

# Forensic Psychiatry: An overview

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# OUTLINE

- Introduction
- Psychiatry and Criminal law
- Psychiatry and Civil law
- Risk assessment
- Sex offending
- Prison mental health
- Substance abuse

# Introduction

Practicing psychiatry

Forensic psychiatry

Development of services

Structure

Mental Health Act

# Psychiatry

- A branch of medicine
- Diagnosing, treating , preventing mental disorders

# Types of Mental illness

- Major Psychiatric illness
  - Organic brain disorders
    - Dementia ( gradual loss of memory- loss of memory, thinking, language)
    - Delirium- ( sudden onset of confused status)
  - Substance use disorders
  - Psychotic disorders
    - Schizophrenia- delusions, hallucinations, disorganized- not in touch with the reality
- Delusion- firmly held false beliefs
- Hallucinations- unreal perceptions ex- hearing voices

- Mood disorders
  - Depression
  - Mania –
  - Bipolar affective disorder- having both manic and depressive
- Anxiety disorders- phobia, panic
- Post Traumatic Stress disorder- following a significant trauma, having nightmares, always on the edge,

# Evaluation of individual mental illness

- History- current symptoms, progression, duration, risk factors, causes, past illness, family history of illness, childhood, support, drugs, encounters with law enforcement authorities
- Mental state examination - observation

# Ethics in practicing

- 04 main pillars
- **Autonomy**- respect patient's opinion involve patient in decision making
- **Beneficence**- what is best for patient
- **Non-malevolence**- recommendations by professional bodies
- **Justice**- act fairly and balancing the interests of different parties
  
- Other

# Ethics: Confidentiality

- Safeguard information
- Consent to disclose information
- Confidentiality in care of children

# Exceptions in confidentiality

- In patients best interest
- In public interest
  - Statutory obligations
    - Communicable disease
    - Use of controlled drugs
    - Fitness to drive
    - Suspicion of child abuse
    - Evidence of serious crime
    - Court order
- Legal representatives

# Consent for treatment

- Voluntarily
- By the patient
- Informed -Clear and full understanding of nature of condition to be treated, other procedures, probable side effects
- Documented

Agree freely without duress

Be competent to make a decision

# Capacity to consent

- A person lacks capacity if their mind is impaired or disturbed in some way, which means they're unable to make a decision at that time.
  - mental health conditions – such as psychosis
  - Dementia
  - severe mental retardation
  - brain damage – ex stroke
  - physical or mental conditions that cause confusion, drowsiness or a loss of consciousness
  - intoxication caused by drugs or [alcohol misuse](#)
- Someone with such an impairment is thought to be unable to make a decision if they cannot:
  - **understand information about the decision**
  - **remember that information**
  - **use that information to make a decision**
  - **communicate their decision by talking, using sign language or any other means**

# If an adult lacks the capacity to give consent,

- To make a decision, the person's best interests must be considered.
- In situations where there's serious doubt or dispute about what's in an incapacitated person's best interests, healthcare professionals can refer the case to the Court of Protection for a ruling.
- However if someone makes a decision about treatment that other people would consider to be irrational, it does not necessarily mean they have a lack of capacity, as long as they understand the reality of their situation.

# Forensic Psychiatry

# Forensic psychiatry

- A subspeciality in psychiatry
- Scientific and clinical expertise is applied to legal issues in legal context embracing civil, criminal, correctional or legislative matters
- Operates at the interface of psychiatry and law
- Dual role : Assisting administration of justice and treating

# Forensic psychiatry

- Assessment and treatment of mentally abnormal offenders.
- Applied to all legal aspects of psychiatry, including the civil law and laws regulating psychiatric practice.

## General psychiatry

- Primary duty is therapeutic – serves patient

## Forensic psychiatry

- Serves a third party- rather than patient- **Legal system**

## Forensic psychiatrists

- Have medical training
- Can prescribe medications , order lab tests and offer psychotherapy

## Forensic psychologists

- No medical training
- But expertise in psychological testing, psychotherapy and statistical analysis

# Civil vs Criminal

- Civil

- The provision of assessment and advice in relation
  - Capacity- ex parental capacity
  - family law matters
  - workers' compensation,
  - personal injury
  - Negligence
  - occupational impairment.

