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# UNIT 16 PUBLIC POLICY AND FORENSIC PSYCHOLOGY<sup>1</sup>

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## Structure

- 16.0 Objectives
- 16.1 Introduction
- 16.2 Forensic Psychology and Criminal Justice System
- 16.3 Application of Forensic Psychology in Policy Making and Decision Making
- 16.4 Let Us Sum Up
- 16.5 References
- 16.6 Key Words
- 16.7 Answers to Check Your Progress
- 16.8 Unit End Questions

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## 16.0 OBJECTIVES

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After reading this unit, you will be able to:

- discuss forensic psychology and criminal justice system; and
- describe the application of forensic psychology in policy making and decision making

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## 16.1 INTRODUCTION

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As we know that a forensic psychologist plays various relevant roles in the context of law and justice system. Thus, he/ she is also in position to influence public policies. The experiences of the forensic psychologists can be utilised in improving or framing better public policies. Thus, in the very last unit of this course, we will discuss about forensic psychology and criminal justice system and we will also discuss about the application of forensic Psychology in policy-making and decision-making.

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## 16.2 CRIMINAL JUSTICE AND FORENSIC PSYCHOLOGY

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Before taking up the relationship between criminal justice and forensic psychology, it is important to define these two disciplines to understand how Forensic psychology contributes to criminal justice and what is its specific role vis a vis criminal justice.

Taking criminal justice first, it can be defined as the delivery of justice. It has within it many agencies and institutions of the government and it not only

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delivers punishment for the crime committed, but also rehabilitates offenders, takes measures to prevent further crimes and provides moral support to victims. The criminal justice system consists of inter related aspects such as the academia, law enforcement, forensic services, the judiciary and corrections. All these support the ideals of legal justice, which is the result of aiming to take care of the rights of people as envisioned in the constitution. The professionals involved in the criminal justice system obey certain ethical principles which shows the competence, reliability, accountability and trustworthiness of these professionals.

Criminal Justice comprises of the following components

- law enforcement officers,
- correction officers,
- judges , lawyers, paralegals,
- probation and parole officers,
- mental health professionals and
- para professionals.

Each of these professionals has certain perspectives on offending behavior, the punishment and rehabilitation aspects. Coordinating all their tasks on a case is a challenge for the criminal justice system. In addition, the criminal justice deals with research areas. The officials in this initiate research which would contribute to improving criminal justice outcomes. These research initiatives cover the four components of the Criminal Justice System, which are the law enforcement, the courts, the correction and the legislation.

Now taking up the definition and description of forensic psychology, it may be stated that it is a branch of psychology which is related to Law. The main part of forensic psychology is to work with the criminal justice system. It is the study of clinical psychology in legal situations. It is thus an application of psychology to issues that involve the law and legal system. If qualified, they may work in both civil and criminal courts dealing with cases belonging to the concerned area of the criminal justice system.

Historically, forensic psychology is a relatively new area, though professionals in the criminal justice system , like the judges and others have often wondered why certain crime and what type of people commit crime, why some choose the antisocial ways of life, and so on. However, with the arrival of forensic psychology, the relatively new field relating to Law, many of these issues are being answered through research and experience. The first effort in the direction of forensic psychology was in 1879, with Wilhelm Wundt, the forensic psychology blossomed. Many experts like J.M.Cattell, Alfred Binet and others tried their hands at research on the psychology of testimony. Experiments in eyewitness testimony etc. were taken up for research by these experts and they raised the issue of the unreliability of these witnesses in the Court. Cattell's work was replicated by Alfred Binet, who studied the intelligence among criminals and victims, to understand the importance of the same in forensic psychology. Based on Binet's work, many experts worked in this area and were able to devise many assessment tools that could be used in the courts of Law by forensic psychologists.

With these efforts, forensic psychologists started working as expert witnesses in criminal trials throughout Europe. Hugo Munsterberg, a German Psychologist, while using psychology for day to day application also was responsible for the development of forensic psychology. In 1915, he published a book, "On the witness stand", advocating use of psychology in legal matters. In 1923, Marston testified in the court in the case of Frye vs the United States. This case established the precedence for the use of forensic psychologists as expert witness in courts. World War II pushed the use of forensic psychology in cases in the courts. Forensic psychology was officially recognised as a specialisation by the American Psychology Association in the year 2001. Since then it has continued to grow and evolve during the past 3 decades.

