

ROLE OF PSYCHIATRIST IN CRIMINAL TRIALS

INTRODUCTION

- CRIMINAL LAW
- STAGES OF CRIMINAL LAW
- ROLE OF PSYCHIATRIST DURING THESE STAGES
- PRETRIAL ASSESSMENT
- TRIAL ASSESSMENT
- ASSESSING FITNESS TO PLEAD AND STAND TRIAL
- REPORT WRITING FOR COURTS
- MEDICOLEGAL RESPONSIBILITIES
- INSANITY DEFENSE
- CONCLUSION

CRIMINAL TRIAL

- IT IS A TRIAL WHERE **CRIME IS COMMITTED AGAINST STATE**, I.E SOCIETY IN GENERAL.
- ONLY GOVERNMENT CAN FILE THE CASE AGAINST ACCUSE ONUS IS ON STATE TO PROVE GUILTY BEYOND REASONABLE DOUBT, THIS IS TERMED AS ADVERSARIAL SYSTEM.
- PUNISHMENT USUALLY IS IN FORM OF **INCARCERATION OR FINE TO STATE OR DEATH PENALTY**.
- CRIMINAL LAW OR INDIAN PENAL LAW CONSTITUTES OF **THREE MAIN LAWS**:
 - SUBSTANTIVE CRIMINAL LAW OR REAL CRIMINAL LAW – IPC 1860
 - PROCEDURAL CRIMINAL LAW OR ADJECTIVE CRIMINAL LAW
 - CODE OF CRIMINAL PROCEDURE (CrPC) 1973
 - INDIAN EVIDENCE ACT 1872

STAGES IN A CRIMINAL TRIAL

I. PRE-TRIAL STAGES

1. REGISTRATION OF FIR
2. INVESTIGATION

II. TRIAL STAGES

1. FILING OF CHARGE SHEET
2. FRAMING OF CHARGES/SERVING THE NOTICE
3. RECORDING OF THE PROSECUTION EVIDENCE
4. STATEMENT OF THE ACCUSED
5. EVIDENCE OF DEFENSE
6. FINAL ARGUMENTS OF BOTH THE SIDES
7. DELIVERY OF JUDGEMENT
8. ARGUMENTS ON SENTENCE
9. JUDGEMENT WITH PUNISHMENT

STAGES IN A CRIMINAL TRIAL

III. POST TRIAL STAGES

1. PUNISHMENT AS PER JUDGEMENT
2. IMPRISONMENT AND OR FINE
3. CAPITAL PUNISHMENT IN RAREST OF RARE CASES.

ROLE OF PSYCHIATRIST DURING THESE STAGES

- DURING THESE DIFFERENT STAGES, ROLE OF PSYCHIATRIST CAN BE IN THE FOLLOWING AREAS
 - COMPETENCE ASSESSMENT FOR VARIOUS **CIVIL RESPONSIBILITIES**
 - COMPETENCE ASSESSMENT AND MANAGEMENT ISSUES IN **CRIMINAL CASES**

PRE TRIAL STAGES

- ASSESSMENT OF FITNESS FOR INTERROGATION
- NO PERSON WITH MENTAL ILLNESS SHOULD BE DETAINED UNLAWFULLY IN PRISON ON NAME OF ‘ PREVENTIVE DETENTION’
- SCREENING FOR MENTAL ILLNESS IN ACCUSED AND OFFERING APPROPRIATE TREATMENT
- ASSESSMENT OF FITNESS FOR STANDING TRIAL [IF INVOKED DURING INQUIRY STAGE]

ROLE OF PSYCHIATRIST DURING THESE STAGES

TRIAL STAGE

- ASSESSMENT OF FITNESS FOR STANDING TRIAL [IF NOTICED OR INVOKED DURING STAGE TRIAL]
- INSANITY DEFENSE ASSESSMENT
- APPEARING AS EXPERT WITNESS
- SCREENING FOR MENTAL ILLNESS IN ACCUSED AND OFFERING APPROPRIATE TREATMENT IN PRISON SETTING FOR UNDER TRIALS

