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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

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TRAUMA INFORMED JUSTICE: RETHINKING CRIMINAL RESPONSIBILITY AND SENTENCING

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ABSTRACT

Several factors influence trauma for different people. Some may manage trauma well and remain unaffected to any great degree. Yet, trauma has an influence on mental health, physical health, relationships, and life opportunities in different areas. A punitive legal ideology may slow specific crimes for a short period, but it does not deal with the cause. The childhood traumas framework is a very influential one in social and behavioural sciences, as childhood traumas have serious negative effects and cause psychopathological problems and detentions in the short and long term of the individual's life. A trauma-informed model of justice is the focus of this paper, which analyses the adequacy of present ideas of criminal responsibility and sentencing practices that disregard the neuropsychological and social dimensions of trauma.

The very notion of a trauma-informed approach does not wash off the blame but serves to enforce the adjudication and penalization in respect to trauma, weakening self-control, and perhaps placing the individual in a survival mode. Through the criticism, the individual is viewed in the realm of psychological injury, which calls into question the proportionality of flagship priorities on punishment. Jurisprudence versus legislative reform versus therapeutic jurisprudence will henceforth be illustrated for the consideration of new ideas.

Factors of a broader nature, like specialized courts for problem-solving and other sentencing options directed toward rehabilitation and restoration, are a category. Such a paper discusses how trauma victims can influence criminal behaviour, giving chances for a fair and supportive judicial system in the consideration of responsibility and sentencing. To address this balance between responsibility and justice, the study advocates that introducing trauma-informed approaches to criminal law and sentencing policy would increase its legitimacy, align punishment with

behavioural sciences, and ultimately reduce the likelihood of reoffending.

Keywords: Trauma, punitive, rehabilitation, behaviour, therapeutic, criminal responsibility.

INTRODUCTION

The justice system's impact on trauma does not stop at persons accused or convicted of crimes. With many of the studies done about the experience of the justice system, it has often been overlooked that 'first responders' to the 'front line' of 'justice', like police, custodial personnel, court workers, and social workers, experience trauma symptoms as a matter of course. These symptoms include the 's' managing intense situations, violence, or listening to the trauma of victims and offenders or trauma themselves.¹ Trauma survivors, whether professionals or system-involved persons, experience further harm through practices such as the merger of punitive isolation, restraint, and strip searches, and long periods of separation from the family. These not only harm the mental health of the system's collateral victims, but the justice process also loses its efficacy and compassion. Trauma understanding and reparation on each layer of the justice system is a prerequisite to its safety and embrace for all participating, and a step further toward its equity. Concerning the Indian justice system, trauma goes well beyond the accused, convicted, and the perpetrators of the crimes, as it also impacts the professionals working in the system. Some people, and the ones that come from the most disadvantaged strata in particular, enter the system with an already existing traumatic history of poverty, violence, and abuse, including caste discrimination. Unfortunately, common practices such as custodial violence, strip searches, and protracted periods of detention inflict psychological suffering and are counterproductive to their alleviation. With respect to Justice Professionals, many of whom possess disturbing case files, undue levels of stress, and uncontrollable pressure, face the trauma of incessant burnout and secondary trauma, and this is the grip of most critical ignorance of trauma and mental health integration.

UNDERSTANDING TRAUMA IN THE CRIMINAL JUSTICE CONTEXT

Trauma, even if there is a single occurrence of an event, multiple instances of an event, or a situation that is prolonged and chronic, affects people in varying and often unpredictable ways.

¹ Trauma-informed in the justice system, available at <https://pmc.ncbi.nlm.nih.gov>, (last visited on 01.09.2025)

While some individuals show symptoms of posttraumatic stress disorder (PTSD) like hypervigilance, flashbacks, or some avoidance behaviours, there are a significant number of people who do not meet formal diagnostic criteria who also suffer noticeable negative emotional and psychological consequences. Within people, these negative consequences can be reflected in the form of brief or subclinical symptoms like anxiety, irritability, detachment, or, in the worst cases, negative sleep hygiene. There are also cases where people show extraordinary resilience and seem externally fine, yet the internal consequences are also likely to be considerable. Trauma is always subtle and sneaky. It can slowly change a person's emotional control, perception of their surroundings, and behaviour over a prolonged period of time. When the damage is more evident, the consequences can also be destructive. There can be a significant impairment in personal life, social life, or a person's career.