The forensic psychologists help and assist in the criminal justice processes. They apply the principles of psychology to criminal investigation and participate in the criminal trials by ascertaining and also assessing the mental state of the accused or the victim who ever is referred for such service. Their involvement in criminal proceedings include evaluations and assessments treatment and consultations

In regard to evaluations and assessments, they assess the psychological state of the person for legal purposes, in order to acquire information for criminal court proceedings, or for releasing a prisoner on probation or parole, or sentencing criminals. They also do these evaluations and assessments for cases on trial in the family courts as well as in civil courts. Forensic psychologists function as expert witnesses and testify about their tests, assessments and evaluation regarding the person concerned which helps the courts to take a clear decision based on the forensic psychological report.

The next important function of forensic psychologist is treatment. This includes treatment of psychological problems to reduce and prevent crime. Treatment is provided in both criminal and civil cases. In criminal courts, they deal with cases related to drugs and substance abuse, mental illnesses and those who repeatedly indulge in crime (recidivism), and help them to change their behaviour. In the cases of civil court, forensic psychologists work with families, and also couples going through divorce proceedings and child custody issues. They also provide treatment for those who suffer from psychological problems because of trauma.

Other duties performed by forensic psychologists include providing important information about the motivation, personality traits, attitudes, etc. of the criminals and the victims and pass on this knowledge to the judges, lawyers of both sides as well as the prosecution, so that judgement is passed in a fair and logical as well as just manner to both accused and the victims. Forensic psychologists abroad are also involved in jury selection by applying their psychological expertise.

Amongst the many consultations they provide the important ones include, law enforcement consultations, trial consultations, expert testimony and academics and research.

The forensic psychologists work with lawyers, legal professionals, and advise them on the many aspects of the individuals as well as the nature and type of

crime, the reasons and motivations to commit the crime etc. All these are based on their research evidence and thus the consultation and advice provided are basically neutral, not favouring any side, thus helping in the process of fair judgement.

In addition to these varied duties, the forensic psychologists function as expert witnesses in the court of law. They provide expert testimony on subjects in which they have thorough and specialised knowledge, such as in mental health, social, cognitive, experimental and developmental issues. These expert witnesses serve the litigants as well as the trial attorneys.

In addition to the above, the forensic psychologists also serve as professors, teachers, trainers and researchers and guide students in topics related to forensic psychology, criminal psychology, criminal investigations, criminal profiling and so on.

In the courts, they interview and assess criminals and provide evidence to the court on the basis of their interviews. Also, they undertake the responsibility for rehabilitating a victim or an accused as and when directed to do so. Also in the courts, they specifically point out the state of the mind of the person, that is, whether the accused had clear intention to commit the crime (mens rea). Depending on the report of the forensic psychologist on mens rea, the judge passes punishment varying from mild to moderate to severe punishment appropriate to the crime committed. This saves the victim, criminal and the society.

In earlier units we had discussed the role of forensic psychologists in law enforcement agencies where in they provide criminal profiles based on research etc. and also are involved in teaching and training of the police officer trainees in dealing with mentally ill persons and other mentally challenged persons.

Another area in which they help is in the case of victims, by providing counselling and psychotherapy to them to overcome their distress, and trauma.

Forensic psychologists also develop a relationship with their clients by providing one-on-one therapy sessions, such as when the police have been involved or there is a court order. These sessions are not only for research and study purposes but for therapeutic reasons to the patient as well. It may require the psychologists to perform activities that are occasionally unpleasant. Prison life is stressful for people who are incarcerated, and they could experience mental health issues while in the care of the prison psychologist. In some cases, the forensic psychologist may recommend group sessions. One primary objective that a forensic psychologist has is to protect the rights of each client they see.

### Check Your Progress I

1) What is criminal justice?