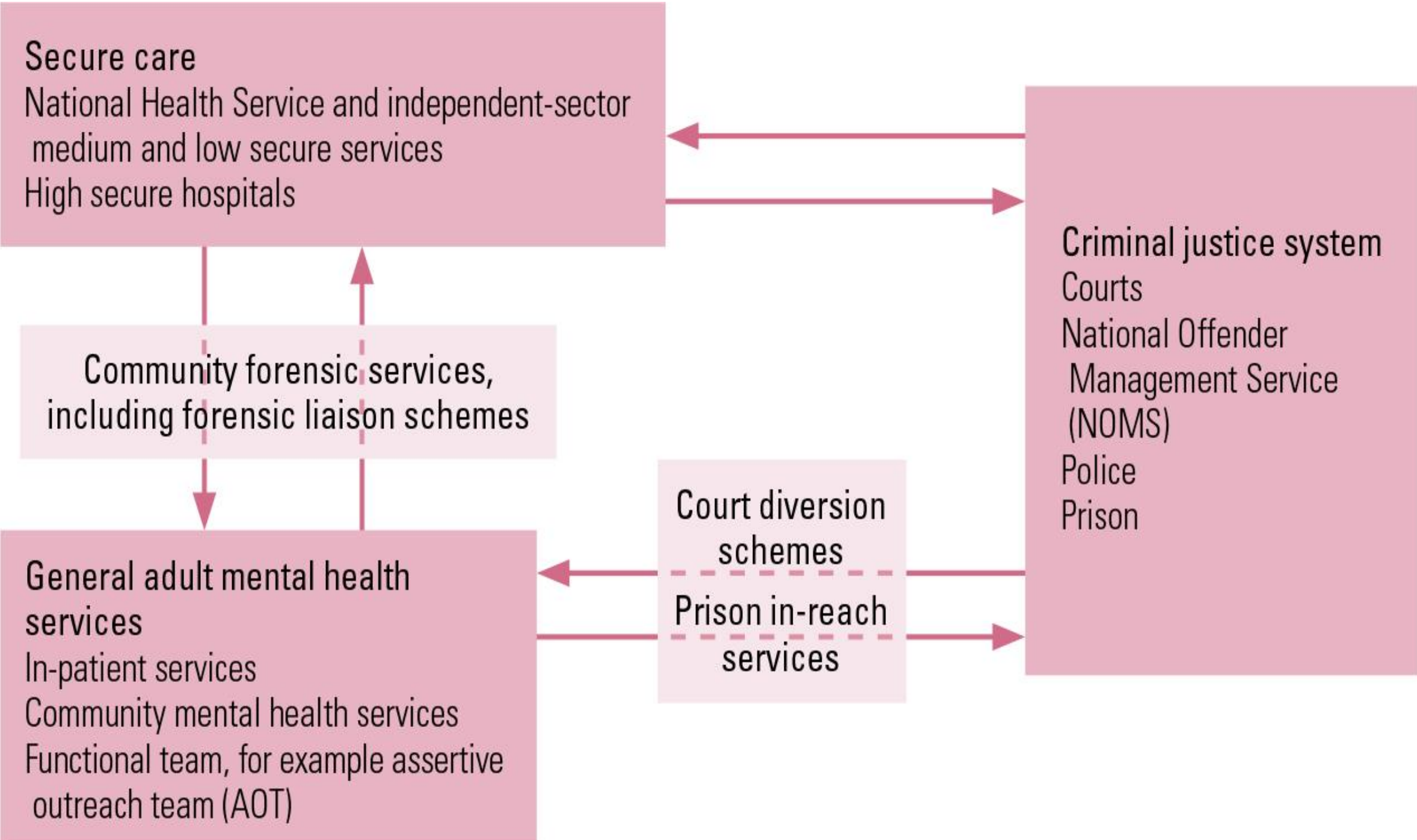
- Criminal

- Insanity defence
- Diminished responsibility
- Fitness issues- fitness to plead , testimonial capacity
- Risk and threat assessment and other matters-

# Forensic psychiatry (historical development in UK)

- In 1975 there were not many more than half a dozen forensic psychiatrists in Great Britain.

The notorious case of Graham Young, which led to the Butler Report 1975, led to the expansion in forensic mental health services with the development of regional (now referred to as medium) secure units in most of the health regions in England, and in Wales. Prior to that there had been only the high secure hospitals known as Broadmoor, Rampton, and Ashworth.



