UNIT 1 MENTAL DISABILITY, MALINGERING, MENTAL ILLNESS, SUBSTANCE ABUSE EVALUATION (FORENSIC PERSPECTIVE)

Structure

1.0 INTRODUCTION

This unit will discuss the concept of mental disability malingering, mental illness, substance abuse, assessment and evaluation and the impact of these factors in criminal justice system as a whole from a forensic perspective. In this unit we will be dealing with the concept of disability and its relationship to criminality. There will be a discussion on how persons with mental disorder are dealt with in the criminal justice system. This will be followed by a discussion on assessment and evaluation and the tools thereof to find out if a person is malingering, cheating, etc., and how far one can rely on the statement of the defendant. Also quite often persons may commit a crime under the influence of substance and drug abuse. These aspects in terms of criminal justice system are being presented in this unit.

1.1 OBJECTIVES

After completing this unit, you will be able to:

- Define mental disability;
- Describe malingering;
- Explain mental illness;
- Elucidate substance abuse and the effect of these factors in the development of criminality; and
- Put forth the various methods of assessment and evaluation from the forensic perspective.

1.2 MENTAL DISABILITY

1.2.1 Definition and Concept

Mental disability refers to all kinds of intellectual sub-normality. Mental disability is defined as "incomplete or insufficient general development of the mental capacities." The level of intellectual functioning of those suffering from mental disabilities can be extremely low. These persons are also labeled as mentally retarded persons who have an IQ of 70 and below on an intelligence test. Mental retardation is a failure to develop intellectually and otherwise, at a rate comparable to other individuals within the same age group. Those with extremely limited mental ability reveal very clearly the lack of development and inability to manage themselves in their day-to-day living and it is not difficult to assess their mental abilities. However, those individuals whose level of ability is nearly approximate the average or dull may pose problems. Their disability cannot be readily assessed and they are expected to handle the situation as adequately as others of their own age group which they are not capable to do. In such cases, the problem arises due to their relative social incompetence and not merely due to the presence of appreciable degree of mental disability.

The mentally disabled persons are less able to make discriminations and to use good judgment in practical life situations. As adults such persons may be quite successful in simple works where little judgment or planning is required. Many of them find useful and satisfying place in the society, manage their own affairs with reasonable success and prudence and generally behave as a good citizen. It is apparent that the mentally disabled persons are not innately perverse and, therefore, not naturally prone to indulge in criminal acts. The explanation for the fact that some become useful citizens and others become chronic delinquents or criminals are numerous and varied as in the case of persons with average or superior intelligence.

1.2.2 Relationship to Criminality

The relationship between mental disability and criminality is not very clear and contrary views have been expressed. That is, some psychologists are of the opinion that mental disability is an important factor in the production of criminal behaviour but some hold the opinion that correlation between mental disability/ deficiency and delinquency is not significant and does not imply a cause and effect relationship between the two.

On the other hand, it is a fact that mental disability may not be a specific cause for development of a criminal personality, these may handicap the personality development to a great extent and render the individual more vulnerable to environmental stress. Many of the persons with mental disability are exposed to unfavourable influences and conditions not ordinarily experienced by normal individual such as:

They may be having mentally deficient parents who are incapable of providing even the normal amount of supervision and direction while such individuals require special care attention.

Another factor which may contribute is the fact that the mentally disabled individuals are suggestible and anxious to please that he is targeted very easily by others. They cannot appreciate the dangerousness and consequences of the act and, therefore, may be induced to do things which the normal person will not dare to attempt. Such an individual can be encouraged to commit crime by other criminals in his surroundings.

Many of these persons may develop irritability due to their failure to compete successfully in the broader social group and on account of this they are given unkind nicknames, victimised by pranks and jokes which may lead them to strike back often with a violence appropriate to their lack of judgment and self restraint.

From the above discussion it is clear that mental disability is not related to criminality as a causative factor rather it is situational and such situation may give rise to the criminal behaviour in otherwise normal individuals.

1.2.3 Mentally Disabled and the Criminal Justice System

The mentally disabled persons may be a victim of a crime, may have witnessed a crime and may have committed a crime or accused of committing a crime and their disability will definitely have an impact upon how such persons will benefit from the criminal justice system?

