

CRIMINAL RESPONSIBILITY, TESTAMENTARY CAPACITY AND COMPETENCY TO STAND TRIAL

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CRIMINAL RESPONSIBILITY

- WHAT IS IT ?
- HISTORY
- INSANITY DEFENCE
- TESTS FOR CRIMINAL RESPONSIBILITY
- INDIAN SCENARIO
- CASES WHERE INSANITY DEFENCE CAN BE RAISED
- ASSESSMENT OF INSANITY
- ISSUES RELATED TO CURRENT INSANITY STANDARDS

CRIMINAL RESPONSIBILITY

- LAW AND PSYCHIATRY
- FORENSIC PSYCHIATRY
- LAW
 - Civil law
 - Criminal law
- TO BE RESPONSIBLE FOR A CRIMINAL ACT
- Responsibility = liability for acts of commission or omission and to punishment
- Law presumes a person to be sane and accountable for his actions unless proved otherwise.

HISTORY

- CRIMINALITY
- JEWISH LAWS
- PLATO
- “CORPUS- LURIS-CIVILIS”
- HENRY DE BRACTON – “wild beast test – no conviction if defendants understood the crime no better than an infant, a brute or a wild beast”
- MATHEW HALE
- PAULUS ZACCHIAS -
Legal Medicine and Forensic Psychiatry

INSANITY - Disease of the mind or defect in which the intelligence or the mental faculties become defective and emotional processes are so disturbed or deranged that the sufferer is unable to adapt himself to his usual and ordinary social environment and requirements

LEGAL INSANITY is described as “Any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility” (*Black's Law Dictionary*)

- US statistics – Insanity defence raised – 0.85 % defendants
- States with higher rates of NGRI (Not guilty by reason of insanity) defenses tend to have lower success rates for NGRI defenses
- the percentage of all defendants found NGRI is fairly constant, at around 0.26 percent.
- In 2011, 5024 prisoners were assessed on semi structured interview schedule. Reports suggest 1389 (27.6 %) prisoners had diagnosable mental disorder (after excluding substance use)- Indian study

- PLEAS OF INSANITY
- TESTS FOR INSANITY require
- 1. **some evidence of mental disease or defect**
- 2 .the mental disease or defect **must exist at the time of the commission of the crime**
- 3 .mental disease/ defect is of **such a degree that the person is unable to understand that the act is wrong &/ contrary to law**

CRIMINAL RESPONSIBILITY

- TESTS OF CRIMINAL RESPONSIBILITY
- **MC NAUGHTEN RULE** (the right/ wrong test; the legal test)
- Daniel McNaughten's trial – 1843 –
- Verdict – not guilty on grounds of insanity – institutionalized
- **MC NAUGHTEN RULES**

MC NAUGHTEN RULES

- Accused person is **not legally responsible**, if **clearly proved** that at the time of committing the crime, he was suffering from such a **defect of reason** from an **abnormality of the mind** that he didn't know the nature and quality of the act or that what he was doing was **wrong**
- **ACTUS REUS** - the actual criminal/guilty act which is against the criminal law
- **MENS REA** – criminal intent motivating the act

DURHAM RULE

- 1954 Judge David Bazelon – Monte Durham case (Durham vs US)
- Product rule/ test
- Accused is not criminally responsible if his unlawful act is product of **mental disease** or **mental defect**
- Mental disease = **mental illness**
- Mental defect = **mental retardation**
- Criticism – too broad scope for eligibility of insanity
- Discarded in 1972 (US vs Brawner) except New Hampshire, Virgin Islands

CURREN'S RULE

- 1961
- Accused person is **not criminally responsible** if at the time of committing the act , he did not have the **capacity to regulate** his conduct to the requirements of the law, as a result of mental disease/defect
- **GOOD AND EVIL TEST**
- This test was laid down in the case of R vs Madfield. The test laid down in this case is '**the ability to distinguish between good and evil.**' In this case, the accused was charged for treason for attempting to kill the king. The defense pleaded that he was not able to distinguish between good and evil and "wild beast test" was unreasonable. He was acquitted.

IRRESISTIBLE IMPULSE TEST (New Hampshire doctrine)

- Lord Justice Atkins committee 1923 , withdrawn in 1924
- Accused is **not criminally responsible** even if **he knows** the nature and **quality of his act** and **knows it is wrong** if he is **incapable** of **restraining** himself from committing the act because the free agency of his **will** has been **destroyed** by mental disease.
- Criticism - Broad scope – does all criminal behaviour not resisted equal to insanity?
- Combined with the Right/wrong test in Virginia, New Mexico

AMERICAN LAW INSTITUTE TEST (ALI)

- 1972
- A person is **not responsible** for criminal conduct if at the time of such conduct as a result of mental disease/ defect he **lacks** adequate **capacity** to either **appreciate** the criminality of his conduct or to **adjust** his conduct to the requirements of the law
- **Combined McNaughten and irresistible impulse test**
- **Cognitive arm** (appreciates criminality of his conduct); **volitional arm** (ability to conform behaviour)
- Knowing vs appreciating the difference between right and wrong
- Modified ALI standard – removing the volitional prong

- **DOCTRINE OF PARTIAL RESPONSIBILITY**

- Person who has committed the crime is suffering from some aberration or weakness of mind, not completely insane
- **Partially responsible** for his act
- **Charge** of murder may be **reduced** to manslaughter

- **DIMINISHED CAPACITY**

- Defence based on impairment of mind which **supplements** rather than replaces insanity defence allowing evidence of any interference with normal functioning of mind to be introduced to prove that the defendant didn't have the ability to formulate one of the specific mental elements required for the crime charged
- Result being **guilty but reduced charges**
- INSANITY defence looks for **criminal responsibility**
- DIMINISHED CAPACITY defence examines if defendant had the **capacity to form the requisite intent for the crime**

- **NORWEGIAN SYSTEM**
- No individual considered **insane** /**unconscious** at the time of committing the offence must be punished
- **GUILTY BUT MENTALLY ILL**
- Accused is sentenced in the same way as if he were found guilty like any other prisoner.
- Then court determines whether and to what extent he requires **treatment** for mental illness
- When and if the defendant is deemed “**cured**” of his mental illness, he is required to **serve out the rest of his sentence** (unlike insanity defence acquittee who is released from psychiatric commitment once he is deemed to be no longer dangerous)

- **UK** – insanity is currently decided based on **rationality** only (McNaughten Rules) – rationality defects excused. Lack of control defence – ineligible for NGRI (not guilty by reason of insanity)
- **US** – statewise difference. Majority – only McNaughten rule, while some use Moral penal code (based on rationality and lack of control).
- Attempts to abolish the insanity defence
- Montana statute
- 6 states inc Utah , Kansas, Idaho – banned insanity defence

WHAT HAPPENS IN INDIA....

- Law **presumes** every individual to be of **sound mind** /sane with sufficient degree of **reason** to be **responsible** for his acts . **Knows natural consequence of his acts. Knows the law.**
- Presence of **Mens Rea** is necessary
- Section 84 IPC – Nothing is an offence which is done by a person who , at the time of doing it , by reason of unsoundness of mind , is incapable of knowing the nature of the act , or that he is doing what is either wrong or contrary to law
- Adaptation of McNaughten rule

- MEDICAL INSANITY vs LEGAL INSANITY
- **MEDICAL INSANITY** – person suffering from any kind of mental illness
- **LEGAL INSANITY** – mental illness + loss of reasoning power . Mental state of individual at the time of commission of crime.
- Not just presence of mental illness, but totality of circumstances seen in light of evidence on record
- Only **legal insanity** (mental illness at the time committing the crime) and not medical insanity falls within the purview of **section 84 IPC**.

- Burden of proving the **commission of an offense** is always on the **prosecution**. The prosecution has to prove the same **beyond a reasonable doubt**.
- **Burden of proof lies on the accused** - the onus of proving the existence of circumstances (Section 84 IPC) for insanity defense would be on the accused (Section 105 of the Evidence Act) and the court shall presume the absence of such circumstances.

- The accused has to prove by placing material before the court such as expert evidence, oral and other documentary evidence, presumptions, admissions or even the prosecution evidence, satisfying that he was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law.
- Though the burden is on the accused, he is not required to prove the same beyond all reasonable doubt, but merely **satisfy the preponderance of probabilities**. the burden of proof casted upon him is no higher than that rests upon a party to civil proceedings.