The impact of trauma on a person is complex, influenced by individual characteristics such as disposition, historical mental well-being, coping strategies, the level of trauma, and the stage of development at which the trauma transpired. Additionally, the significance attached to the trauma and the sociocultural situation in which it is situated have a profound impact on the trauma's emotional and behavioural results. Community and culture, during other times, dictate how a person can emotionally process, express, or restrict some feelings. The feelings of trauma include, but are not limited to, fear, anger, sadness, guilt, and shame. Many people, however, do not have the luxury of pinpointing or depicting such emotions and feelings. This is especially the case for people raised in contexts where emotional expression was considered taboo.²

Emotionally painful events being admitted may be consciously or unconsciously resisted by individuals for the perceived side effects of losing control, feeling vulnerable, or social judgment. Others may say the word numb or emotionally detached; they describe the absence of feelings instead of the presence of feelings. This feeling of numbness may itself constitute protection against the trauma of overwhelming, impossible, or dreadful experiences. Recognizing a broad range of trauma responses, including more elusive ones outside of a traditional psychiatric set of categories, is essential in the healing process for developing trauma-informed practices,

² Tammi L. Solvinsky, "The Thread of Trauma: A Critical Analysis of the Criminal Legal System", ICF International Inc., Reston, VA 20190, USA

particularly within systems like the criminal justice system that very often engage directly with traumatized individuals.³ Every trauma and maltreatment experience greatly determines poor physical and mental health outcomes, in either case, in adulthood. How one processes and communicates the emotion connected to trauma is so much influenced by his or her sociocultural heritage. In many cultures, outward expression of emotions is discouraged or seen as being weak; thus, some people find it difficult to label, comprehend, and/or communicate their feelings. Following healing, from the point of unexpressed emotion, they pose yet other barriers to finding proper support while also impeding the healing process of these persons due to the inhibition of the emotions that may otherwise have served them.

CRIMINAL RESPONSIBILITY AND TRAUMA

A wound can have a profound effect on a person's mental state, which can affect the extent of criminal liability. Knowledge about these relationships is important in the judicial system, particularly when determining whether offenders may control their actions and whether they may understand the nature and consequences of these actions. Injuries can prevent the use of full consciousness or maximizing intentions. This is very suitable for insanity and inadequate abilities.

The mental effects caused by injuries

An alert related to injuries and excellent cases is Post Traumatic Stress Disorder (PTSD), which has symptoms that impede the cognitive abilities that criminal liability may interfere with. Symptoms can be poor concentration, excessive emotional reactions, and bad judgment. Injuries with extreme mental balance ruptures can reduce the ability to maintain or know their behaviour, or to consider them from an appropriate or illegal perspective. A decline in understanding is the requirement that criminals act consciously and intentionally, undermining the classic hypotheses underlying criminal liability.

Many instances of trauma may disrupt an individual's psychological functioning; however, faulting the trauma for the criminal act grows tricky. The law usually requires straightforward proof that

³ Jill D. Stinson, Megan A. Quinn, Jill S. Levenson, The impact of trauma on the onset of mental health symptoms, aggression, and criminal behaviour in an inpatient psychiatric sample, Child abuse and neglect, Vol 61, pages 13-22, November 2016.

trauma induced the defendant to do the act at the time the act was committed. It is this inability to distinguish trauma-induced symptoms from deliberate wrongdoing that adds to the complexity; this is especially true when violent or aggressive behaviour presents itself. With that said, the whole ambiguity calls for a more in-depth comprehension of trauma and its psychological effects, and what they signify in the realm of criminal liability. Bearing in mind the role of trauma in the commission of crimes ensures that justice is meted out fairly; this, in turn, means that trauma-related assessments and treatments ought to be operative within the criminal justice environment in a manner that acknowledges the convoluted consideration of trauma and mental health toward legal responsibility.