POST TRIAL STAGES

- SCREENING FOR MENTAL ILLNESSES AND OFFERING APPROPRIATE TREATMENT IN PRISON SETTINGS FOR CONVICTS
- ASSESSMENT OF FITNESS FOR EXECUTION

PRETRIAL ASSESSMENT

AIMS OF ASSESSMENT

ASSESSMENT OF ANY PERSON WITH MENTAL ILLNESS WITH REGARD TO FITNESS TO BE INTERVIEWED BY POLICE IS AIMED AT THE FOLLOWING

- TO DETERMINE CAPACITY OF PERSON TO UNDERSTAND INTERVIEW AS ASSESSED BY ASSESSMENT OF FOLLOWING PARAMETERS:
 - CONCENTRATION ABILITY
 - ABILITY TO UNDERSTAND INTERVIEW
 - ABILITY TO PROCESS INTERVIEW
- ANY AFFECT OF PROCESS OF INTERVIEW ON PERSONS MENTAL STATE IN CASE OF INDIVIDUALS WITH KNOWN MENTAL ILLNESS
- ASSESS AND ANTICIPATE WHAT RESOURCES OR SUPPORT WILL BE NECESSARY TO AID THE INTERVIEW SO AS TO REDUCE ANY DETRIMENTAL EFFECT OF INTERVIEW ON PERSON AND INCREASE PRODUCTIVITY OF INTERVIEW

FORENSIC PSYCHIATRY ASSESSMENT OF FITNESS TO BE INTERVIEWED BY POLICE”

- THIS IS A **FUNCTIONAL TEST OF CAPACITY**, NOT DEPENDENT ON ANY PARTICULAR MENTAL DISORDER DIAGNOSIS.
- FACTORS SUCH AS TIREDNESS, EMOTIONAL AROUSAL OR DISTRESS, PHYSICAL PAIN OR INTOXICATION MAY CONSTITUTE MENTAL VULNERABILITY AND DELAY INTERVIEWING.

FORENSIC PSYCHIATRY ASSESSMENT OF FITNESS TO BE INTERVIEWED BY POLICE”

BEFORE SEEING THE PATIENT :

- 1. OBTAIN WRITTEN INFORMATION FROM THE CUSTODY OFFICER ABOUT HIS/HER PRESENTATION IN THE POLICE STATION, PARTICULARLY LEVEL OF INTOXICATION, AGITATION, CONFUSION, BIZARRE BEHAVIOR, LOSS OF CONSCIOUSNESS OR HEAD INJURY.
- 2. OBTAIN PRIOR WRITTEN RECORDS OF MENTAL HEALTH ASSESSMENT OF ALLEGED ACCUSED.
- 3. CONSIDER POTENTIAL RISK OF HARM TOWARDS YOU OR OTHERS DURING THE ASSESSMENT, AND TAKE APPROPRIATE MEASURES.

FORENSIC PSYCHIATRY ASSESSMENT OF FITNESS TO BE INTERVIEWED BY POLICE”

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ON SEEING THE PATIENT :

- 1. OBTAIN CONSENT FOR THE ASSESSMENT, UNLESS THE PERSON DOES NOT HAVE CAPACITY (IN WHICH CASE IT IS NECESSARY TO BE SATISFIED THAT PROCEEDING IS IN THEIR BEST INTERESTS) AND DISCLOSE LIMITS OF CONFIDENTIALITY.
- 2. ATTEMPT TO TAKE A FULL PSYCHIATRIC HISTORY, CONCENTRATING ON IDENTIFYING EVIDENCE OF MENTAL DISORDER, LEARNING DISABILITY, PERSONALITY DISORDER, DRUG AND ALCOHOL USE.
- 3. UNDERTAKE A FULL MENTAL STATE EXAMINATION, INCLUDING ASSESSMENT OF COGNITIVE FUNCTIONING AS APPROPRIATE.