### Secure care

National Health Service and independent-sector medium and low secure services  
High secure hospitals

Community forensic services, including forensic liaison schemes

### General adult mental health services

In-patient services  
Community mental health services  
Functional team, for example assertive outreach team (AOT)

Court diversion schemes

Prison in-reach services

### Criminal justice system

Courts  
National Offender Management Service (NOMS)  
Police  
Prison

# Components of a forensic psychiatry service

- Secure hospital- low, medium and high secure hospitals
  - forensic patients found not guilty or unfit to be tried
  - security patients (prisoners) who need compulsory mental health treatment under
  - civil patients of area mental health services who cannot be managed in the community and who require compulsory treatment in a secure environment.
- Community-based programs
- Prison-based mental health service.

# Forensic psychiatry in Sri Lanka

- Forensic psychiatry unit in NIMH
- Prison mental health services
- Court reports
- Forensic psychiatrists in Sri Lanka – limited number, general psychiatrists acting in the role

# Mental Health Act

# Mental Health Act

- Legislation that covers the assessment, treatment and rights of people with a mental health disorder.

## ***Purposes of mental health law***

- To incarcerate mentally ill people
- To prevent abuse and exploitation of mentally ill people
- To facilitate treatment
- To protect rights of mentally ill people
- To establish services

# Mental disease Ordinance – Sri Lanka

- Enacted 1873

# Different types of stay at the MHA

- DC court
- Voluntary
  - >16 years – person gets admitted himself
  - <16 years – parent or guardian admitting the person
- Involuntary

Emergency, Temporary

- As part of prison sentence

# Types of admission

- DC court admission
- Admission by the minister
- Emergency admission
- From the prisons by order of the minister of justice
- Voluntary admission
  - >16 years – person gets admitted himself
  - <16 years – parent or guardian admitting the person
- Temporary admissions

# Involuntary admissions

- Dangerous behaviour toward themselves , helpless and unable to provide for their basic daily needs- risk to self
- Dangerous behaviour toward others- risk to others
- Danger of “essential harm” to their mental health if they do not receive mental care- deterioration

# Other content

- Discharging
- Leave
- Appeal
- Visitors

# Draft Act

??Why

135 years old act

- Violation of the patient's right
- DC court judge is required to take a decision on the mental status of a individual, (in a busy court room, with a lot of people, by a untrained person)
- Medical practitioner is not defined
- Relatives have too much control over the fate of the person
  - They can hand over the patient to the courts – without committing a crime
  - They can directly petition the minister and hand over the patient to the mental hospital
- Only the MS has authority to everything (1 person for thousands of patients)

# Psychiatry & Criminal law

Fitness to plead

Criminal responsibility

Diminished responsibility

Fitness to Plea

# Fitness to plead

- Defendant's ability to take part in a criminal trial
- It takes in to account the person's current mental state
- The majority of people who are deemed unfit to plead suffer from either psychosis or a mental retardation.
- If found unsound : exclude from trial and offer treatment & Rehab

# History

- In Medieval English court...
  - The accused need to submit a plea and if not the trial could not proceed. ( ex: by remaining mute)
  - If someone is mute, the experts needed to differentiate whether mute was due to 'visitation of god' ( ex: lunatics or mute offenders) or mute due to malice.
  - Visitation by god – considered a plea of not guilty and stayed in trial
  - Mute due to malice- 'peine forte et dure'

- Sir William Blackstone, (1765-1769)
  - a defendant should not be stayed in trial if the defendant becomes 'mad' after committing the offence
  - he is not able to plead and is not able to 'make his defence'.
- The modern standards to assess a defendant for fitness to plead derive from English case law. In R v. Pritchard (1836) (8),

# Pritchard criteria (case law 1836)

- Must be able to instruct his solicitor and counsel
- Must understand the charge(s)
- Must be able to decide whether to plead guilty or not
- Must be able to follow court proceedings enough to make a proper defence
- Must know they can challenge a juror
- Must be able to give evidence in his or her own defence

# Legal provisions in Sri Lanka

- Section 262 of the Criminal Procedure Code : when a defendant cannot be 'made to understand proceedings of his or her trial', but is not insane ( deaf
- Sections 374 and 375 of the Criminal Procedure Code :a defendant who is '**incapable of making a defence** as a consequence of being of unsound mind
- Incapable of making defence = not fit to plead