TRAUMA INFORMED SENTENCING

Recognizing the complex interplay between trauma, criminal acts, and mental illness, the trauma-informed perspective holds that lesser sentencing in criminal justice authorities needs to be nuanced and compassionate. The approach first recognizes how deep and often convoluted past traumatic experiences are affecting the persons that come into contact with the justice system, either as offenders or victims. From physical, emotional, sexual abuse, neglect, or poverty, likewise systemic discrimination, all kinds of things can be rightfully construed as having deep ramifications on how people behave. Trauma-informed sentencing, therefore, provides for an explicit recognition of such factors and an attempt to understand their importance rather than just evaluating the criminal act on the basis of legal culpability or moral failing.⁴ Trauma-informed sentencing tries to deal with offenders in a way that does not re-traumatize and shies away from creating any new harm. Under traditional sentencing processes with their concepts of punishment and deterrence, a form of secondary trauma may be inflicted upon the person through cruel conditions of incarceration, isolation, or stigmatization. The punitive character of sentencing does nothing to redress the root causes of the offending and often worsens the psychological distress of a person, retards the rehabilitation progress, and increases the risk of re-offending. Trauma-informed sentencing, therefore, is an individualizing sentencing process that uses the trauma history, along with the concurrent mental health condition, of the offender as relevant context for

⁴ Victoria Jackson, Danny H. Sullivan, Daveena Mawren, Arie Freiberg, Jayashri Kulkarni & Rajan Darjee, "Trauma-informed sentencing of serious violent offenders: an exploration of judicial dispositions with a gendered perspective", pages 3-4.

sentencing decisions. In addition, sentencing is determining the appropriate legal penalty for an individual who has been found guilty of a crime. It examines the law, the details of the incident, and the surrounding circumstances. Including a trauma-informed approach means that judges and sentencing committees take into account the offender's psychological and social circumstances. When possible, this point of view advocates for alternatives to incarceration, such as community programs, mental health services, and restorative justice techniques that aid in rehabilitation and healing.

In conclusion, trauma-informed sentencing cultivates justice that is both equitable and restorative, admitting that tackling trauma can lessen harm, aid offender rehabilitation, and enhance community safety. It seeks unbroken training and awareness for lawyers and judges to ensure that trauma is recognized and is properly incorporated into sentencing choices, encouraging results that uphold human dignity and support social well-being.

SPECIAL POPULATIONS AND TRAUMA IN SENTENCING

Adverse childhood experiences (ACEs) such as abuse, neglect, or being raised in dysfunctional environments have been widely accepted as contributing towards life outcomes that are adversely marked in both the immediate and the long-term sense. From the criminology perspective, Agnew's General Strain Theory (GST) is one key theoretical framework within which the relationship of ACE with delinquent behaviour is explained.⁵ In GST, people can be subjected to different kinds of strain-type situations: it may be failure to achieve success in life- goals that are deemed worthwhile; or encountering some harmful situation; or the sheer loss of something that is itself significant to some person. A combination of these strains induces in a person an adverse emotional reaction such as anger, frustration, or hopelessness. A person who receives chronic or severe ACEs and hence becomes emotionally reactive may react by engaging in delinquent behaviours as a means of maladaptive coping. If these strains persist, then that in itself can become a more powerful risk factor for continued delinquency. However, such ACEs generate strain not only psychologically but physiologically. Whereas early exposure to chronic stress amplifies allostatic

⁵ Dylan B. Jackson, Melisa S. Jones, Daniel C. Semenza, Alexander Testa, "Adverse Childhood Experiences and Adolescent Delinquency: A Theoretically Informed Investigation of Mediators during Middle Childhood", *Int. J. Environ. Res. Public Health* 2023, 20(4), 3202.