- WHEN IS A PLEA OF INSANITY TAKEN ?
- 1. In bar of trial – accused cannot plead due to insanity
- 2. in bar of conviction – accused was insane when crime was committed
- 3. in bar of infliction of capital punishment – when condemned person is insane
- the plea of insanity should be taken during the investigation or during the trial in the lower court not during the appeal to the higher court
- Unsoundness of mind should be established is the time when the crime is actually committed
- Such a plea can be established from the circumstances which preceded, attended and followed the crime.
- Mere absence of motive, no attempts to flee, partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under sec 84

- No reference to impulse , infanticide or diminished responsibility
- Idiots , Imbeciles and persons deprived of all understanding and memory (< 7 yrs and 7-12 yrs with immature understanding) are not criminally responsible

- A dichotomy of section 84 IPC reveals the following ingredients.
- The accused was insane
- He was insane at the time of the crime and not merely before or after the act and
- As a result of unsoundness of mind, the accused was incapable of knowing the nature of act or he was doing what was really wrong or contrary to law.
- Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behavior of a psychopath affords no protection under Section 84 IPC.
- In one of the landmark decisions, in the case of Surendra Mishra versus state of Jharkhand, the Apex Court has stated that an accused who seeks exoneration from liability of an act under Section 84 of the IPC is to prove legal insanity and not medical insanity.

INSANITY

- INSANITY AND MURDER
- Role of doctor
- 1. history
- 2. motive
- 3. preparation
- 4. accomplices
- 5. nature of the crime
- 6. conduct of the criminal at the time of the crime
- 7. conduct of the criminal after the crime

Planning: deliberation, time spent on planning, presence of an accomplice, procuring of required weapon, date and time of execution of offence and arranging vehicle to escape

Avoid detection: waiting until proper time, taking the victim to a secluded place, use of gloves and mask, disguising and concealment of weapons

Disposing evidences: wiping off fingerprints and blood, discarding weapon, destroying documents, burying, concealing victim, planting false evidences and threatening witnesses

Escaping from the crime scene: efforts to avoid arrest, resisting arrest, lying to police, notifying police and expression of guilt after the offense

Presences of Accomplice: if multiple accomplice are present

Performing complex task: If a person has performed a complex task (which requires cognitive ability) immediately before and after commission of crime

- State of mind only at the time of the offence, not in general
- All mental disorders don't free a person from the criminal responsibility of his acts
- Impairment in understanding the nature of his act and its consequences, not emotions and will
- Mens Rea
- Determination is COMPLICATED and DIFFICULT
- Question of sanity or insanity is for the court to decide
- Judge decides if acquittal on grounds of insanity is justified

- **DOCTRINE OF DIMINISHED RESPONSIBILITY**

- Defence requires a state of mind bordering upon but not amounting to insanity
- Usually in cases of mental unsoundness or partial insanity

- **CRIMINAL RESPONSIBILITY AND AUTOMATISM**

- Automatism – conduct performed by person whose consciousness is impaired to such an extent that he isn't fully aware of his actions
- Epilepsy
- Concussion/cerebral disease
- Hypoglycemia
- Somnambulism
- INDIAN LAW has no special provisions

- Epileptic automatism
- Temporal lobe epilepsy
- Head injury , hypoglycemia – non insane automatism
- Somnambulism, somnolentia
- INSANITY AND DELIRIUM
- Not an offence under sec 84 IPC
- INSANITY AND DRUNKENNESS
- Sec 85 ,86 IPC
- Accused is not criminally responsible , if the intoxicant was administered without his knowledge or against his will

- HYPNOTISM – not absolved from criminal liability
- IMPULSE (irresistible) – not sufficient ground for exception from criminal liability
- Delusion – mere presence may not absolve person from criminal responsibility

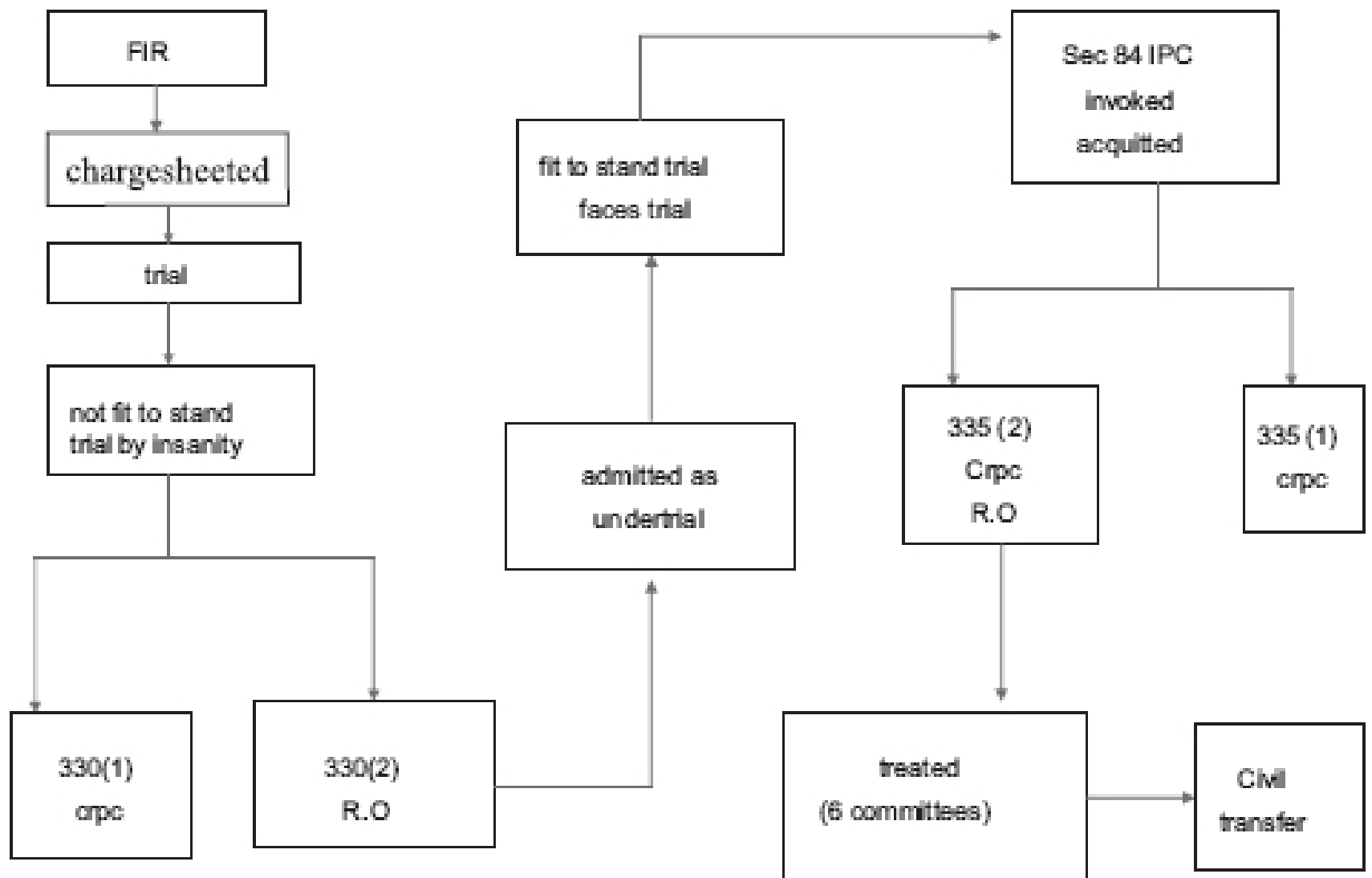
Assessment

- **ASSESSMENT OF LEGAL INSANITY**
- The criminal law asks different questions with reference to assessment of legal insanity.
- “Did the defendant ‘**know**’ or ‘**appreciate**’ that his conduct at the time?”
- “Did the defendant ‘**premeditate**’ the crime?”
- “Was he **aware of risks** his conduct posed?”
- Source of testimonies - Lay testimony from the defendant and From the Psychiatrist.

- The expert's testimony is based on four influences:
- Particular symptomatology
- Diagnosis
- Presence of legally relevant impairments (the defendant thought that killing was justified)
- Ultimate legal conclusion (the defendant was insane at the time of offence).
- In Indian scene, the opinion about mental status from the psychiatrist is sought after a long period after the commission of the crime and in this regard, experts have recommended for a **mandatory pretrial observation** in suspected offences by the mentally ill

- Sections 328-339 CrPC deal with the procedures of unsoundness of mind committing an offence. Section 333 is concerned with sound mind at the time of enquiry and unsound mind at the time of committing an offence.