- Who can raise the issue
  - ( not specify in the section 375, says when the 'court has reason to believe that the accused is of unsound mind'
  - Judge, prosecution or defense
- Quantum of proof ( not specify, English law)
  - Beyond balance of probability
- Burden of proof( not specify, English law)
  - Whoever raise the issue

# Criminal Responsibility & Insanity defense

- Criminal responsibility refers to a **person's ability to understand his or her conduct at the time a crime is committed.**
- Insanity defence
  - Claim that a mental disorder caused the accused to commit the act
  - Based on the principle that a person who is of **unsound mind** or insane **at the time of the offense** is unable to form the mens rea (guilty mind), necessary for the act constituting the crime

# History of insanity defense

- Roman law
- Good and evil test
- Wild Beast Test
- Right and wrong test

# Good and evil test

- In England, 1313
- Based on bible
- Insane thought as of children- incapable of 'sinning' because they cannot distinguish , not guilty – if the defendant could not differentiate good and evil at the time of the crime
- Used in 14<sup>th</sup>-16<sup>th</sup> century
- Replaced by Wild Beast test

# Wild Beast Test

- English Case 1724, Rex Vs Arnold
- Defendant attempted to kill an English lord (Onslow)
- Arnold suffered from the delusion that he was the victim of Onslow's persecution and bewitchment, which caused "imps" (devils) to dance in his bed all night.
- "I can't be easy," Arnold reported; "he plagues me day and night. I can't eat or drink; if I eat anything, it comes out of my body. I am ... as if they pumped the breath out of my body"
- Justice Tracy
- Defendants were not to be convicted if they understood the crime no better than "an infant, a brute, or a wild beast."

# Right and Wrong Test

- England 1840
- Edward Oxford attempt assassinate Queen Victoria
- Edward's family testified re: his unsoundness , found evidence of a factitious secret society “ Young England” in possession of Edward

# McNaughton rule

- **At the time of the committing of the act**, the party accused was laboring under such a **defect of reason**, from **disease of the mind**, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was **doing** what was wrong
- The defendant must show whether he/she understood his/her actions or that his/her actions were wrong
- McNaughton rule is **purely cognitive** (mentally understand), fails to take into consideration the issue of control

# Durham Rule

- “an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.”
- Abandoned- being too broad.
- For example, drug addicts were able to use the defence to successfully avoid conviction for crimes related to their addiction

# Irresistible impulse test

- In response to criticisms of the [M'Naghten Rule](#)
- The Irresistible Impulse Test requires the inability to control an impulse even though the defendant knows that it is wrong.
- Killed her husband
- Having an attack of catatonic schizophrenia

# Criminal Responsibility: Model Penal Code Tests

- American Law institute
- **a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.”**
- both a cognitive ( mentally understand) and a volitional (ability to control behavior at the time of offend) prong
- a defendant who can distinguish right and wrong but is nonetheless unable to stop himself from committing an act he knows to be wrong.

# Section 77 of the Penal Code of Sri Lanka

- “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**”

## Two tests

- Presence of a mental illness (‘unsoundness of mind’)
- Legally relevant capacities

# Presence of a mental illness 'unsoundness of mind'

- No legal definition provided
- Unsound mind = disease of mind , mental retardation
- Severe mental illness- ( psychotic disorder, major mood disorder, organic psychiatric illness )- which can grossly affect one's perception and understanding of reality
- However no legislature preventing less serious, non psychotic illnesses being used as part of an insanity defence
- Formal diagnosis ( ICD 10, DSM V) is not required in theory, but it is good practice to use
- Symptoms should deprive the defendant's legally relevant capacities

# Legally relevant capacities

- ‘cognitive’ aspect (‘knowing’) of the behaviour
- Inability to appreciate
  - the act
  - the ‘**legal wrongfulness**’ (being contrary to the law or illegal)
  - ‘**moral wrongfulness**’ (being contrary to moral standards).
- Moral wrongfulness-
  - ( ex hearing voices of god. God commanding . Thus making a person believe his act is morally justified)
  - Moral standards ( subjective/ objective )
- *McNaughton vs Section 77* – included moral aspect, Sri Lankan insanity defence has widened.