load and activates sustained "fight or flight" responses, associated with an increased risk of aggressive behaviour. Typically, there is a trauma and abuse history for the women in criminal operations; such a criminal history might serve as a background for instances of childhood sexual, physical, or psychological abuse. There can also be instances of adult domestic violence. These adverse childhood experiences (ACEs) are highly correlated with the greater incidence of adult mental disorders, substance dependence, and criminal activity, largely of violent and drug-related offenses. Few females are defendants, almost at a ratio of 6:1 compared to their male counterparts; however, the 30% increase shows that the rate of violent offenses by female defendants has grown more than double that of male defendants since 1990, with its increase standing at 12%. By current assessment, there are 2.1 million female violent offenders and 13.1 million male offenders. Violent female offenders are an uncommon group with differing psychiatric profiles and frequently present with histories of trauma, PTSD, mood disorders, and substance use disorders. These conditions often bring about maladaptive coping strategies, emotional dysregulation, and impulsive behaviour that may lead to violence. Forensic evaluations should take into account the complex interplay of psychiatric, trauma-related, and psychosocial elements in female offenders to direct sentencing. Evaluation of female offenders and, hence, considerations of sentencing, treatment, and rehabilitation must take into account the interplay of psychiatric, trauma-related, and psychosocial factors.⁶ Female offenders, in contrast to their male counterparts, typically have shorter criminal histories, and their offenses tend to present a relational or situational character: usually within or near the victim's home. Aggression occurs amidst acute stressor events in personal relationships, which include verbal or physical abuse. Aggression, though often considered to be masculine, has been found in research to be a potential risk associated with women's mental impairment, yet women tend to commit fewer violent acts than men. Commonly, female offenders tend to be diagnosed with affective disorders such as depression more so than male offenders, but those who carry a schizophrenic diagnosis carry a higher risk for violent behaviour than male schizophrenics, especially when co-morbid with substance abuse. This accentuates the need for integrated treatment approaches addressing both psychosis and substance use towards effectively reducing the risk of violence in female offenders. Trauma constitutes the kernel around which crime is built for Indigenous and marginalized communities through intergenerational, situational, and underlying

⁶ Anne Marie Hathway, "Female Offenders: Patterns, Risk, and Assessment", *Psychiatric Times* Vol 42, Issue 4

factors. Precipitating causes, relevant to idiosyncratic traumatic events-that induce an act of criminality. With respect to situational factors, however, these things usually could involve unemployment, poverty, or ill-health, each of which heightens or aggravates vulnerability⁷. In the deeper sense, the historical disruption of the Indigenous system of law, culture, and authority has given rise to social and psychosocial problems in the present time. This legacy of colonization and systemic marginalization is inherited by all generations and thus establishes" intergenerational trauma, intergenerational disadvantage, and intergenerational opportunity for some."

POLICY AND JUDICIAL REFORMS

While specific guidelines on trauma-informed sentencing have not yet been fully developed within the Indian judicial framework, some emerging concepts vis-à-vis increased judicial sensitivity towards trauma and vulnerability are already taking shape around it. Courts have started to develop some procedural safeguards for vulnerable witnesses, recognizing trauma in rare cases, victim-friendly orientation in testimony and proceedings for compensation against, at least, secondary victimisation. The Bharatiya Nyaya Sanhita (BNSS) recognises that any aggravating or mitigating factor, including any demographic one, shall have to be taken into consideration at the time of sentencing. But the problem of limited time allotted to the judges by procedural law and the human element of subjectivity certainly act as barriers to a consistent application of these principles. Nonetheless, while these impediments are indeed in place, earnest attempts devoted to lessening secondary victimisation, while simultaneously constituting support services for victims and access to rehabilitation and compensation, do go some way towards creating a more trauma-informed justice system in India. The Bharatiya Nyaya Sanhita (2023) provides certain laws that may be invoked where violence is committed under extreme situations. It includes Section 37(2) for private defense; Exception 1 to Section 101, under instances of acts committed in response to grave and sudden provocation; Section 367 relating to mental unsoundness. These clauses acknowledge certain extenuating circumstances but do not go far enough when considering the complex psychological and emotional aftermath faced by a survivor of prolonged domestic abuse. The law still goes on to expect instant and rational responses from people in utterly irrational, life-

⁷ Joy Wundersitz, "Indigenous perpetrators of violence: Prevalence and risk factors for offending" AIC Reports Research and Public Policy Series 105, Published by the Australian Institute of Criminology, pages 3-4.