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ROLE OF PSYCHIATRIST

- standard evaluation procedure of all patients who plead insanity defense is absolutely necessary.
- no such standardized procedures exist in India
- Psychiatrists are often called for conducting mental health evaluations and treatment. Apart from treatment, courts may also request for various certifications. This includes:
 1. **Certifying the presence or absence of psychiatric illness** if the defendant claims for an insanity plea (defendant's mental status when the alleged offense took place);
 2. **Assessment of fitness to stand trial** in cases where mental illness incapacitates cognitive, emotional and behavioral faculties of an individual causing serious impact on the ability to defend the case (defendant's present mental status and his competence during adjudication)

- Psychiatrist should consider inpatient admission for a comprehensive evaluation of the defendant.

It is the duty of the psychiatrist to educate the court, clarify psychiatric issues, provide honest and objective opinions based on factual data and sound reasoning

- **Forensic psychiatry assessment proforma**
(modified version of Kumar et al 2014) –
NIMHANS detailed work up proforma for forensic psychiatry patients II – semistructured.
Assessment of forensic psychiatric cases.
Modified periodically as per clinical evaluation and legal requirement

Date: Time: Place of Examination:

Name of the Patient with alias:

Father's/Mother's Name:

Residential address with mobile number:

Identification Mark:

Gender:

Age:

Marital status:

Education:

Occupation before arrest:

Name the referring authority:

Reason for referral:

Accompanying letters (Referral letter with date):

Legal status of the prisoners: Under Trial/ Convicted

Duration of stay in prison (in months):

Charges against the patient (if possible include IPC sections):

Behavioral Observation report from the prison:

Chief complaints as per the referring authority:

Chief complaints as per the patient:

Circumstances around the alleged crime:

History of Presenting Illness:

Past history of Medical/psychiatric illness and Treatment history:

Family history (please do pedigree charting with names of each family members):

Personal history:

Premorbid personality:

Mental Status Examination and Cognitive Function:

Provisional Diagnosis:

Plan of management:

Investigations:

Requesting for more information (letters to be dispatched):

a. FIR from the police station:

b. Family members to provide information and to plan for management:

c. Any other letters:

d. Treatment:

ASSESSMENT

- Retrospective evaluation
- Interviews, record reviews, collateral interviews, psychological tests (review all accompanying legal documents, ascertain referring authority, reason for referral date and time of referral, time to evaluate. Previous medical and psychiatric records. History from all sources – defendant, accompanying person, FIR, post mortem, autopsy report, crime scene photos, behaviour observational report, interviewing family members and past treating psychiatrist)
- Inpatient / outpatient basis

- Should be interviewed as early as possible
- Inform defendant about the purpose of evaluation, lack of confidentiality at outset of assessment
- Documentation – date, time of assessment, demographic details. ID marks, injuries on body. Detailed psychiatric history.
- Assessment of mental state at time of offence – open ended questions . Step by step account 1 week before to 1 week after offense
- Cognition, emotions, perception, Behaviour before, during , after commission of offence. Does he know nature of act, law , appreciate right and wrong?
- Mental status , cognitive functioning assessment – serial MSE, serial ward observation
- Diagnosis

-
- a) Explain the environment and people present during the occurrence of incident?
 - b) How did nearby people respond to the act ? why?
 - c) What was behavioral and emotional response of the victim?
 - d) What may be the reason victim reacted in that way?
 - e) What would be your response if you were victim?
 - f) What recourse would you expect from the law, if you were a victim? and
 - g) What would you do, if someone else had committed the act?
 - h) What will be the role of police in such incidents?
 - i) What will you do if one of the known person was the victim?
-

ISSUES RELATED TO CURRENT INSANITY STANDARDS...

- 1. Going by the current understanding of neurological evidence of compulsion and lack of impulse control, rationality tests without the inclusion of lack of control, seem to be outdated
- 2. Separate “Control determination” and “Rationality determination” may be an issue
- 3. Relevance ratio is ideal for “Evidentiary relevance”
- 4. Lack of control on type of mental disorders that qualify for Insanity defense
- 5. Quality standards on expert testimony with Reliability and validity

Differing testimonies of experts. Law concerned with blame, medicine with treatment. Law is not required to accept what medicine terms a disorder.

- **HOWEVER...**
- **the concept of insanity defence is a legal one and not a medical one. Although a psychiatrist's opinion is taken into account ultimately the decision to accept or reject the defence lays with the court the world over**

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JUVENILE JUSTICE ACT

- **STATISTICS**
- **Juveniles between 16-18 yrs apprehended under IPC**
- **Source : Juveniles in conflict with law. Crime in India 2013,**

CRIMES	2003	2013
Burglary	1160	2117
Rape	293	1388
Kidnapping/ abduction	156	933
Robbery	165	880
Murder	328	845
Other offences (cheating rioting etc)	11839	19641
TOTAL	13941	19641

JUVENILE JUSTICE ACT 2000, 2015

PROVISION	JUVENILE JUSTICE ACT 2000	JUVENILE JUSTICE ACT 2015
TREATMENT OF JUVENILES	All children under the age of 18 years treated equally. Maximum penalty for juvenile in conflict with law is 3 yrs	Juveniles aged between 16-18 yrs committing serious/ heinous offences could be tried as adults. However no death penalty or life imprisonment
JUVENILE JUSTICE BOARD	Conducts enquiry and directs the juvenile to be placed in any fit institution for a period not exceeding 3 years	Adds a preliminary enquiry, conducted in certain cases by JJB to determine whether a child is placed in a home or sent to Children's court to be tried as an adult

PROVISION	JUVENILE JUSTICE ACT 2000	JUVENILE JUSTICE ACT 2015
APPEALS	Appeal to the Sessions court within 30 days of JJB order; further appeal to High court	Appeal JJB/CWC order within 30 days to Children's court; further High court (Dist Magistrate for foster care etc)
ADOPTION	No provision for inter country adoption in the act.the Guidelines governing the Adoption of Children 2011, provide for inter country adoption	Inter country adoption allowed if adoption cannot take place within the country, within 30 days of child being declared legally free for adoption
FOSTER CARE	Temporary placement of a child to be given for adoption , with a family for a short or extended period of time; biological family may be allowed to visit	Same as the act. Adds new provision for monthly checks on foster family by CWC
AFTER CARE	Monetary and	One time financial

JUVENILES IN OTHER COUNTRIES...

- **Minimum age for the Juvenile at which he can be charged with an offence:**
- **United States of America:** the age ranges from six to ten years
- **United Kingdom:** the age limit is ten years.
- **South Africa:** the age is of ten years.
- **France:** by offence committed
- **Canada:** after the age of twelve years.
- **Germany:** at the age of fourteen years.
- **India (Juvenile Justice Act 2000): under IPC after the age of seven years.**
- **India (Juvenile Justice Act 2015): same as the J J Act 2000**

- **The age in which Juvenile can be tried as an adult:**
- **United States of America:** from the age of 13 years
- **United Kingdom:** 17 years in England, Wales and Northern Ireland, 16 years in Scotland
- **South Africa:** juvenile can be treated as an adult from the age of sixteen years
- **France:** the age of being an adult is sixteen
- **Canada:** the age of the juvenile who will be treated as an adult is fourteen years
- **Germany:** at the age of fourteen years.
- **India (Juvenile Justice Act 2000): any juvenile cannot be tried as an adult**
- **India (Juvenile Justice Act 2015): from the age of sixteen in the case of heinous crimes**

- **The types of offences for which the minor can be tried:**
- **United States of America:** aggravated sexual abuse, murder, assault, robbery, firearms offences, and drug offences
- **United Kingdom:** Murder, rape, causing any explosion likely to endanger life or property.
- **South Africa:** robbery, murder, rape
- **France:** armed robbery, murder, rape and drug offences
- **Canada:** serious bodily harm to any person, murder, and aggravated sexual assault
- **Germany:** abuse of persons who are incapable of resistance, or sexual abuse, or child abuse leading to death
- **India (Juvenile Justice Act 2000): cannot be tried**
- **India (Juvenile Justice Act 2015): “*Serious offence (punishment 3-7 years e.g. cheating,***

- **The penalty for juveniles tried as adults :**
- **United States of America:** same as adults. No life imprisonment or death penalty
- **United Kingdom:** same as adults. life imprisonment allowed. no death penalty
- **South Africa:** same as adults. No life imprisonment or death penalty
- **France:** same as adults, on a case by case basis. life imprisonment allowed
- **Canada:** Murder – 7-10 yrs. Maximum penalty for other offences is 3 years. No life imprisonment or death penalty
- **Germany:** 10 yrs. No life imprisonment or death penalty
- **India (Juvenile Justice Act 2000): not applicable**
- **India (Juvenile Justice Act 2015): same as adults. Life imprisonment with possibility of release allowed. No death penalty**

TESTAMENTARY CAPACITY

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- **Testamentary capacity**
- **Capacity of the individual to make a will.**
- refers to person's full sense and mental sanity to have confirmed and signed the Will after **understanding what his assets comprised and what he is doing by making a Will.**
- He understands in full mental capacity **who he is naming** the assets to and how are they related to him and what **repercussions** it may have later.
- Testamentary capacity is the legal status of being **capable of executing a Will.**
- Testamentary capacity- **task-specific nature** as opposed to the global status of the mental illness. It means that a person suffering from mental disorder can make a Will provided he is capable of required competency for making a Will.