- Raising the issue: defence, the prosecution or the judge
- before or during the trial process.
- ‘Expert’ for the determination- Medical officers (The criminal procedure) , may need joint assessments with other professionals
- Collecting information – information to reconstruct the mental state of the defendant at the time of the offence
- Burden of proof : defendant (29).
- Quantum of proof : balance of probabilities,

# Assessment

- Consent, limits of confidentiality, statements as verbatim on most occasions
- Defendant's explanation/ motivation of the defendant's behaviour
- previous contact with mental health services and law enforcement authorities
- A detailed mental state at the time of the assessment.
- in-patient or an out-patient setting., on average ,2- 3 sessions will be required by the expert to complete a report.
- Role as the treating clinician- role confusion

# The disposal of the defendant

- If acquitted -holding the defendant in a 'safe place of custody' as the court thinks fit.
- The safe place of custody has been identified as a prison, a mental hospital ( forensic unit NIMH in Sri Lanka ) or other suitable place of safe custody as identified by the Minister in charge of the subject
- . A Visitor's board ( consisting of a Magistrate, an independent psychiatrist and representative from the department of prisons), convene 6 monthly and review those who are detained at the Forensic unit of the National Institute of Mental Health in Angoda to determine the suitability of these individuals for release in to the community.
- No legal provisions for monitoring the person found to be of unsound mind after being discharged from hospital or prison, thus lost to follow up

# Intoxication and insanity defense

- Impairment legally relevant capacities
- But voluntary intoxication from alcohol or drugs is not considered as basis for an insanity defence (Section 78 of the penal code)
- Involuntary administration – basis for defence
- Mental illnesses which are the direct effects of psychoactive substances such as substance induced psychotic disorders, delirium tremens or alcoholic dementia - considered as a basis for an insanity defence within Sri Lankan law.

# Infanticide

- 4% of women with postpartum psychosis commit infanticide
- Postpartum psychosis and other postpartum mental health syndromes (e.g., postpartum depression) are also **admissible** in **sentencing hearings** as **mitigation** on the basis of **diminished capacity**.
- Defense laws in infanticide-
  - Infanticide laws
  - Mc Naughten Rule/ Model penal code test/section 77

# Infanticide

- The insanity defense is successful in less than 0.1 % of all criminal trials.
- But in major population studies found insanity defense successful in 15 to 27% of infanticide cases
- The law treats women who kill their children with more leniency

# Infanticide law in Sri Lanka

- Chapter XVI, section 294, culpable homicide exceptions,
- Culpable homicide is **not a murder** if the offender being the **mother of a child under the age of twelve months**, causes its death whilst **the balance of her mind is disturbed** by the reason of her not having fully recovered from the **effect of giving birth to the child** or or by the reason of the effect of lactation consequent upon the birth of the child

# Infanticide law

- Criticisms of infanticide laws include
  - inherent gender bias
  - diminished value of the infant's life
  - unnecessary overlap with a sufficient insanity defense
  - One year cut off does not comport with research data, if the goal is to excuse mentally ill mothers

# Diminished responsibility

- In some jurisdictions
- where a person kills or is party to a killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind as substantially impaired his mental responsibility for his acts and omissions in doing or being party to the killing.

# Absence of intention (automatism)

- Defendant lacked intention altogether (technically, the absence of *mens rea*)
- example -acts committed while sleepwalking.
- difficult to determine retrospectively, and the defence is now rarely used

# Fitness to be punished

- In corporal or capital punishment
- Psychiatrists may be asked to assess offenders to determine whether they are mentally well enough to be punished or may be asked to treat offender patients to make them fit to be punished or executed.
- ? ethical

# Other psychiatric issues that may be relevant to the criminal court

- Amnesia – loss of memory
  - Over one-third of those charged with serious offences,, report some degree of amnesia for the offence and inadequate recall of what happened.
  - Amnesia has to be distinguished from malingering, but there appear to be instances of true amnesia for offences
- False confession
  - Can be to interrogation , neuropsychological assessment and, in some cases, an assessment of suggestibility.
- False accusation
  - severe personality and other problems

- Criminal medical negligence
  - acting with absolute disrespect for life, acting knowing very well that actions could kill, endanger or harm the patient
  - Assessment 4 Ds-

