychiatry therefore focuses on determining the type of mental disorder the person has and thereby assessing his or her criminal responsibility or liability. Forensic psychologists, due to the nature of their training and experience, approach legal issues differently to forensic psychiatrists. Whilst both forensic psychologists and forensic psychiatrists are called to work on behalf of either the prosecution or the defense, forensic psychologists are responsible for determining the mental capacities of the person concerned. This may, for example, involve measuring the victim's intelligence level (say, in the case of rape and assessing the ability to give consent in sexual activity) or evaluating reading ability. These mental capacities may be assessed by administering psychological tests and/or a through a clinical interview with the person concerned. In terms of the respective training that forensic psychologists and psychiatrists must undertake, there is a difference in focus and emphasis. Forensic psychiatrists start their careers by completing a five-year medical degree. They then complete post graduate training for several years in general psychiatry and further training in the track of forensic psychiatry. Forensic psychologists on the other hand, having obtained a degree in psychology, usually obtain either a masters or a doctorate in psychology, with a specialist track relating specifically to forensic psychology. Since a doctorate demands a greater component of research-based training, forensic psychologists have

the exposure to, and understanding of a broad range of research materials and tools, which they can draw upon and utilize when working in the field.

Forensic psychology in Sri Lanka

As in other specialties of psychology, forensic psychologists need to have a first degree in psychology and postgraduate training in forensic psychology, at least up to the masters level. Since psychology is a young discipline in Sri Lanka (De Zoysa & Ismail, 2001) there are no known forensic psychologists in the country. However, there are a few other specialists such as clinical psychologists, educational psychologists and developmental psychologists (De Zoysa *et al*, 2010) who are called upon to provide forensic psychology services to the justice system of the country (De Zoysa, 2002). Clearly, these other specialists cannot offer the breadth of specific services that a specialized forensic psychologist could offer the administration of justice. The unique training of a forensic psychologist, in both psychology and the law, equips them to offer a unique suite of skills and knowledge. But, in the absence of these specialists, the justice system can still gain valuable input from already available clinical, educational and developmental psychologists, as well as other psychology specialists where appropriate, in the administration of justice. For example, as discussed above, clinical psychology is a speciality of psychology concerned with the assessment and management of mental illness and abnormal behaviour preferably in a team set up. This field integrates the science of psychology with the management of complex human problems, including mental illnesses. Due to this expertise, a clinical psychologist might be called upon to provide mental health services such as assessment and provide clinical management assistance to individuals who have come into contact with the criminal justice system. They may also be asked to provide expert evidence on a range of conditions such as alleged child abuse (De Zoysa, 2002) and capacity to give consent to sexual activity (say, in the event of suspected rape).

Providing psychological evidence in court: Possibilities and issues in the Sri Lankan context

Across the globe, it is now over a century since psychologists first furnished courts with psychological expert evidence (Gudjonsson, 2003). However, in Sri Lanka, it is the authors' observation that psychologists (typically clinical psychologists) have been called on to do such work only within the last decade. Be it globally or in Sri Lanka, the scope of forensic psychology has grown and there is an increased demand for psychological reports and other psychological services in the administration of justice. This growth is seen both in criminal (e.g., in the assessment of alleged child abuse) and civil proceedings (e.g., in child custody issues in divorce proceedings). In the absence of forensic psychologists in Sri Lanka and their specialized contribution to court work, other specialties of psychology in the country (such as clinical, educational and developmental psychologists) can be called upon to contribute in the following ways:

1. Expert opinion regarding psychological conditions – because of clinical psychologists' training, they may be called upon to evaluate the existence of a psychological condition in an alleged victim, suspect or even a witness. In the Sri Lankan context, this is particularly so in the case of alleged child abuse where based on the authors' experiences clinical psychologists are increasingly called upon to assess and establish such allegations.
2. Child custody evaluations – given clinical or developmental psychologists' training in mental health, family functioning, and psychological conditions, they could be called upon to offer opinion regarding the most suitable custody arrangements at the time of a parental separation or divorce. Although this role is mainly played by

social workers in a team set up , in the absence of such an entity in Sri Lanka, a psychologist may assist in regard.