1) *Mentally Disabled person as a victim*

There is a serious risk that people with limited mental capacity will be served extremely poorly by the criminal justice system because

a) they may be unable to report offences against them to the police,

b) in the absence of other evidence, the evidence of the mentally disabled victim may not be regarded as too unreliable to present in the court,

c) those who live in institutions may be at a disadvantage because the managers looking after them may not have appropriate procedures for contacting the police about crimes reported by residents. Alternatively, they may actively discourage staff from reporting such matters to the police because the victim would make a poor witness in their eyes.

2) *Mentally Disabled person as a Witness*

It may be that the mentally disabled persons have a greater than average chance of witnessing a crime. Such persons are at an increased risk of being victimised by others in the community. In case, they are victims of sexual assault, their own evidence is extremely important (Kebbell and Hatton, 1999). In order to be a

competent witness under the British case law, the judge has to be satisfied on two main issues for which the advice of psychologists and psychiatrists may be sought. The issues are:

a) does the witness understand the oath and its implied sanction, and

b) is the witness capable of giving an accurate account of what they have seen?

According to Kebbel and Hatton (1999) the style of questioning used with the persons with mental disability may have an influence on the quality of the testimony elicited. They are able to answer general and simple questions and not the specific and complex questions.

Mentally Disabled person as an Accused/ Suspect: When the mentally disabled persons are suspected or are accused for their involvement in, committing a crime, the first question arises at the time of interrogation i.e. whether he/she is able to understand the questions presented to him by the interrogating officer?

At a later stage, the question of understanding his/her rights comes whether the accused/suspect has sufficient present ability to consult his/her lawyer with a reasonable degree of rational understanding, and whether he/she has a rational as well as factual understanding of the proceedings against him/her. Further, false confession under police pressure is a risk with such a vulnerable group.

1.2.4 Assessment and Evaluation

The psychological assessment of an individual's mental abilities requires the application of psychometric tests to assess the mental functioning. Generally intelligence tests are administered to assess and evaluate the mental ability. There are various types of intelligence tests available-group vs. individual tests, verbal vs. performance tests, adult vs. children's tests. The best testing instrument of mental ability is the Wechsler Adult Intelligence Scale - 4th edition, Wechsler Intelligence Scale for Children – 4th edition and Stanford-Binet Intelligence Scales – 5th edition. The WAIS has both the components i.e. verbal and performance and this is an individual test.

Besides administration of psychometric tests, the psychologist can conduct

a) Clinical Interview which includes review of psychiatric ,medical and social history, mental status examination, behaviour, culture, religion, and preference for support,

b) Cognitive Testing which includes assessment of functioning across multiple areas of cognitive skills like reasoning, judgment, insight, mental flexibility, memory, attention, language, and visuospatial abilities among others. The process of cognitive testing is analogous to putting the brain on a "road test" and this is the only tool to demonstrate how the brain actually functions in the outside world, and

c) Functional Testing is helpful in the assessment of skills specific to independent living.

1.3 MALINGERING

1.3.1 Definition and Concept

Malingering in psychiatric terms is lying. The term malingering is commonly used to refer to conscious deception. There is no psychiatric concept of malingering which does not have the element of conscious fabrication. It is conscious exaggeration of symptoms as opposed to unconscious attempt at resolution of conflicts.

The widely accepted definition of malingering is the "conscious simulation or exaggeration of injury, illness, or disability". The essential features of malingering as defined by the DSM, is the "intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs…"

Malingering may be seen most commonly in those people who have been injured either in a working situation or in an automobile accident. A malingerer is one who is responding to an injury by a falsified deceptive set of symptoms. In malingering there is deliberate and persistent planning and the conscious mind is a participant in the simulated disorder.

Deception is one possible behavioural outcome to resolving a problem situation. The ability to be deceptive begins in childhood and continues unabated into adolescence and adulthood. Deceptive behaviour cuts across all socio-economic tiers, educational groupings, career lines, and workplace settings and is seen in every area of human activity.

Deception in various forms is a pervasive phenomenon in among living organisms. Reviling, conjuring, confidence games, and psychic frauds are still popular ventures. Deception is a ubiquitous, adaptive, and potentially detectable phenomenon. Malingering or deception is generally used for unlawful gains, fake claims, and to avoid punishments for a crime.