- A **Will** is an important document which enables the individual/living person to **rightfully leave his assets to whoever he chooses to, after his death.**
- It is a **legal declaration** of a person's intention which he desires to be performed after his death. There often arise complications when a person dies without making a Will.
- After the death of a person, his property devolves in two ways:
 - (i) According to the respective laws of the land when no Will is made – i.e. intestate
 - (ii) By way of Will – i.e. testamentary

- **Law of Succession**

- laws of inheritance are diverse and complicated.
- The rules of distribution of property in case a person dies without making a Will are defined by every law of succession.
- These rules provide for a class of persons and percentage of property that will be inherited by such persons.
- When a person dies a sudden death without making a Will, there is possibility of unintended injustice to some potential beneficiaries.
- India has a well developed system of succession laws that governs a person's property after his death. Indian Succession Act 1925 applies expressly to Wills and Codicils made by Hindus, Buddhists, Sikhs, Jains, Jews, Parsis and Christians. The Muslim Personal Law is applicable to Muslims. They are not governed by Indian Succession Act, 1925.

- Acts operating in India:
 - **The Indian Succession Act 1925**
 - **The Hindu Succession Act (amendment) 2005)**
 - **The Muslim Personal Laws**
 - **The Indian Registration Act 1908**
- Apart from these Acts, various states of India have their own amendments of Hindu Succession Act 1956, according to the local customs.
- A male who makes a Will is called **testator** and a female **testatrix**. All properties, movable or immovable of which testator is owner and which are transferable can be disposed off by a will.

According to **Section 2(h) of the Indian Succession Act 1925,**

- **“A Will is a legal declaration of the intention of the testator, with respect to his property which he desires to be carried into effect after his death.”**

Important postulates of the Will

- • A Will is a legal declaration. It must be signed and attested as required.
- • The declaration should relate to disposition of the person making the Will.
- • A Will becomes **enforceable only after the death of the testator**. It has no effect during the lifetime of the testator.
- • It is **revocable** and the testator can change the Will at any time during his life-time.

PERSONS CAPABLE AND COMPETENT TO MAKE A WILL

- Section 59 of Indian Succession Act 1925
- Any person of **sound mind** can make a Will
- A person who has reached the **age of majority** can make a Will. However, as per Section 60 of the Act, a father whatever his age may be, may by Will may appoint a guardian or guardians for his child during minority.
- A married woman may make a Will of her property which she could alienate by her own act during her life-time.
- Persons **who are deaf or dumb or blind , But of sound mind**
- Persons, who **are insane**, may make a Will during an **interval while they are of sound mind**

PERSONS WHO CAN'T MAKE A WILL

- **Lunatic, insane persons**
- **Minor** i.e. below 18 years of age.
- **Corporate bodies** by their very nature are incapable of making a Will, though they may benefit under the Will of an individual partner.
- No person can make a will , while he is in such a state of mind, whether arising from **intoxication** or from illness or from any other cause , so that he does not know what he is doing
- **Codicil**
- **supplement to a Will** when a testator intends to make any minor alterations in his Will e.g. change in the number of trustees. According to the Section 2(b) of the Indian Succession Act 1925,
- instrument made in relation to a Will and explaining, altering or adding to its disposition and shall be deemed to

- **Essentials of Will making**

- • It is a legal document
- • Person to be competent to make a will.
- • Signature of the testator on the Will
- • Attestation by two or more witnesses.
- • No particular form of Will prescribed by law
- • Registration not compulsory
- • Safe custody of Will.
- • Secrecy of the Will
- • It is effective only after the death of the testator.
- • Execution of the Will.

- **Competency of the person to make the will**
- Every person of sound mind and not a minor can execute a will.
- Any movable or immovable property can be disposed off by a will by its owner
- Persons who are deaf, dumb or blind are not incapable of making a will, if they know what they do by it.
- A person who is insane may make a will if his psychopathology does not influence his decision making or at times when he has sound mind.
- No person can make a will, while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause that he does not know what he is doing.
- The declaration takes effect only after the death of the testator and it is revocable any time before the death

- **Banks v. Goodfellow criteria**
- Understanding of the nature of the act (Will making) and its effects
- Knowledge of the nature and extent of one's assets.
- Knowledge of persons who have a reasonable claim to be beneficiaries.
- Understanding of the impact of the distribution of the assets of the estate.
- A confirmation that the testator is free of any delusions that influence the disposition of the assets.
- Ability to express wishes clearly and consistently in an orderly plan of disposition.

- **US jurisdictions** - possible for a testator to possess general testamentary capacity and yet suffer from an insane delusion that invalidates the Will.
- **Indian Succession Act 1925**- a person is said to have testamentary capacity only if he is in a sound disposing state of mind.
- Essential that the testator should have **sufficient capacity** to **comprehend** perfectly the **conditions of his property**, his **relations to the persons** who were or should or might have been **object of his bequest** and the **scope or the bearing** of the provisions of his Will.

ELEMENTS

- It is a **voluntary act** on the part of the testator
- Testator should have a **sound disposing mind**.
- Testator should know **what he is doing** by making a Will.
- Testator should have sufficient capacity to know the **extent of his/her property**.
- Testator should be aware of **potential beneficiaries**.
- Testator should be aware of the **consequences** of his/her decision.
- Testator should be **free from undue influence/fraud/coercion**.
- Testator must know the **contents** of the Will.

Factors affecting testamentary capacity

- **Physical factors**
- **Psychiatric disorders**
- **Undue influence**
- may affect **cognition, perception**, which in turn may have effect on individual's ability to understand relevant facts related to testamentary capacity.
- affect the person's **appreciation of consequences** of specific actions or his **interpretation of situation specific factors**

- **Physical factors**
- Factors which lead to **brain dysfunction** either due to certain **diseases, trauma or medication** may have impact on the client's ability to think clearly.
- include **medical disorders, including head trauma, systemic diseases i.e. metabolic, endocrinal, infectious and other disorders** that affect brain functioning and mental state.
- Certain **drugs** may have effect on cognition and perception and hence may interfere in decision making.
- **Alcohol**
- Alcohol abuse can have both acute and chronic effects on cognition, judgment and behaviour.
- In the acute phase of alcohol consumption even the small amounts of alcohol may affect perception, judgment and impulsiveness. These mental changes could affect testator's decision regarding the

- **Psychiatric disorders**
- **Dementia**
- Dementias such as Alzheimer's disease, Lewy body dementia, and vascular **cognitive impairment** are characterized by diffuse cognitive deficits.
- In cases of obvious and severe cognitive impairment, there will be little need for subtle interpretations of brain function, and the lawyers or the courts can assess the impact of the impairment without the help of experts.
- However, in many disputed cases, the level of cognitive impairment is relatively mild or subtle. Some individuals with dementia maintain their social graces and appear perfectly normal to a lay person.
- Therefore, probing and documentation of the rationale disposition, particularly in suspicious circumstances, are especially important to demonstrate that the individual is capable.

- In dementia, **executive impairment** can affect insight, perception and judgment and impulse control.
- Mild forms of memory impairment can be associated with suspiciousness or even paranoid delusions as testators attempt to compensate for their memory deficits.
- In retrospective assessments, evidence for progression of dementia after the last Will was executed can help to support hypotheses about impaired thinking, perception, or judgment at the time of the execution of the Will

- **Mood disorders**

- Mood disorders, including depression and bipolar disorder, may produce **cognitive distortions (delusions), compromise judgment**, and cause irritability or impulsiveness.