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## 16.3 APPLICATION OF FORENSIC PSYCHOLOGY IN POLICY MAKING AND DECISION MAKING

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Before we go on to discuss about the role of forensic psychologist in public policy, let us try and understand what a public policy is. Public policy can be described as a system that relates to the laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives (Kilpatrick, 2000). Policies are mainly based on values, aspirations, commitments and they are also based on the present situation. They can be termed as statements that are general in nature and they also provide an idea about future actions to be taken. In this context we can also discuss about policy formulation that can be explained as a process in which the political and power groups adapt the social demands, A policy statement can be said to be an outcome of the process of policy formulation.

In general, psychologists can play an important role in public policy formulation especially when the outcome of the policy depends on human behaviour, though many a times it so happens that policymakers often seek psychologists when their policy is at threat due to public behaviour (Fischhoff, 1990). But it can be said that psychologists as such can play an important role in public policy making and the subject has much to offer in effective policy formulation.

It is also important to note here that, for a policy to be effective, it is important that an in-depth study of human behaviour is carried out, which will not only help in effective formulation of a policy but also in its effective implementation.

In all the previous units, we discussed about the role of a forensic psychologists in varied contexts ranging from assessment and evaluation of offenders, providing them adequate rehabilitation and reintegration, police personality, behavioural, mental health, detecting deception to role played with regard to assessment and evaluation of eyewitness, to the role played by a forensic psychologists in civil and criminal law and so on. As we know forensic psychologists also work closely with jury, police, offenders and other personnel in the context of justice system. Thus, based on the exposure and activities carried out by a forensic psychologist, he/ she a can play an important role in policy formulation as well, as he/ she have necessary expertise regarding various issues related to law, criminal justice and so on and based on their experience as well, they can make suggestions for suitable public policy formulation.

It can be said that forensic psychology and public policy also overlap each other a great deal as both forensic psychology and public policy involves the law, though the way law is approached by forensic psychology and the way it approached by public policy may differ. In a previous unit, we studied the relationship between psychology and law and a forensic psychologist needs to function keeping in mind the law. Thus, there are certain procedures that need to be followed and opinions that are offered by a forensic psychologists can be seen as implementation of the law. In public policy, the law is created and shaped and then it is applied by lawyers, judges and even forensic

psychologists. Though while contributing to public policy making, the forensic psychologists need to ensure that their suggestions are well heard and incorporated in the laws. This can also be a challenge as being a forensic psychologist you are bringing your expertise to a different field (that of legislation) and he/ she may be expected to mainly provide relevant information which may or may not be used in the formulation of the public policy. Further, it is also important that forensic psychologists communicate with the policy makers in the way that they understand. Thus, a forensic psychologist needs to avoid complex words or terms as used in psychology and communicate in a simple, clear and specific manner in such a way that it is easily understood by persons who are not mental health professionals. This again is similar to what a forensic psychologist is expected to do in his/ her professional activity. He/ she needs to regularly communicate with lawyers, judges and other personnel in the justice system in a way that they understand what is being said, that is, without using heavy terminology as used in psychology and so on.

It is further important that whatever is being suggested by a forensic psychologist with regard to the public policy formulation is supported with collateral data. Thus, research in this context and collection of collateral data is also an important function of a forensic psychologist in the context of public policy.

Besides the role played by a forensic psychologist in public policy, a forensic psychologist also needs to make effective decisions that are ethical as well. Based on his/ her expertise and suggestions, a forensic psychologist can influence decision making by court. And this could be of utmost importance and a person's freedom and wellbeing could depend on the relevant information provided by a forensic psychologist. Thus, whether it is detecting deception, or competency and sanity evaluation or sentence mitigation, the information provided by a forensic psychologist could be used in order to make certain relevant decisions. A forensic psychologist could also be invited as an expert witness and he/ she may be asked to testify. We discussed about forensic psychologists as expert witnesses in detail in unit 11 of this course and we know that this as well is one of the relevant roles played by a forensic psychologist. A forensic psychologist may serve as an expert witness voluntarily or involuntarily (where he/ she may be subpoenaed or may be hired by a defence team or the prosecution). In such a situation the forensic psychologist needs to provide their opinions that are based on their knowledge and expertise. They could base their testimony on the information that they have gathered for the specific testimony or they could also provide their opinion on the cause or outcome. They could also be involved in interpretations of an individual's behaviour and actions and may be required to make conclusions based on certain given circumstances. In order to serve as an expert witness, a forensic psychologist not only needs to be competent but he/ she also needs to meet the necessary qualification of a witness, that is, possess necessary educational qualification, skills, training and so on. Overall the role played by a forensic psychologist in decision making needs to be based on both legal and ethical resources, which can also help in the identification of the problem and make better decisions.