# Psychiatry and Civil Law

Testamentary capacity

Other aspects

# Testamentary capacity

- At the time of making the will, testator must be able to ( Banks Vs Goodfellow)
  - Understand what a will is;
  - Understand the nature & extent of the property;
  - Understand who are his close relatives & can assess their claims to his property;
  - Does not have any mental abnormality that might distort his judgement
- The mental state before and after the signing does not affect person's capacity
- Reasons for challenges in assessing- Senility, Dementia , Insanity

- **Aspects of family law**

- A marriage contract is not valid if, at the time of the marriage, either party was so mentally disordered as not to understand its nature.
- 'incurably unsound mind' later in a marriage- may be grounds for divorce, and a psychiatrist may be asked to give a prognosis.
- Parental capacity -

- **Personal injury**

- claims for compensation by patients with post-traumatic stress disorder or one of the other psychological sequelae of accidents

- **Fitness to drive**

- Dangerous driving - suicidal inclinations or manic disinhibition, panicky or aggressive driving may result from persecutory delusions, and indecisive or inaccurate driving may be due to dementia.

- Civil medical negligence

- Assessment

Duty

Deviation

Damage

Direct cause

# Assessment of victims

- Capacity assessments to give evidence
- Capacity to consent
- Psychological consequences of torture
- Special recommendations to Courts/ JMOs

# Children

- UN convention of rights of children <18
  - Penal code
    - Nothing is an offence
    - Above 16- adult
  - Competent age for consent – not stated in our civil law
  - Age of majority – presumed be 18 for all general purposes
  - In 1995 amendment: Legal age of consent for sexual acts increased from 12 to 16
  - Transplantation of Human Tissues act No.40 of 1987:
    - Person above 21 may consent to donation
- Gillick competency**

# Assessment of risk

Violence

Stalking

Arson

# Risk of Violence

- One of the major role of forensic psychiatrist – risk assessment
- To predict : Imminent risk, Future risk
- Important in planning
- Also for disposal
- Various tools to asses risk
- *In forensic work*, the court may ask about the defendant's dangerousness, so that a suitable sentence can be passed.

# Stalking

- The willful, malicious and repeated following and harassing of another person that threatens his or her safety”
- Psychosis, mood disorders, adjustment disorders, personality disorders can associate
- Assessing Risk
  - Historical- previously stalking others , breaches of restraining, intervention or court orders , trespass, hacking into victim’s computer
  - Current- attitude toward the victim, ability to move on to new relationships, anger control issues, deviant sexual arousal
  - Future- likely contact with the victim in the future

# Fire setting, Arson and Pyromania

- Fire setting- behavior
- Arson- crime , willfully start fire or aids in setting fire
- Mental illness is over represented in arson - substance use, mental retardation, personality disorder
- Pyromania- impulse control disorder, deliberately set fire, before setting fire having a tension and pleasure/ relief when around fire, rare diagnosis
- Risk assessment : Fire setting history, psychiatric illness, substance use, Current ideations/plans, personality

Sex offending

# Assessing victims

- Consequence of sexual assault: depression, Post traumatic symptoms, secondary victimization
- Referred to Forensic psychiatrists – to assess the capacity to consent,
  - In cases of mental retardation
  - Stage 1: is there an impairment of the brain or mind
  - Stage 2:
    - Understand the information relevant to the decision
    - Retain the information for long enough to make a decision
    - Use that information to make a decision
    - Communicate the decision
- Re; children : Legal age of consent for sexual acts increased from 12 to 16 – to assess mental state

# Risk assessment

- Previous criminal history
- Higher number of sexual offences and more than one type of sexual offence
- Being a childhood victim of sexual abuse
- Violent sexual fantasies
- Negative attitudes to women
- Belief that victims consent to or enjoy the act
- Choice of location and occupation to facilitate access to victims
- Use of sadomasochistic or paedophilic pornography
- Substance misuse
- Treatment non-compliance

Prison mental health

- Male prisoners are 14 times more likely to have two or more mental health disorders compare to men in general
- Female prisoners are 35 times more likely to have two or more mental health disorders compare to women in general
- Suicide rate is 15 times higher than in the general population

# Prison mental health service

- Voluntary service , consent is important
- Confidentiality maintained
- Independent from department of corrections

# Substance abuse

- Acute intoxication
- Dependence- needs to evaluate for dependence criteriae
- Withdrawal
- Psychotic disorder
- Amnesty syndrome
- Residual and late onset psychotic disorders

# Management

- Inward Rx
- Counselling
- Rehabilitation

Thank You