- These acute and subacute changes may affect testamentary capacity and **vulnerability to undue influence**.

- **Delusions**

- Paranoid delusions may be seen in **schizophrenia, delusional disorders, and neurological disease, such as dementia, delirium, brain injury, and other brain lesions**.

- According to the **Banks v. Goodfellow criteria**, the testator must be free of any delusions that directly affect the distribution of the estate. Changes made in the Will on the basis of false belief make the Will invalid. Even if such beliefs do not reach delusional intensity, they can make the testator **vulnerable to**

- Careful questioning and probing by the assessor will help to elicit the impact of these beliefs on the distribution of assets.
- **Undue Influence**
- **Coercion or subversion of Will**
- Subversion allows for a continuum of influence depending on the extent of the cognitive impairment. The lower the cognitive capacity of an individual, the lesser influence would be required to determine that the individual was incapable or unduly influenced. On the other hand, an individual with no cognitive impairment would have to be subjected to a severe level of influence to the point of coercion or containment before that influence would be considered undue.
- Undue influence has been defined by one of the courts as: “...the opportunity of the beneficiary of the influenced bequest to mould the mind of the testator to suit his or her purpose.” (Hyatt v. Wrote, 1937)
- Undue influence is a strictly **legal concept; the onus of proof is on those claiming undue influence**

Frolik (2001) and Spar and Garb (1992) have delineated the **indications of undue influence**

- A confidential relationship existed between testator and the influencer that created an opportunity for the latter to control the testamentary act.
- The influencer used the relationship to secure a change in the distribution of the testator's estate.
- There were unnatural provisions in the will
- The change in distribution did not reflect the true wishes of the testator.
- The testator was vulnerable to being influenced either because of a neurological or psychiatric disorder or because of specific emotional circumstances.
- The beneficiary actively participated in or initiated the procurement of the Will
- There was undue benefit to the beneficiary.

- **Section 61 of the Indian Succession Act 1925**
a will is avoided when it is affected by coercion or fraud because the person otherwise capable does not have a free mind.
- At times it is difficult to differentiate between the undue influence on the part of the potential beneficiary and expression of gratitude and desire on the part of testator.

Symptoms suggesting testamentary incapacity (Hayley Bannet)

- Difficulties in attention and information processing
- Language difficulties
- Memory difficulties
- Impairment of higher executive functions
- Persecutory delusions about a family member causing the testator to exclude the person from the Will.
- Delusions of poverty – the testator does not realize the worth of his own or of his estate which may influence his decision making and distribution of property.
- A person displaying these symptoms at the time of giving instructions to prepare the Will or signing of the Will may be suffering from some form of mental incapacity.

- LAW AND TESTAMENTARY CAPACITY – **test specific, situation specific.**
- Need not possess mental powers at their best, unimpaired in any degree by old age or disease
- At the time of will making, he should have been able to comprehend nature and effect of disposition, should have sufficient memory and intelligence to form a proper judgement reg. it , should have freely decided to make it
- Person of unsound mind can make a will during **lucid interval**
- Delusions may not affect will validity.
Superstitions may , when the person isn't able to exercise free judgement
- Will made by a person of full capacity is **not**

ASSESSMENT OF TESTAMENTARY CAPACITY

- At the time of will drafting, lawyer may make initial assessment, call for expert assistance in specific circumstances
- Experts – psychiatrists, psychologists
- ROLE-
 1. confirmation of testamentary capacity when cognitive and mental state is concerned
 2. assess potential role of undue influence
 3. give retrospective opinion re capacity or undue influence after death of the testator when the will is challenged.
- Review of available medical records
- Interview with testator

- letter from the solicitor detailing legal tests – confirmation that client has consented to evaluation and disclosure of results. Verifiable information about clients family, assets
- enough time for evaluation. Multiple interviews over a period of time. Consent to be taken prior to evaluation
- Standard assessment for dementia
- Thorough physical and neurological examination
- Psychiatric examination, presence of delusions, hallucination, thought disorder, mood state, cognitive functions and their effect on decision making
- Record the answers verbatim
- Check facts such as extent of assets, with the solicitor
- Ask about and review previous Wills
- Ask why potential beneficiaries are included or excluded.
- Check that client understands each of the Banks v. Goodfellow points
- If in doubt about mental capacity seek second opinion

- At least 2 separate consultations
- Criteria for determination of testamentary capacity
- The testator understands that he is giving instructions for the disposal of his property after his death.
- The testator can recollect the extent and character of his property and dispose it off with understanding and reason
- The testator can recall and understand the claim of potential heirs such as his family
- The testator is not suffering from any disorder of mind such as delusions and hallucinations which influence his decisions

- Asking the testator to explain the effects of a Will, and asking whether he understands what would happen to his property if he does not make one.
- Asking the testator to give a general estimate of his property and its value.
- Asking the testator to describe the reasoning behind his decision to include or exclude potential heirs.
- Asking the testator whether he understands that the Will revokes all previous Wills

- Can you tell me the reasons that you decided to make changes in your will?
- Why did you decide to divide estate in this particular fashion?
- Do you understand how individual A might feel, having been excluded from the will or having been given significantly less amount than previously expected or promised.
- Do you understand economic implications for individual B for this particular distribution in your will?
- Can you describe the nature of any family or personal disputes or tensions that may have influenced your decision?
- Can you tell me about the important relationships in your family and others close to you?

examination of the client should be conducted in the
absence of anyone
who stands to benefit or might exert influence

- **Cognitive screening tests**

- MMSE

- Clock drawing test

- **RETROSPECTIVE ASSESSMENT**

- Obtaining the relevant document - All medical records ,Results of any neuropsychological examination, Neuro-imaging results ,References to the testator's mental state or behaviour ,Relevant financial documents - Other personal documents such as cheque books, diaries, business records or contracts
- Obtaining corroborative information about deceased's behaviour from The surviving spouse ,Relatives ,Friends and business associates
- Informed assessment

- **Documentation for assessment of testamentary capacity and undue influence**
- Rationale for making changes
- Appreciation of consequences and impact of particular distribution esp if it deviates from or excludes natural beneficiaries
- Clarification of concerns about potential beneficiaries – r/o delusion/ overvalued idea influencing distribution
- Evidence of presence of specific neurological or mental disorders that may affect cognition, judgement or impulse control
- Evidence of psychiatric symptoms/ behavioural disturbances' at the time of execution of Will. - agitation, impulsiveness, dis-inhibition, aggression, hallucinations or

- Emotional/psychological milieu in which the testator lives, with specific reference to conflict or tension within the family.
- Testator's understanding and appreciation of any conflicts in his environment
- Evidence of pathological or dependent relationship with a formal or informal caregiver.
- Evidence of inconsistency in expressed wishes or an inability to communicate a clear, consistent wish with respect to distribution of assets
- Any indication of undue influence

COMPETENCY TO STAND TRIAL

- “Adjudicative competence”
- “Competence to proceed with adjudication”
- “Competence to stand trial”
- “Fitness to stand trial”

DEFINITION

- The **legally determined capacity** of a criminal defendant to proceed with criminal adjudication.
- Mental abilities of individuals to defend their case is called, 'fitness to stand trial' or 'competence to stand trial' (American Psychiatric Association, 2002; Mossman et al., 2007)
- Is a legal construct that usually refers to a criminal defendant's **ability to participate in legal proceedings related to an alleged offence** (Mossman et al., 2007).