In this context, we can also discuss about Amicus Curiae Briefs. The meaning of amicus curiae is ‘friend of the court’. Amicus briefs is a “legal document filed by a person who does not have any interest in the outcome of the case of files it for greater public good” (<https://www.legalserviceindia.com/legal/article-796-amicus-curiae.html>). Amicus brief can be defined as “a legal opinion submitted to the court by a person or organisation not directly involved in the case in support of a litigant or issue before the court” (Harmening and Gamez, 2016, page 10). The person who authors the amicus curiae briefs wants to provide relevant information to the court so as to help the court in decision making. An amicus thus is an individual or it could also be an organisation that is provided or granted a discretionary leave to file a brief, that is written, so as to obtain an insight in a certain issue, that the parties to the case may not be able to focus on due to lack of expertise or even time. Amicus briefs as such can play an important role in certain legal cases. Thus, forensic psychologists also can be an amicus and can author an amicus curiae briefs, with the help of which they can provide important insight in certain aspects of the case. Psychological associations can also play an important role in filing an amicus briefs. American Psychological Association (APA) for instance has played an important role in judicial as well as legislative process by submitting amicus curiae briefs (Bersoff, 2013). And this in turn can also have an influence on public policy formulations.

As such amicus briefs can be seen as means of making the legal decision makers aware about data regarding certain prominent issues. As mentioned by Bersoff, D (2013), “APA has contributed 147 amicus briefs, with 58 of these filed in the U.S. Supreme Court”. An infact one of the first amicus briefs that was submitted by APA was in the case Jenkins V. United States in the year 1962 in the U.S. Court of Appeals for the District of Columbia in which the decision taken was that psychologists can serve as expert witnesses with reference to the existence as well as nature of mental illnesses.

Thus, forensic psychologists can play an important role in public policy and also in decision making, thus making difference to the larger society.

**Check Your Progress II**

- 1) What is public policy?

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**16.4 LET US SUM UP**

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To sum up, in the present unit we initially focused on forensic psychology and criminal justice. We defined criminal justice as the delivery of justice to those who have committed crimes. In this section, the role of a forensic psychologist in the context of criminal justice was also explained. The unit also focused on the role of a forensic psychologist in public policy and

decision making. Public policy can be described as a system that relates to the laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives (Kilpatrick, 2000). Psychologists in general and forensic psychologists in specific can play an important role in policy formulation and this was highlighted in the present unit. The role of a forensic psychologist in decision making was also focused on with special reference to testimony by forensic psychologists.

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## 16.6 KEY WORDS

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**Amicus brief:** Amicus brief can be defined as “a legal opinion submitted to the court by a person or organisation not directly involved in the case in support of a litigant or issue before the court” (Harmening and Gamez, 2016, page 10)

**Criminal justice:** Criminal justice can be defined as the delivery of justice to those who have committed crimes. It has within it many agencies and institutions of the government and it not only delivers punishment for the crime committed, but also rehabilitates offenders, takes measures to prevent further crimes and provides moral support to victims.

**Public Policy:** Public policy can be described as a system that relates to the laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives (Kilpatrick, 2000).

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## 16.7 ANSWERS TO CHECK YOUR PROGRESS

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### Check Your Progress I

- 1) What is criminal justice?

Criminal justice can be defined as the delivery of justice to those who have committed crimes. It has within it many agencies and institutions of the government and it not only delivers punishment for the crime committed, but also rehabilitates offenders, takes measures to prevent further crimes and provides moral support to victims.

### Check Your Progress II

- 1) What is public policy?

Public policy can be described as a system that relates to the laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives (Kilpatrick, 2000).

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## 16.8 UNIT END QUESTIONS

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- 1) Define criminal justice. Describe forensic psychology and criminal justice.
- 2) Explain the role of a forensic psychologists in public policy and decision making.

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## SUGGESTED READINGS

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