The symptoms targeted for deception reflects goal formulation and planning on part of the faker. As a rule the fakers select target symptoms in accordance with the direction of their vested interests. Selecting a target means that the faker makes assumptions about both ground truth and distortion.

Targets can change as a function of many factors like opportunity, fatigue, and evaluator behaviour but the goal remains the same. Finally, the targets are often based on partially real deficits and represent an exaggeration of deficits rather than pure fabrication. In a nutshell, the targets of malingering involve any short term objectives which, when achieved are in the direction of the faker's stake.

1.3.2 Malingering/Deception and Criminal Justice System

Deception is relevant to all forensic settings and situations where expert opinions on mental state are sought. Civil claims of psychological damage or trauma is one area where malingering is always suspected. Civil claims of mental injury, trauma, or defect may be broadly categorised into tort claims and eligibility claims.

Tort claims allege that a personal injury was caused to the plaintiff or to the property of the plaintiff by the negligence or intentional act of the defendant. Such injuries are compensable through awards for the actual damages sustained and sometimes for punitive damages as well. Eligibility claims allege that the claimant satisfies current criteria for special assistance from a government program. In all these types of claims distortion and outright malingering of complaints is a significant probability.

Another situation in which malingering occurs very frequently is when a suspect faces the death sentence. Simulation may also occur when the accused is a police informer or is suspected of being an informer by his criminal associates.

1.3.3 Response Styles

Four types of response styles have been described by Lipman (1962), which are as given below:

a) Invention – the patient has no symptoms but fraudulently represents that he has,

b) Perseveration – genuine symptoms formerly present have ceased, but are fraudulently alleged to continue,

c) Exaggeration – genuine symptoms are present, but the patient fraudulently makes these out to be worse than they are,

d) Transference – genuine symptoms are fraudulently attributed to a cause other than the actual cause in fact.

1.3.4 Evaluation and Assessment of Malingering/Deception

The forensic psychologists may be asked to evaluate the validity of an illness, whether malingering is involved, and to aid in the follow up evaluation of persons claiming mental and emotional difficulties due to previous traumatic experience.

The forensic distortion analysis (FDA) mandates a scrutiny of the actor, oneself as an evaluator, and the context in which the distortion occurs. In many cases the issues surrounding FDA makes it impossible for one individual or discipline to answer all the biological, psychological, and social questions in deception analysis.

Deception analysis involves some collaboration with other sources of data. An adequate database for FDA requires information relevant both to the time of evaluation and some past event. In the forensic distortion analysis, therefore, the initial step is to gather information. Possible sources include:

- Interviews of significant/ knowledgeable others.
- Behavioral observation of the possible deceiver in individual and group, structured and unstructured, stressful and non-stressful situations.
- Functional analysis of previous deceptive behaviour.
- Analysis of validity indicators on psychological testing.
- Analysis of learning curves and expected performance in intellectual and neuropsychological methods.
- Competence assessment.
- Medical and laboratory analysis.

- Neurological testing using PET, CT, and MRI technologies.
- Semantic and transcript analysis.
- Non verbal behaviour analysis.
- Autobiographical materials like diaries, letters.
- Records produced by others like military, school, job.
- Expunged records in the State or Federal archives.
- Intervention paradigm designed to assess deceit by changing it.
- Base rate analysis for trait of the groups in which the deceiver holds membership.

The analysis then proceeds to a synthesis of the findings by considering all factors and assigning due importance to various factors. It is expected that the synthesis can be verified and replicated by independent examiners. A good working rule is that deception must be demonstrated, not simply arrived at by ruling out other possibilities. The evaluator should recognise that ground truth for any event, free of camouflage and faking, stands by itself and can be measured.

Besides the above data analysis, psychological tests like Minnesota Multiphasic Personality Inventory (MMPI) and MMPI-2 have also been used in case of civil litigants. The MMPI-2 is a567-item multiscale inventory designed to assess psychopathology. In addition to its clinical scales, the MMPI-2 contains specialised scales designed to evaluate issues related to response styles. However, these scales have not been widely used or cross validated. Some psychological tests specially designed to assess malingering are as follows:

The Structured Interview of Reported Symptoms (SIRS) is an interview designed to comprehensively assess malingering and related response styles.