FITNESS FOR INTERROGATION – capacity to understand meaning of questions posed during police investigations and in court and to answer such questions meaningfully (Rothschild et al 2007)

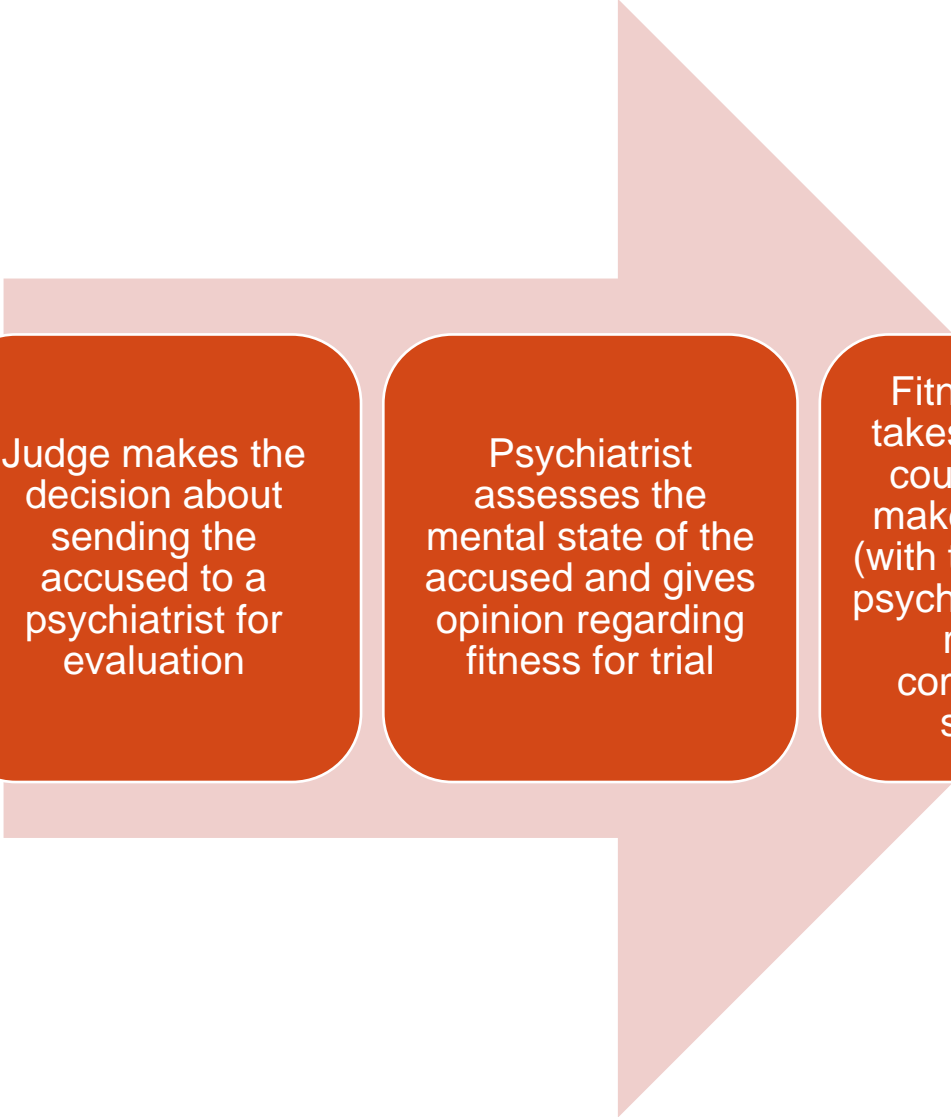
PRESUMPTION OF FITNESS

- The law assumes that every accused person is “fit”, unless it is determined by a judge, after a fitness hearing that the accused is “unfit to stand trial ”

A criminal court may issue directions to

- assess the fitness to stand trial
- to determine issue of criminal responsibility

- COURT DETERMINES



Judge makes the decision about sending the accused to a psychiatrist for evaluation

Psychiatrist assesses the mental state of the accused and gives opinion regarding fitness for trial

Fitness hearing takes place in the court and judge makes a decision (with the help of the psychiatrists report) regarding competency to stand trial

- Competency: An **Indispensable** Element
- Defendants have an **unassailable right to understand** the proceedings against them.
- No matter how clear the evidence of guilt is, mentally incompetent people can't be convicted. A person who is **not competent/unfit** to stand trial **Are usually excluded from criminal prosecution. Trial usually postponed till pt is judged competent**
- Usually sent for treatment to regain competence
- Authorities will arrest and hold the defendant in custody and the prosecution will file criminal charges, but the case can't advance until the defendant's competency is "**restored.**"

- LEGAL VALUES SERVED BY COMPETENCY

- Richard Bonnie
- Wiener BA, 1985

- preserving the dignity of the criminal process/
legal system
- reducing the risk of erroneous convictions and
safeguard accuracy of proceedings and ensure
procedural fairness
- protecting defendants' decision-making
autonomy.
- To achieve the objectives of Sentencing

- Incompetency: **Not a Defence.** Competency to stand trial is legally **unrelated** to the defendant's mental state at the time of the alleged crime.
- Whether he has a mental state defence to the crime, such as insanity or diminished capacity, is an issue to be determined at trial.
- The **forensic evaluation of Competency** to stand trial may arise in various ways.
 - 1.the defence counsel may request an assessment that will be protected by privilege.
 - 2. However, most evaluations are compelled and reported findings are delivered to the court.

- Important to take proper measures to protect against self-incrimination.
- The mental health professional should disclose to the defendant the nature of the evaluation, who has retained or appointed the evaluator, lack of ordinary doctor–patient confidentiality, possibility that the evaluator may be called on to testify about the evaluation, and right of the defendant not to answer questions.
- Ideally, the defendant's treating clinician should not perform the evaluation.

HISTORY

- 1836 act of Parliament [English law] persons accused of felonies were granted the full right to legal representation.

- **Youtsey v. United States [1899]** Youtsey had been tried in absentia
— due to problems resulting from a seizure disorder and convicted.

Then a higher court overturned conviction and remanded the case for retrial and a competency hearing.

- **Dusky v. United States[1960]** The U.S. Supreme Court established
what the Constitution minimally requires in order for a

STATISTICS....

- United States alone, around 60,000 competency cases per year
- Rates of incompetency 20 – 30%. (Bonnie RJ & Grisso T, 2000;
- Melton GB et al., 2007; Melton GB et al., 1997)
- Judges and attorneys estimate that competency is a legitimate issue in approximately 5% of criminal cases, although only 1/3rd of these are actually referred. [LaFortune and Nicholson (1995)]
- No valid study available depicting factual numbers of incompetent or unfit cases for trial in Indian court of law.

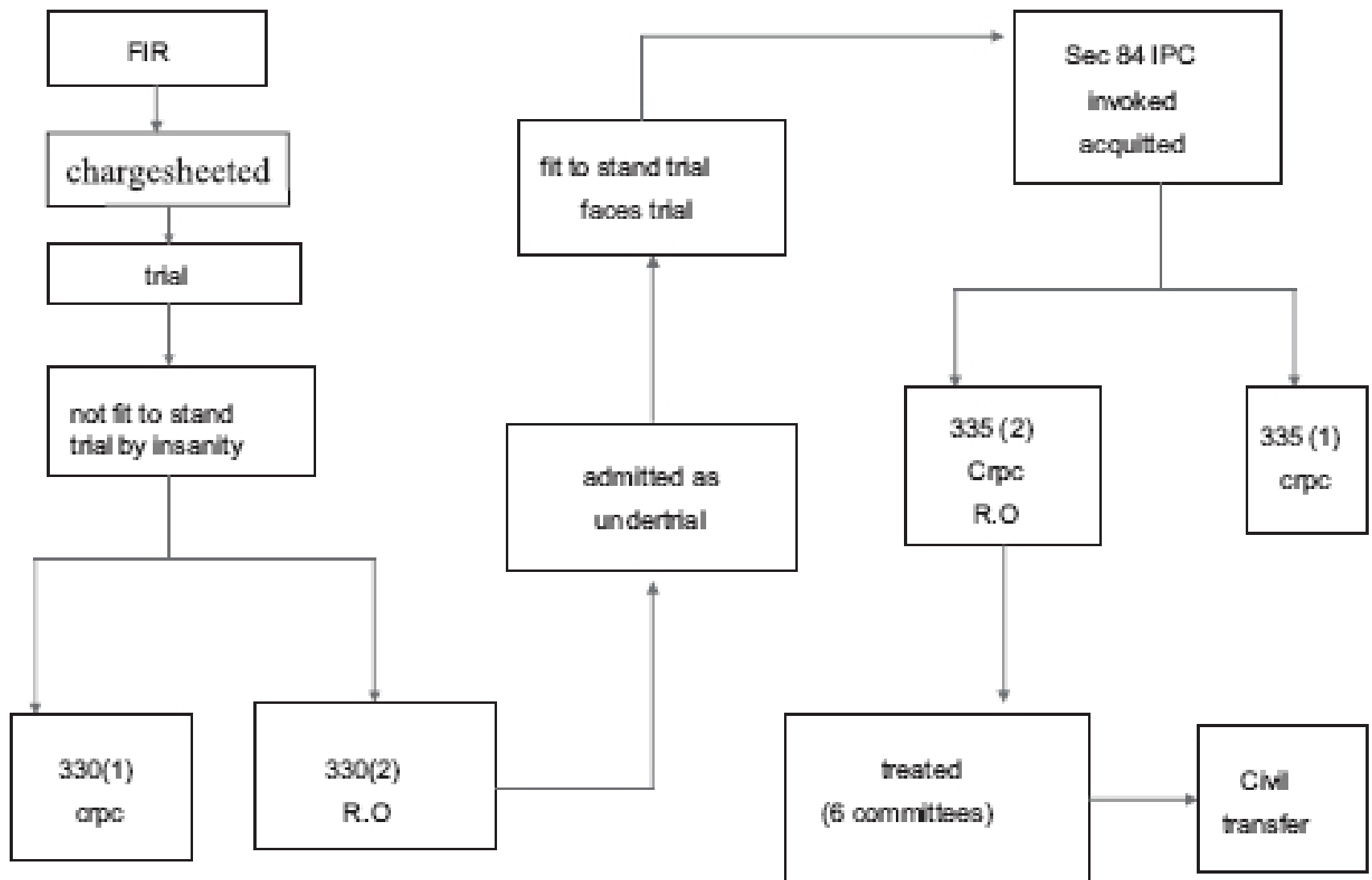
- However almost all legislations have some common components with regards to assessment of fitness to stand trial
- 1. ability of the accused to understand the charges he/she has been accused of
- 2. ability to distinguish between plea of guilty and not guilty
- 3. realizing the seriousness of the penalties if proven guilty
- 4. ability to instruct his/ her lawyer and ability to follow the proceedings in court
- Appropriate behaviour in court