MODES OF ASSESSMENT

- DETAILED CLINICAL INTERVIEW
- GATHERING COLLATERAL INFORMATION
- ASSESSING POLICE TRANSCRIPT IF POSSIBLE
- JAIL PSYCHIATRIST OR MEDICAL OFFICER GENERAL OR BEHAVIOUR REPORT
- PSYCHOLOGICAL ASSESSMENT (GUDJONSSON COMPLIANCE SCALE)

TRIAL ASSESSMENT

ASSESSING FITNESS TO PLEAD AND STAND TRIAL

- UNDERSTANDING **THE RIGHT PURPOSE** OF ASSESSMENT
 - READ THE COURT ORDER FOR ASSESSMENT TO ASCERTAIN WHAT THE PURPOSE OF ASSESSMENT IS
 - FEEL FREE TO CLARIFY FROM COURT IN WRITING THE PURPOSE OF ASSESSMENT OR NATURE OF EXAMINATION
- INFORMED CONSENT AND **LIMITATION OF CONFIDENTIALITY**
 - PERSON OR FAMILY PRESENTING FOR ASSESSMENT SHOULD BE INFORMED BEFORE ASSESSMENT ABOUT FOLLOWING AND A WRITTEN CONSENT TO SAME SHOULD BE RECORDED
 - WHO ORDERED THE EXAMINATIONS ?
 - PURPOSE OF EXAMINATION
 - WHO ALL WILL HAVE ACCESS TO REPORT
 - LIMITATIONS OF CONFIDENTIALITY
 - DUTY TO REPORT TO COURT THE FACTS APPARENT DURING ASSESSMENT PROCESS

ASSESSING FITNESS TO PLEAD AND STAND TRIAL

- **CLINICAL EXAMINATION**

- DETAILED PSYCHIATRIC EXAMINATION, ASSESSMENT OF SPECIFIC CAPACITY
- REPORT OF UNFITNESS MUST BE FOLLOWED UP BY SERIAL ASSESSMENTS AND OPINION SHOULD BE BASED ON ASSESSMENT AS CLOSE AS POSSIBLE TO TRIAL OF ISSUE IN COURT.
- IN DIFFICULT CASES, IT IS ADVISABLE TO DO EVALUATION AS INPATIENT.
- ASSESSMENTS SHOULD HAVE DETAILS MENTIONED OF ENTIRE PROCESS OF INTERVIEW PREFERABLY IN QUESTION ANSWER FORMAT AND TO BE REPORTED ALSO TO THE JUDICIARY WITH ALL PROCESS DETERMINANTS DETAILED AND THEN IMPRESSION MENTIONED AT THE END.

- **COGNITIVE DEFICITS** ALSO TO BE ASSESSED

- SIMPLE OBJECTIVE TESTS (SERIAL 7, RECALLING A NAME AND ADDRESS) ARE HELPFUL BUT NOT DETERMINATIVE, BEING RATHER DIFFERENT TO TASK REQUIRED IN COURT ROOM.
- WHERE DEMENTIA OR OTHER COGNITIVE DISTURBANCE IS SUSPECTED, MMSE IS HELPFUL (SCREENING) BUT NOT A CAPACITY TEST FOR COURT ROOM

ASSESSING FITNESS TO PLEAD AND STAND TRIAL

- **STRUCTURED ASSESSMENT** USING STANDARDIZED PSYCHOLOGICAL INSTRUMENTS
 - COMPETENCY SCREENING TEST (SCREENING MEASURE) LIPSITT ET AL
 - COMPETENCY ASSESSMENT INSTRUMENT (STRUCTURED INTERVIEW, 2 STAGE SCREENING) MCGARRY
 - INTERDISCIPLINARY FITNESS INTERVIEW (STRUCTURED INTERVIEW, ASSESS LEGAL AND PSYCHOPATHOLOGICAL) GOLDING
 - INTERDISCIPLINARY FITNESS INTERVIEW REVISED (COMPETENCY TO CONFESS) GOLDING ET AL
 - **THE FITNESS INTERVIEW TEST REVISED** (STRUCTURED INTERVIEW SCHEDULE, BASED ON CRIMINAL CODE, PSYCHOLEGAL ASPECTS) ROESCH ET AL
 - EVALUATION OF COMPETENCY TO STAND TRIAL REVISED