The Miller Forensic Assessment of Symptoms Test (M-FAST) is a 25-item structured interview consisting of seven scales designed to be used to screen for malingering.

The Structured Inventory Malingering Symptomatology (SIMS) is a 75-item true/false test composed of five scales: low intelligence, affective disorders, neurological impairment, psychosis, and amnesia.

The FDA model suggests that any combination of methods – interviewing, testing, observation, base rate comparison – can be utilised.

Self Assessment Questions

1) What is the difference between mental disability and malingering?

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2) How the concept of mental disability related to criminal justice system?

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3) Explain the benefits of malingering to the malingerer?

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4) What are the various methods of assessment of psychological phenomena in relation to criminal justice system?

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1.4 MENTAL ILLNESS

1.4.1 Definition and Concept

Mental illness is a disorder of the mind that is judged by the experts to interfere substantially with the person's ability to cope with life on a daily basis. It presumably deprives a person from freedom of choice but it is important to note that there are degrees to this deprivation. Mental illness is manifested in behaviour that deviates notably from normal conduct. A mentally ill individual is characterised by abnormal patterns of experience and behaviour. Abnormal behaviour is usually more extreme than is normal behaviour. Abnormal behaviour is a deviation from commonly accepted patterns of behaviour, emotion, or thought and usually refers to maladaptive behaviour. The task of differentiating between what is normal and what is abnormal has always been very difficult. Different persons define abnormality in different ways, from different point of view and for different purposes.

The mental illness or abnormal behaviour can be broadly classified as Neuroses (includes anxiety reactions, phobic reactions, conversion reactions, dissociative reactions, obsessive compulsive reactions, and neurotic depressive reactions).

Psychoses includes paranoid reactions, psychotic depressive reactions, manic reactions and manic depressive cycles, schizophrenic reactions, and involutional

psychotic reactions. Personality disorders include character disorder, inadequate and unstable personalities, sociopathic personality disturbances, sexual deviation and addiction, psychosomatic disorders, and acute and chronic brain disorder.

1.4.2 Mental Illness and Crime

The relationship between mental illness and criminal behaviour is a complex one. Numerous attempts have been made to classify and integrate criminal behaviour into accepted psycho-social diagnoses.

The common element in criminal behaviour and abnormal behaviour is that both fail to live in conformity with the rules and regulations of the society and show partial disregard for the requirements for social acceptability.

This common factor has lead to the thought that crime is product of mental abnormality. The relationship between criminal behaviour and mental illness is not as strong as it is often assumed and the fact is that all law violators are not mentally ill and all persons who suffer from mental disorder do not commit crime. In behaviour which is both criminal and abnormal the problem is greater and mentally ill offenders pose special problems for the criminal justice system.

1.4.3 Criminal Justice System and Mentally Ill Offender

According to Wootton (1978), the issue of mental illness may be raised at three different stages:

a) the accused may be certified insane and, therefore, unfit to stand trial,

b) the accused may plead mental illness as an excuse to a criminal charge or as in the case of the English Homicide Act 1957, the accused may enter a plea of “diminished responsibility” in order to reduce a charge of murder to that manslaughter, and

c) when an offender has been convicted the court may substitute medical for penal treatment.

Even when the accused has successfully pleaded the defense of mental illness to a criminal charge, he may not necessarily be discharged rather he may be detained for medical treatment. According to M’Naghten Rules 1843, in order to establish a defense of insanity it must be proved that the accused ‘was laboring under such a defect of reason, from disease of 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.

Essentially, the rule states that if a person because of some mental disease, did not know right from wrong at the time of committing an unlawful act, or did not know that what he was doing was wrong, that person cannot be held responsible for his/her actions.

However the M’Naghten rule does not cover the “irresistible impulse” concept which points out that the individual may realise the wrongfulness of their conduct, be aware of what is right and what is wrong but still be powerless to do right in the face of overwhelming pressure from uncontrollable impulses.

The Brawner Rule, which is largely based on an insanity rule suggested by Model Penal Code (MPC) is another commonly used rule for determining insanity. The

rule states "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law" (U.S. vs. Brawner, 1972).

The Brawner Rule, unlike M'Naghten, recognises partial responsibility for criminal conduct as well as the possibility of an "irresistible impulse" beyond one's control. according to the Brawner rule it must be demonstrated that the mental disease directly influenced the defendant's mental or emotional process , or impaired his/her ability to control behaviour.

