



ORIGINAL RESEARCH PAPER

Psychology

BRAIN AND LITIGATION : A NEURO COGNITIVE PERSPECTIVE

KEY WORDS:

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Knowledge of facts, gathering of information, understanding the concepts and building the relationships is not complete knowledge. Good decision making is a part of Metacognition which is the "knowledge" of knowledge and awareness of its limitations (JE Russo 1992). The same is constructed by multiple factors that are individual as well as societal in nature. Henceforth, the meta cognition could indeed be biased in nature (C Berry, 2017). The nature of evaluation differs when a professional confirms, his or her beliefs. The brain indeed tests hypotheses, within the socio political schema of an individual's metacognition. Looking at research in cognitive science and law, it explores the impact of cognitive bias on both lawyers and clients. Often subtle mental biases can lead to pervasive errors in decision resulting in inaccurate predictions. This creates a negative outlook towards litigation and the Judiciary. Empirical studies of settlement-related behavior, especially in decision-making generally, suggest that clients make mistakes in thinking about their cases that distort their choices about whether to settle, when to settle, and on what terms to settle. Though settlement of case ultimately belong to the client, lawyers play an important role in the process and their recommendations typically carry greater weightage because of their skill and non judgmental and objective perspective respectively. On the other hand, some studies reveal that lawyers are also bound to subjectivity, inviting multiple cognitive errors. This further delay the process of litigation (C Berry – 2017).

Logic and Statistical decision making is believed to be rational and in psychology heuristics is associated with errors. Einstein used the term in 1905 on quantum physics, (Holton 1988, pp. 360–361) and Max Wertheimer and his fellow Gestalt psychologists spoke of heuristic. Studies reveal that heuristic decisions pose a threat to "Effective autonomy" which includes a person's desires, preferences, choices and behaviours. As per moral and legal philosophy, such framing challenge the behaviour of the lawyer and the validity of the moral status of the consent of the client (Hanna 2011). Lawyers should account for cognitive bias in their clients and themselves for two reasons. First, it can lead to bad choices and second it benefits to understand and improve the client relationship (J DiPippa, 2001).

Most lawsuits are involved efficiently in settlement, however, they hold a huge share of compromise (Geoffrey P. Miller 1987). The nature of the legal profession is such that the client confides in a lawyer with utmost trust and confidence. It is a contractual as well as fiduciary relationship. It is an advocate's ethical duty to inform the client of his interest and not to accept any engagement which he may have an interest in. A neuropsychological perspective may provide lawyers with insights into how to shape their own behavior so that they can better serve clients and avoid malpractice claims and other adverse behaviors impacting the profession. Research indicates that an individual's brain learns over time how to distinguish different objects (e.g., a chair or desk) based on features of the objects that coalesce into patterns. These patterns or schemas help the brain efficiently recognize objects encountered in the environment. It is interesting to know that the brain also recognize people and relationship with them in different combinations of characteristics as well. Scientists refer to these automatic associations as implicit they operate behind the-scenes without the individual's awareness (JM Shasteen, 2017).

interaction of the two systems when interpreting our own behavior is what is described as "Neuro awareness." This can be used as a tool by lawyers to gain a deeper understanding of their client's perspectives. Research studies show that the quality of decisions decreases significantly when the brain is low on energy Brain functioning requires up to twenty percent of our total energy consumption at any given point. The studies revealed that it can be difficult for even trained, careful professionals to identify and completely correct the way our minds work (David M. Eddy 2001). At the same time empirical studies suggest that we can improve our judgment if we are conscious of our cognitive biases and practice correcting them (Baruch Fischhoff 1982).

An understanding of some of the biases that shape our decisions can offer us the opportunity to bring to bear the "override" function of System 2 reasoning on problems. Skills for challenging confirmation bias have long been an important part of the training of scientists, law enforcement personnel, and other investigators. Lawyers are beginning to pay attention with respect to the impact of the bias in their own decisions. Both stress and fatigue tend to make our choices more conservative and making too many decisions too quickly risks pushing important decisions down to our sub-rational System 1 processes. To avoid mistakes, it is important to allow sufficient time for decision-making, and to do so at a time when our brains can handle the work. Research has shown that group decisions are less prone to bias and other distortions than individual decisions. From a practical perspective, checking in with others allows the lawyer to bring a broader range of experience and gives an excellent opportunity to practice countering confirmation bias and monitor them. While speaking with a client, be aware that [because of the effect of various biases] he is trying to reinforce what is already in his own mind. This means that after a loss, a client may have a salient memory of anything the lawyer said that the client interpreted as "egging him on" to go ahead with the litigation (Lawprom Magazine, 2017).

Personality, socio-cultural background, education, training, need for competence and different types of benefits may play a significant role in a biased decision making of a lawyer. Such heuristics impact his own progress, the client-lawyer relationship, cost of litigation and the precious time consumed by way of litigation in the courts apart from the flaws found in the overt behaviour of the lawyers. These variables are researched extensively in a few decades in Western countries and have become empirical studies. Some of the implications and recommendations are also successfully implemented in their justice system. In case of India, very few published researches are found on such issues. The above discussed issues are very much practical and experienced in the everyday functioning of the profession of lawyers on various hierarchical levels and have a huge scope for research. There are various models to improve the quality of decision making, but the most upcoming, practical and scientific model is considered to be Neuro based model, especially for the intellectual community.

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