Table 2: International statutes and criteria for fitness to stand trial.^{6,7}

<i>Country specific legal statutes</i>	<i>Criteria for fitness</i>		
	<i>Criteria 1</i>	<i>Criteria 2</i>	<i>Criteria 3</i>
United States (Dusky standard)	Factual understanding of case and charges	Rational understanding of case and charges	Ability to consult with counsel for defense in case
Criminal Procedure Rules of Florida	Defendant's appreciation of charges	Defendant's appreciation of range and nature of possible penalties	Defendant's capacity to disclose offense related pertinent facts to attorney
Criminal Code of Canada	Accused must understand nature or object of the proceedings	Accused must understand possible consequences of proceedings	Accused must be able to communicate with counsel
Australian legal system	Understanding of charges made	Understanding of court process	Ability of accused to instruct legal advisors for proceeding in relation to the charges
Common elements of all systems	a. Ability to understand and communicate legal charges framed b. Ability to understand and communicate consequences of charges if proven guilty c. Ability to assist lawyer in defending the case d. Ability to understand and follow court room procedures		

REPORT WRITING FOR COURTS

REPORT CAN BE SUBMITTED INTO TWO PARTS:—

1. A BRIEF OPINION ADDRESSING THE QUESTION ASKED BY COURT OF LAW
 - DECLARED FIT / UNFIT
 - IF UNFIT REPORTED (TEMPORARY OR PERMANENT)
 - IF TEMPORARY (INTERVAL AFTER WHICH NEXT ASSESSMENT SHOULD BE OFFERED)
2. DETAILS OF ASSESSMENT WHICH HELPED TO ARRIVE AT THE STATED OPINION
 - PATIENT DETAILS
 - COPY OF WRITTEN INFORMED CONSENT MENTIONING LIMITATION OF CONFIDENTIALITY
 - BACKGROUND OF ASSESSMENT (WHO ORDERED, PURPOSE)
 - MEDICAL BOARD DETAILS
 - DETAILS OF ASSESSORS
 - SOURCE OF INFORMATION TO REACH ON OPINION (WHO ALL WERE INTERVIEWED, RECORDS ASSESSED)