3. The revision of laws – recent advances in psychological research has revealed much about human psychological functioning. These advances have been applied practically, including in the revision of the laws of the country. For instance, since the 1970's, homosexuality ceased to be considered a mental illness and is now considered a matter of sexual orientation along with heterosexuality. However, these advances in research into sexuality are not reflected in Sri Lankan laws where homosexuality remains a criminal offence. Psychologists therefore could contribute to the work of committees that are involved in the revision of these out dated views to ensure such changed norms are incorporated into the laws of Sri Lanka.

Despite the potential contribution that psychology could make to the administration of justice in Sri Lanka, the authors believe that most psychologists, and indeed most other health professionals, are reluctant to become involved in court work. Arguably there are various reasons for this, key amongst them is that psychologists in Sri Lanka find it difficult to balance the massive demands made on their time. For instance, there are only a handful of clinical psychologists (and only five are in the government sector) for a population of more than 20 million people in the country (De Zoysa, 2002). As these psychologists are not specialist forensic psychologists, they also have other mandatory duties to attend to, such as attending to those with mental illnesses. It is difficult for this small group of professionals to juggle these other duties with court work, a fact further compounded when travel to other parts of the country is required in order to give expert evidence at the time of a hearing. There are also other reasons for psychologists to feel rather reluctant to become involved in forensic work: first by furnishing a written report to the court the psychologist is often

subsequently summoned at trial as well. Secondly, a reluctance to undertake forensic work also stems from the protracted carriage of cases, which are often postponed several times, taking months or even years to reach a final verdict. The reality is that, having to attend court hearings many times over each time a case is postponed or adjourned deprives the psychologist from too much time from what is already a demanding work schedule. The following example from one of the author's clinical work typifies the problems identified above:

A paediatrician referred two children, aged 3yrs and 5yrs, to the author for a psychological assessment due to an alleged occurrence of sexual abuse by the children's father. The first contact between the author and children was in September 1999. The author was able to assess the children, confirm the alleged sexual abuse and present the assessment report within a few weeks. The author was then summoned to courts seven times. Thus, the author had to present herself at courts in response to these summons, cancelling all her other professional commitments, only to be notified on the designated day that the case was once again postponed. Finally the author had the opportunity of presenting her evidence on August 2001.

Importantly, this example represents the rule rather than the exception in the Sri Lankan judicial system. In fact, most cases are delayed for more than the two years required for this particular case to be finalised. Needless to say, this situation is far from satisfactory and makes others shy away from appearing in cases of child abuse. One possible solution to this problem, other than speeding up court processes, might be to reduce court summons and rely solely on the psychologists' report. However, relying solely on the report has its own disadvantages too, including that such an approach may be seen to compromise the accused's right to a fair trial in the absence of an opportunity for cross-examination of the reporting psychologist. Appropriate safe-guards would have to be put into place

to ensure the interests of the administration of justice are not traversed.

Concluding thoughts

It is clear that psychologists play a critical role in the administration of justice in Sri Lanka, however, given the small number of psychologists in the country and the current absence of specialist forensic psychologists, greater attention needs to be directed to how other specialist psychologists can best service the needs of the administration of justice with due regard for the competing and often unreasonable workload demands placed on this small but clearly indispensable group of professional psychologists.

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References

1. British Psychological Society. Viewed 18 August 2010, <<http://www.bps.org.uk>>, 2010.
2. De Zoysa, P. (2002). Child sexual abuse in Sri Lanka: the current state of affairs and recommendations for the future. *Journal of Child Sexual Abuse*, 11, 97-113.
3. De Zoysa, P., & Ismail, C. (2001). Psychology in an Asian country: A report from Sri Lanka. *International Review of Psychiatry*, 2, 110-111.
4. De Zoysa, P., Cogill, S., Ismail C., Wanigaratne, S., Yule, B., Tribe, R., & De Silva, P. (2010). Teaching clinical psychology in Sri Lanka. *Proceedings of the 12th International Conference on Sri Lanka Studies*, Colombo, Sri Lanka.
5. Grubin, D. (1996). *Fitness to plead in England and Wales*. Hove, UK: Psychology Press.
6. Gudjonsson, G. H. (2003). *The psychology of interrogations and confessions. A Handbook*. Chichester: John Wiley & Sons.
7. Marzillier, J. & Hall, J. (1999). *What is clinical psychology*. 3rd Ed. Oxford: Oxford University Press.
8. Myers, D. G. (1996). *Exploring Psychology*. 3rd Ed. New York: Worth Publishers.