WHY TO ASSESS ?

- Wulach (1980) identified four legal rationales –
 - 1. Accuracy of the proceedings demands the assistance of the defendant
 - 2. Legal procedure depends on defendants' ability to exercise their rights to choose and assist legal counsel, confront their accusers, and testify.
 - 3. Integrity and moral dignity of the legal process is undermined by the trial of an incompetent defendant
 - 4. The goal of punishment is not served by sentencing a defendant who fails to comprehend the reasons for

INDIAN SCENARIO

- RIGHT TO FAIR TRIAL IS A HUMAN RIGHT
- Article 14 of the International Covenant on Civil and Political Rights, approved by India and is a part of the Protection of Human Rights Act 1973 which recognises the **right to fair trial as a human right**.
- **The concept of a fair trial is a constitutional imperative recognised in Articles 14, 21, 22 and 39-A**
- - The Code of Criminal Procedure (CrPC) 1973 (Procedure in case of accused being lunatic, CrPC Sec 328, 329 and 330)



FACTORS TO BE CONSIDERED FOR ASSESSMENT

- **DUSKY STANDARD**
- **Factual understanding**
- **Rational understanding**
- **Ability to consult with counsel**

(Dusky v US 1960; Rogers et al 2001)

- (1) Mental capacity to appreciate his presence in relation to time, place and things
- (2) He is able to understand that he is in a Court of Justice, charged with a criminal offence and there is a Judge on the Bench;
- (3) A Prosecutor present who will try to convict him of a criminal charge;
- (4) That he has a lawyer who will defend him against that charge;

- 5) That he will be expected to tell his lawyer the circumstances, facts about the case to the best of his mental ability.
- (6) That there is, or will be, a jury present to pass a verdict based on the evidence provided.
- (7) He has memory sufficient to relate those things in his own personal manner

INVOKING fitness to stand trial assessment in court

- Court may order assessment of defendants mental condition, if it believes that such evidence is necessary to determine
- FITNESS to stand trial
- Whether , at the time of committing the alleged offence, defendant was suffering from mental disorder
- Whether mental disorder impairs the reasoning power of the defendant
- For placement of person in an appropriate place like hospital, rehab, prison

DOES THE ACCUSED HAVE THE MENTAL CAPACITY FOR ??

- Comprehending the charges framed against him/her.
- Realising the seriousness of the penalties if proven guilty
- Following the proceedings of the court
- Helping their lawyer to defend their case
- Appropriate behaviour in the court.

(Zapf et al., 2001).

TOOLS

- -1. The MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) (Poythress NG et al., 1999)
- - 2 The Competence Assessment for Standing Trial for Defendants with Mental Retardation (CASTMR)-(Everington C & Luckasson R, 1992).
- - 3.The Evaluation of Competency to Stand Trial-Revised (ECST-R)(Rogers R et al., 2004).
- - 4.The Inventory of Legal Knowledge (ILK: Musick & Otto,2010)
- - 5.Competency Screening Test (CST: Lipsitt, 1971)
- 6.Competency Assessment Instrument (CAI), 1973 Mc-

Garry,Harvard Medical School's Laboratory of Community Psychiatry.

AMERICAN ACADEMY OF PSYCHIATRY AND LAW (AAPL) GUIDELINES (2007 pub.)

- attempts to standardize competency evaluations by recommending 15 specific areas of inquiry
- recommends the use of specific questions and a systematic examination covering 15 areas of inquiry.
- A more sound approach would be the integration of clinical interviews with standardized measures
- Psychiatrists should interpret results of testing in light of all other data obtained from clinical interviews and collateral sources

EVALUATION...

- First, the evaluation should determine whether the defendant has a mental disorder. A thorough mental status examination will lead to a description of signs and symptoms of mental disorder, if they present.
- The forensic assessment will identify any impairment of capacities related to the required competency.
- In the event of a finding of incompetency, the diagnosis and related information will provide important prognostic information regarding restoration.

- Review of the criminal allegations (arrest reports), review of information that led to the referral (such as court clinic's report), and the court order
- Gather collateral information: Treatment records that will inform regarding diagnoses and symptoms
- Attorney information: What happened in prior attorney contacts, the nature and quality of the interaction, problems observed, and belief regarding defendant's competency to stand trial
- More information may be necessary in cases involving claims of amnesia, suspected malingering
- Consider: How much experience does the defendant have in the criminal justice system? It may be useful to ask questions about experience to determine level of sophistication

- The assessment content should follow the legal test as outlined by Dusky.
- Framework developed by the MacArthur Foundation Research Network on Mental Health and the Law.
- involves assessment of defendants' capacities to understand, reason, and appreciate as it related to specific content areas.
- Questions may be framed to
- assess understanding of information related to competency to assist counsel (understanding of criminal charges, implications of being a defendant, adversarial nature of proceedings, role of defence counsel, prosecutor, judge and ability

- Decisional competency – ability to make important decisions that arise in the course of adjudication: how to plead, considering plea agreements, strategy of defence.