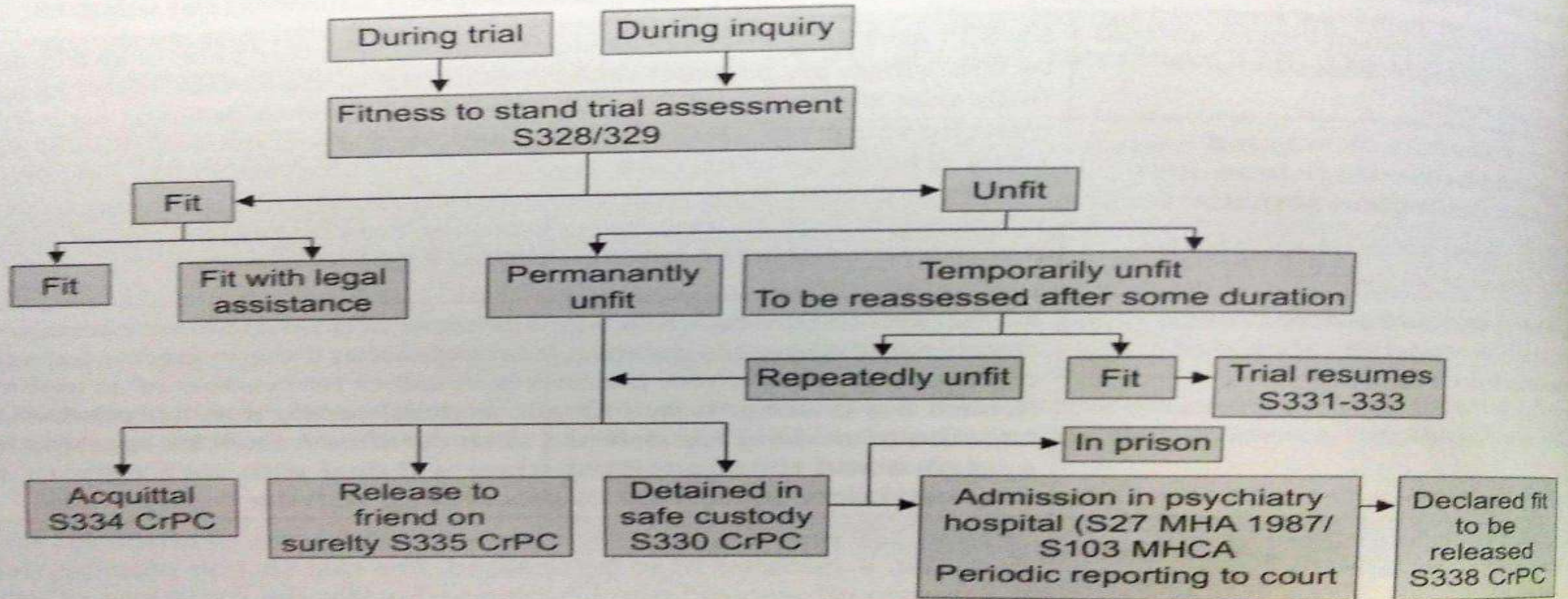
REPORT WRITING FOR COURTS

- CLINICAL CASE SUMMARY
- REPORT OF ANY PSYCHOLOGICAL TEST USED (INCLUDING DATE, TIME, ASSESSOR DETAILS)
- FITNESS TO STAND TRIAL ASSESSMENT
- OPINION AND RECOMMENDATION
- ADDITIONAL RIDERS IN INCAPACITY REPORTS
 - IF UNFIT REPORTED (TEMPORARY OR PERMANENT)
 - IF TEMPORARY (INTERVAL AFTER WHICH NEXT ASSESSMENT SHOULD BE OFFERED)
- ANY SUPPORT MEASURES NEEDED DURING TRIAL

ALL THE REPORTS SUBMITTED TO THE COURT ARE DOCUMENTARY EVIDENCE AND PSYCHIATRIST CAN BE CALLED IN COURT OF LAW AS EXPERT EVIDENCE TO CORROBORATE THEIR OWN OR SOMEONE ELSE REPORT SUBMITTED ON THE MATTER.

PRISONERS WITH MENTAL ILLNESS NOT FIT TO STAND TRIAL

Flowchart 1: Procedure to be followed if an under trial person with mental illness appears to be unfit to stand trial.



MEDICOLEGAL RESPONSIBILITIES OF PSYCHIATRIST

FOR MONITORING OF PRISONERS WITH MENTAL ILLNESS UNFIT TO STAND TRIAL ADMITTED IN PSYCHIATRIC HOSPITAL.

- **ADMISSION IN PSYCHIATRY HOSPITAL** : AN ORDER UNDER SEC 30 OF THE PRISONER ACT / SEC 330 SHALL BE SUFFICIENT AUTHORITY FOR THE ADMISSION
- **PROCEDURES TO BE FOLLOWED FOR REGULAR MONITORING DURING INPATIENT STAY**
 - PROVISION OF ASSESSMENT BY BOARD OF VISITORS (THE CONCERNED GOVT. TO APPOINT NOT LESS THAN 5 VISITORS TO EACH NURSING HOME OR PSYCHIATRIC HOSPITAL.
 - FREQUENCY OF ASSESSMENT BY BOARD OF VISITORS (MONTHLY INSPECTION BY THE VISITORS AND AUTHORIZES THEM TO MAKE REMARKS IN REGARD TO THE MANAGEMENT AND CONDITION OF THE PSYCHIATRIC HOSPITAL/ NURSING HOME.