threatening situations. Without any consistent legal precedent or further trauma literacy among the legal fraternity, many times, it is the very system that turns against women and subjects them to further injustice. There have been scattered instances of judicial recognition of sustained abuse. The Gauhati High Court, in *Manju Lakra vs State of Assam (2013)*⁸, reduced the sentence of five years for the murder of a woman, recognising possibilities of sustained abuse. Nallathangal syndrome-an interpretation of psychological collapse as a result of extreme abuse in its extremely exaggerated sense-was recognised by the Madras High Court in *Suyambukkani (1989)* for the commutation of a murder sentence.⁹ Indian jurisprudence currently lacks an integrated trauma-informed approach to such realities. Until this is done, any decision remains basically ad hoc and incidental to justice.

RESTORATIVE AND REHABILITATION ALTERNATIVES

Punishment, restorative justice initiatives like community conferences and victim-offender mediation seek to promote healing and restorative accountability. Open prisons, sometimes known as the murder-thin-skyrim, are a progressive method in which inmates live essentially unrestricted, with opportunities for supervision and useful employment to help them pay for their education or find employment. To avoid a thorough involvement with the criminal justice system, diversion programs encourage community service, education, and therapy for both first-time offenders and adolescents. Beyond the conventional incarceration, several alternative pathways for rehabilitation can promote reform and reintegration of offenders in India. Community-based correctional programs such as probation and parole offer a structured method of supervision while enabling individuals to remain in society. From this angle, this option serves to prevent the negative consequences of imprisonment. Restorative justice options, such as victim-offender dialogues and community conferencing, assist in healing and accepting responsibility without placing emphasis on punishment. An open prison is one wherein inmates live on their own or under minimal supervision and engage in productive work; this progressive idea further inculcates responsibility among the inmates and ensures reintegration with society. Diversion programs for juvenile and first-time offenders involve counselling, education, and community service to prevent stronger ties with the criminal justice system. Drug de-addiction and mental health treatment centres provide

⁸ Citation: 2013(4) GLT333, *Manju Lakra vs State of Assam (2013)*

⁹ Acting against abuse: Justice must be trauma-informed, available at <https://www.deccanherald.com>, (last visited on 02.09.2025)

key alternatives for offenders whose crimes are related to substance abuse or a psychological condition. Rehabilitation through civil society and legal aid clinics can provide socio-economic support to lessen the risk of reoffending. Together, these avenues strive to provide a more humane, effective, and rehabilitative approach to criminal justice in India.

CHALLENGES ENCOUNTERED

Trauma-informed justice acknowledges the challenges presented by systems that are punitive rather than rehabilitative. One of those challenges is the widespread lack of knowledge and education among members of the justice system about trauma, its impact on human behaviour, and the impact on human memory. Courts may not consider someone's trauma history when disposing of matters due to time and resources. The representation of trauma-informed principles may be inconsistent between authorities, and there may be no clear guidelines to achieve equity and equal treatment. Of course, there is also a chance that the processes themselves can induce further trauma, particularly if the victim's or offender's process requires them to relive their experience several times, often without support from a psychologist or social worker.

CONCLUSION

Trauma-informed justice is one of the necessary changes in how we think about and apply criminal responsibility and sentencing – particularly in cases of systemic inequalities, historical marginalization, and intergenerational trauma. Recognizing the ways trauma affects people psychologically and socially does not become any kind of justification for a crime, but it does provide important contextual considerations to understand why particular people conflict with the law. When trauma awareness is linked to judicial sensitivity, rehabilitative processes, and community-based supremacy, the justice system can restore its dignity as a tool for equitable, humane, and effective recourse. This benefits offenders in their rehabilitation and reintegration process while addressing the causes of criminality to mitigate future commissions of crime. Regardless of whether it is in India or anywhere else, trauma-informed practices have the potential to serve adjudicators in distributed justice in a fair way; reduce incarceration and allow those broken and devastated to begin healing. So ultimately, trauma-informed justice could be said to be a step towards restorative justice.