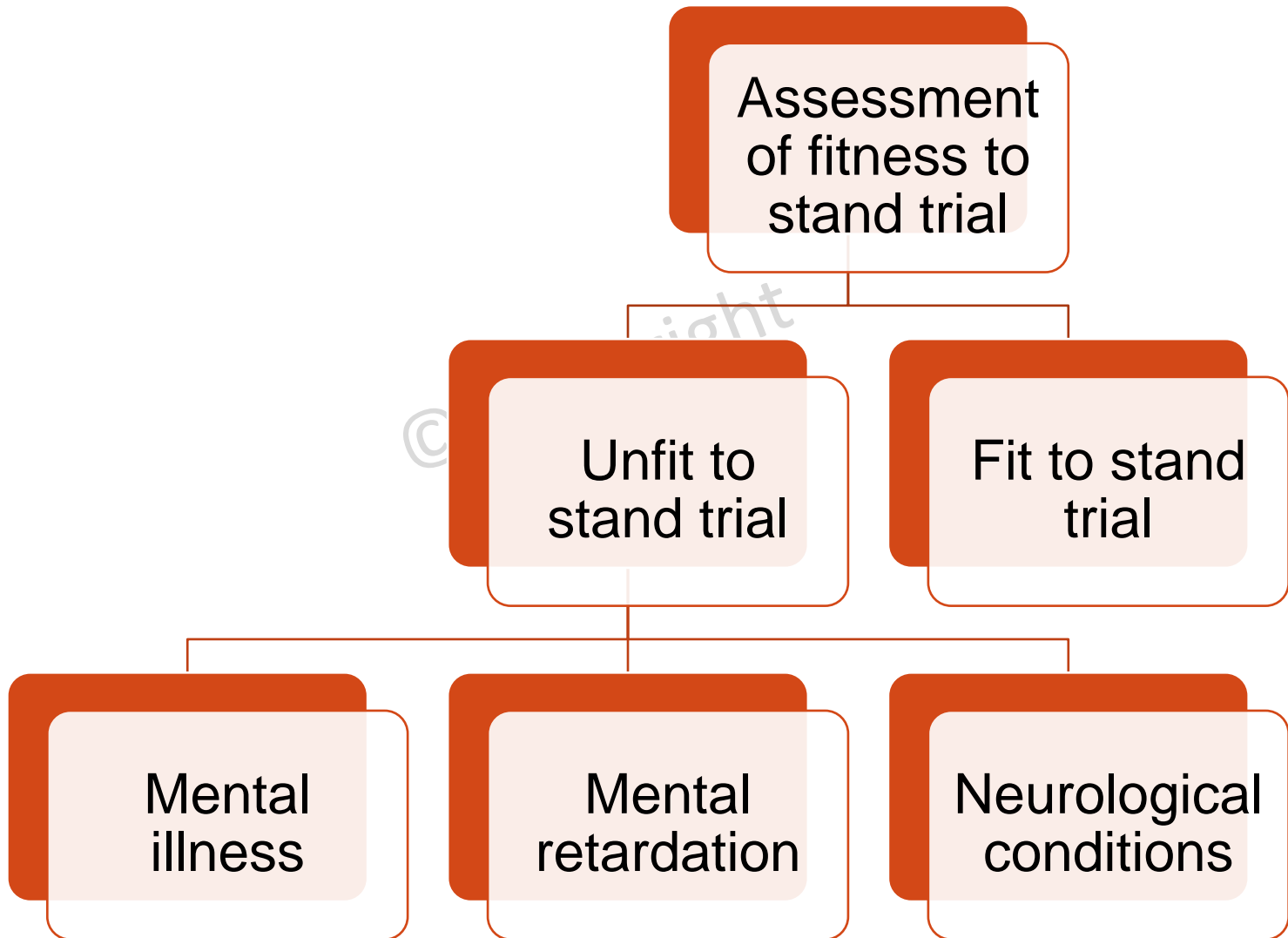
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- The clinician's questions should address each area systematically.
- the defendant should be asked about the specific charges being brought against him and his knowledge of the specific actions that are alleged.
- The defendant should have an understanding of the potential punishment that he faces.
- The assessment should focus on the defendant's capacity, not on their current level of knowledge
- the clinician should also assess the defendant's ability to reason, to employ the information he understands to make a decision.
- Assessment of appreciate involves the application of information to one's own circumstances.

- Attorney interactions
- Observations and inferences
- Account of the event

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EVALUATION...



UNFIT TO STAND TRIAL

MENTAL ILLNESS

- Schizophrenia, Delusional disorder, depression , BMD

MENTAL RETARDATION

- Mild, moderate, severe, profound

NEUROLOGICAL CONDITIONS

- Dementia, stroke

- CERTIFY – FIT/UNFIT TO STAND TRIAL
- **If unfit the forensic psychiatrist has to ascertain**
 1. The nature of the illness and impairment
 2. Also reason out how the defendant's illness is an impediment to the judicial process.
 3. Restorability of the fitness and time required for the same. Mention reversibility (treatable conditions like schizophrenia, bipolar disorders , delirium or irreversible – MR, dementia, irreversible brain damage)
 4. Mode of restoration of fitness –
pharmacotherapy
psychosocial treatment
legal counselling.

- PSYCHOSOCIAL INTERVENTIONS

- CBT in depressed pts
- Cognitive retraining in pts with cognitive deficits
- Social skills training in schizophrenia
- Anger management techniques
- Counselling for drug users
- Relaxation training and BT for anxiety disorders
- Stress management, coping skills

- LEGAL COUNSELLING
- Educating the defendants in the trial process, including roles of courtroom personnel, pleas, charges, sentencing and how to assist attorney in planning the case
- Guest lectures, group discussions
- Workshops, meeting with court personnel
- Role play with mock trials
- Discussions led by legal experts
- Videotapes of actual courtroom proceedings

IMPLICATIONS

- -Influence on court decisions, Court proceedings
- -Resources utilised
- -Referral to a forensic psychiatry setting and treatment of a patient.

WHAT HAPPENS IN INDIA....

- No tools have been developed till date.
- Meagre statistical data.
- Absence of certified forensic psychiatrists.
- Only a few hospitals provide inpatient forensic psychiatry services.
- few psychiatrists trained in forensic issues.

Fitness to stand trial is NOT insanity defence

Fitness to stand trial

- current ability to understand and participate in the adjudicating process.
- Assessment of State of mind during adjudicating process. dynamic entity, changes over a period of time, needs periodic assessment.
- prospective assessment of

Insanity defence

- refers to one's state of mind at the time of the alleged crime (Sec 84 IPC)
- State of mind during commission of crime. static entity
- retrospective assessment of state of mind

ISSUES...

- Lack of established methodological and procedural guidelines for capacity evaluations and application of variable criteria to establish impairment
- Reversibility
- Forced treatment
- Self-Incrimination
- Confidentiality

- REVERSIBILITY

- Restorability of fitness to stand trial in the future. Irreversibility = non restoration
- Defendant should not be held indefinitely for treatment of restoration of fitness. Stipulated time period for successful restoration within a reasonable time

- FORCED TREATMENT

- If defendant suffering from mental illness, he/she should be offered treatment which they can refuse
- Conflict between individuals right to refuse treatment vs restorability of the fitness to stand trial through forced treatment
- ECT – debate esp in western countries

- SELF INCRIMINATION

- During assessment defendants may admit to certain actions
- Pt can demand for psychological evaluation under certain circumstances
- Documentation of such self incriminatory evidence – controversial

- CONFIDENTIALITY

- Dilemma between “respect for individuals right of privacy” and “duty to do forensic assessment of the defendant and provide an accurate report to the court or investigating agency”
- Required to disclose role of assessment and submission of report to the court
- Psychiatrist needs to inform defendant that information will be collected from collateral sources like his/her family members . Hence confidentiality is limited

CURRENT SCENARIO

- Law has not established a universally accepted & understood definition of capacity to commit offense.
- Psychological sciences cannot adequately deconstruct this concept in a manner that allows for an accurate and reliable assessment.
- Mental health examinations to establish criminal capacity have low reliability. [Anthony L Pillay et al]
- Developmental literature is also unable to provide absolute criteria for determination of criminal capacity unequivocally.
- No designed assessment tools at present.

ADOLESCENT AND CAPACITY TO COMMIT CRIME...

- Mental age [IQ test].
- General understanding of crime and of its consequences.
- Reasoning and judgement in aspects related to the offence
- Understanding of the legal process and law.
- If having acted under the influence of others, the extent of this influence must be considered.
- The conduct of the adolescent before, after or during the commission of the crime.

PSYCHOMETRICS...

- These assessments can help police or other competitive bodies to determine how to assess the individual in question e.g. whether he/she is capable to stand trial or whether due to mental illness he/she is unable to understand the proceedings and hence not competent to stand trial.
- HTP, ROR, MMPI

- Use of the MMPI-2
- The MMPI is very commonly used by mental health professionals to assess and diagnose mental illness and in assessing malingering within criminal forensic groups
- The test is often used in legal cases, including criminal defense and custody disputes.
- On MMPI, importance is given to the Validity scales i.e. L, F and K and on subscales 7 and 8 – gives an idea about Schizoid / paranoid tendency.

(The MMPI, MMPI-2, & MMPI-A in court: A practical guide for expert witnesses and attorneys (3rd.ed). Pope, Kenneth S.; Butcher, James N.; Seelen, Joyce)

- ROR
 - Used to assess if the patient has psychotic tendencies and touch with reality.
 - Original responses/confabulated responses.
 - In mentally retarded, it can be given as a stimulus to understand the person's thought process
- © Copyright
- IQ TESTING
 - Is done for Juveniles to assess their mental age (JJ Act)
- HTP
 - Emphasis on the quality of the drawings is paid to check for psychotic tendencies.

- Competence to stand trial is a prerequisite to adjudication of criminal cases and essential in preserving fairness, accuracy and dignity of criminal proceedings .
- Competency assessment instruments, multiple sources of data, the relationship between psycho-legal impairment and symptoms of psychopathology and the fluid nature of competency across time and across specific case demands are all aspects of evaluation of trial competence
- Issues surrounding competency determination are highly complex . the evaluator needs not only a high level of clinical knowledge and skills but also knowledge of the legal system.
- Although ultimately competence to stand trial is a legal issue, as psychiatrists, we are called on to ADDRESS the issue of competence more than most issues in criminal law

THANK YOU