MEDICOLEGAL RESPONSIBILITIES OF PSYCHIATRIST

- FREQUENCY OF REPORTING BY BOARD OF VISITORS (ANY 3 OF THE VISITORS SHALL ONCE IN EVERY 3 MONTH VISIT TO ASSESS THE STATE OF MIND OF SUCH PERSON AND MAKE A REPORT TO AUTHORITY UNDER WHOSE ORDERS THE PERSON IS DETAINED.
- **DISCHARGE FROM PSYCHIATRIC HOSPITAL:** SEC 40 EMPOWERS THE MEDICAL OFFICER IN CHARGE OF THE NURSING HOME/ PSYCHIATRIC HOSPITAL TO DISCHARGE ANY MENTALLY ILL PRISONER, ON RECOMMENDATION OF TWO MEDICAL PRACTITIONER ONE OF WHOM SHALL PREFERABLY BE A PSYCHIATRIST IN MANNER.

MEDICOLEGAL RESPONSIBILITIES OF PSYCHIATRIST

FOR MONITORING OF PRISONERS WITH MENTAL ILLNESS UNFIT TO STAND TRIAL **DETAINED IN JAIL**

A. LEGAL PROVISION AS PER SEC 30 OF PRISON ACT, 1900 AND SECTION 39 OF **MENTAL HEALTH ACT, 1987**

- MONITORING BY INSPECTOR GENERAL : ONCE IN EVERY 3 MONTH VISIT AND ACCESS THE STATE OF MIND OF SUCH PERSON AND MAKE A REPORT TO THE CONCERNED AUTHORITY
- MEDICAL/PSYCHIATRY REVIEW : VISITED ONCE IN EVERY 3 MONTHS BY A PSYCHIATRIST (MEDICAL OFFICER IF PSYCHIATRIST NOT AVAILABLE) AND A SPECIAL REPORT REGARDING MENTAL AND PHYSICAL CONDITIONS OF SUCH PERSONS TO BE MADE.

MEDICOLEGAL RESPONSIBILITIES OF PSYCHIATRIST

B. LEGAL PROVISION AS PER SEC 30 OF PRISON ACT, 1900 AND SECTION 39 OF MENTAL HEALTH ACT, 2017

- **PROVISION OF PSYCHIATRIC WING IN PRISONS MEDICAL WING** : APPROPRIATE GOVERNMENT SHALL SETUP MENTAL HEALTH ESTABLISHMENT IN THE MEDICAL WING OF AT LEAST ONE PRISON IN EACH STATE AND UNION TERRITORY AND PRISONERS WITH MENTAL ILLNESS MAY ORDINARILY BE REFERRED TO AND CARED FOR IN THE SAID ESTABLISHMENT
- **REGULAR REPORTING BY JAIL MEDICAL WING** : MEDICAL OFFICER IN JAIL SHOULD SEND A QUARTERLY REPORT TO THE CONCERNED BOARD CERTIFYING THERE IN THAT THERE ARE NO PRISONERS WITH MENTAL ILLNESS IN JAIL.
- **PROVISION OF MONITORING BY MENTAL HEALTH** : THE BOARD MAY VISIT THE PRISON/JAIL AND ASK THE MEDICAL OFFICER AS TO WHY THE PRISONER WITH MENTAL ILLNESS, IF ANY HAS BEEN KEPT IN THE PRISON/JAIL AND NOT TRANSFERRED FOR TREATMENT TO A MENTAL HEALTH ESTABLISHMENT.

INSANITY DEFENSE

INSANITY DEFENSE (SECTION 84 OF THE INDIAN PENAL CODE, 1860, 1860)

THE DEFENSE OF INSANITY IN CRIMINAL CASES IN INDIA IS BASED ON **MCNAUGHTEN'** S RULE AND IS MENTIONS IN SECTION 84 OF IPC WHICH STATES AS FOLLOWS:—

” NOTHING IS AN OFFENCE WHICH IS DONE BY A PERSON WHO AT THE TIME OF DOING IT, BY REASON OF UNSOUNDNESS OF MIND, IS IN CAPABLE OF KNOWING THE NATURE OF THE ACT, OR THAT HE IS DOING WHAT IS EITHER WRONG OR CONTRARY TO LAW”

INSANITY

	Medical insanity	Legal insanity
What it Is	Refers to presence of mental disorder	Mental state at time of crime
Purpose of concept	Diagnosing and treating the individual	Welfare of public and simultaneously not penalizing the innocent individual who committed the crime due to disturbed mental faculties
Nature and degree of insanity	Range from mild anxiety disorders to severe schizophrenia or dementia	Conditions subsequently affecting cognitive faculties to the extent that person was incapable of knowing nature and quality of act or its wrongness at the time of committing crime irrespective of diagnosis or severity.
Time factor	It takes into account historical evidence and course of illness in future to reach on the diagnosis	It refers to mental state only at the time of committing crime

ASSESSMENT FOR INSANITY DEFENSE

Name of the test	Principle evolved for insanity defense
McNaughten	<p>It brought out new concept for claiming insanity defense, following should be present</p> <ul style="list-style-type: none">• Defect of reason from disease of mind• Disease of mind rendered accused incapable of:<ul style="list-style-type: none">• Distinguishing nature of act• Wrongness of act• Act being against law
Durham' s test	<p>It brings forth the concept that mere presence of mental disease is not sufficient, more important is to find out the casual connection between unlawful act and mental disease. Insanity defense to be given only in cases where act was direct product of mental illness.</p>

ROLE OF PSYCHIATRIST IN INSANITY DEFENSE ASSESSMENTS

- FOCUS ON ASSESSMENT
- LIMITATION OF ASSESSMENT (RETROSPECTIVE ASSESSMENT)
- LOCUS OF ASSESSMENT (ADVISABLE TO ADMIT FOR COMPREHENSIVE EVALUATION)
- COLLATERAL INFORMATION AND RECORDS
- ACCOMPANYING LEGAL DOCUMENTS

ROLE OF PSYCHIATRIST IN INSANITY DEFENSE ASSESSMENTS

- MEDICAL DOCUMENTS
- CLINICAL ASSESSMENT
 1. HISTORY OF PSYCHIATRIC ILLNESS
 2. DETAILS CONCERNING ALLEGED CRIME
 3. CURRENT MENTAL STATUS EXAMINATION
 4. ASSESSMENT OF COGNITIVE FUNCTION
 5. PSYCHOLOGICAL ASSESSMENT OF PERSONALITY AND MALINGERING
 6. WARD BEHAVIOR OBSERVATION REPORT

CONCLUSION

- 1. AN IMPORTANT GOAL OF CRIMINAL JUDICIAL SYSTEM IS TO ENSURE THAT NO ONE WITH A MENTAL DISABILITY IS INAPPROPRIATELY HELD IN JUDICIAL CUSTODY OR PRISON.
- 2. MENTAL HEALTH PROFESSIONALS (PSYCHIATRISTS) PLAY AN IMPORTANT ROLE IN ASSESSMENT AND TREATMENT FOR SUCH INDIVIDUALS.
- 3. PSYCHIATRISTS ARE OFTEN CALLED AT VARIOUS STAGES FOR CERTAIN ASSESSMENTS BY COURT OF LAW ESPECIALLY RELEVANT DURING TRIAL PHASES.
- 4. WITH AID OF PSYCHIATRIST'S KNOWLEDGE ABOUT MENTAL DISORDERS AND ASSESSMENTS DONE AT VARIOUS STAGES IN SUCH PERSONS IF A PERSON WHO IS UNDER TRIAL OR A CONVICT WHO IS RENDERED UNFIT CAN BE PROVIDED APPROPRIATE SUPPORT ALONG WITH LEGAL PROVISIONS AND HENCE PREVENTED UNDUE PROLONGED ILLEGAL DETENTIONS.

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Thank You