It also excludes from the definition of mental disease any repeated criminal or antisocial conduct and, therefore, under this rule the psychopathic or antisocial personality disorder is not covered.

1.4.4 Assessment and Evaluation

Now-a-days the courts are permitting clinical psychologists to testify as expert witnesses. Clinical Psychologists make a variety of contributions related to the criminal law, but they are known most distinctively for the evaluation of criminal suspects by means of psychological tests. Psychological tests are an objective and standardised tools to assess the individual's intelligence, personality, psychopathology, and mental capacity.

The clinical psychologist or forensic psychologist will most likely use psychometric tests. The psychometric tests used to assess the mental illness and criminality of an individual, are the traditional psychological instruments. Most frequently used instruments are Minnesota Multiphasic Personality Inventory (MMPI and MMPI-2), Wechsler Adult Intelligence Scale-Revised (WAIS-R), Rorschach Psycho-diagnostic Inkblots, Bender Visual Motor Gestalt tests, Personality Assessment Inventory (PAI), NEO-Personality Inventory-Revised (NEO-PI-R).

A clinical evaluation is always helpful in assessing and documenting the capacity. Although there are no golden rule regarding the components of a typical capacity assessment it is always helpful to structure the assessment by integrating theoretical principles, legal considerations, and clinical models. Theoretical information from Grisso's conceptual model provides an important guide for the assessment process by integrating legal and clinical considerations into five domains – functional, causal, interactive, judgmental, and dispositional.

The assessment outcome should include the following:

a) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations,

b) an evaluation of the respondent's mental and physical condition, and if appropriate, educational potential, adaptive behaviour, and social skills,

c) a prognosis for improvement and a recommendation as to the appropriate treatment or habitation plan, and

d) the date of any assessment or examination upon which the report is based.

1.5 SUBSTANCE ABUSE EVALUATION

1.5.1 Definition and Concept

Drug addiction may be defined as the habitual use of drugs which cause psychological dependence, physical dependence and tolerance. According to DSM-IV, substance misuse/abuse does not meet the criteria for drug dependence. According to the DSM-IV diagnostic criteria, substance (drug and alcohol) intoxication are characterised by

a) a recent ingestion of a particular substance,

b) maladaptive behaviour like poor judgment, labile behaviour, or physical or sexual aggression, without which it would not matter from a legal viewpoint whether the person was intoxicated, and

c) critical physical and psychological signs that will vary according to the substance. The use and misuse of psychoactive substances, including alcohol, may result in the patient developing a wide range of psychological disorders depending on the drug being used.

The concept of dual diagnosis is a recent development which incorporates a wide range of co-existing problems, including the co-existence of addictive behaviour with concurrent mental health problems. Carey (1989) states that with dual diagnostic patients, the psychiatric disorder and the substance misuse are separate, chronic disorders each with an independent course, yet each able to influence the property of other.

1.5.2 Drug Abuse and Crime

Drug addiction is not a crime but the addict comes in conflict with the law through the unlawful purchase, importation or possession of drugs. Furthermore, many addicts support their drug habit by the sale of drugs, theft, prostitution or other crimes. The illicit purchase of drugs is expensive and persons who are addicts turn to crime to support their addiction.

1.5.3 Drug Abuse and Criminal Justice System

Drug addiction does not relieve a suspect of legal responsibility for his criminal act. It has also been argued that drug intoxication is no defense to a crime unless the intoxication was involuntary. Intoxication is involuntary only if the intoxicant was imbibed as a result of duress, fraud or mistake. It is not sufficient that one was advised or persuaded to drink.

In spite of its deleterious medical and psychological effects, incapacitating self induced ethanol or illicit substance intoxication at the time of an instant offense is not considered a valid argument for claiming impairment. Mitigation may be claimed if substance intoxication removed the criminal intent – *mens rea* – necessary for the offense to have occurred.

1.5.4 Assessment and Evaluation

The increasing incidence of mentally ill substance-abusing individuals generally is reflected in the mentally disordered seen in the courts, prisons and secure health services. The residual effects of addictive substances (that may mask or

mimic psychiatric symptoms, such as depression) make the accurate assessment of co-existing disorders especially difficult. In such a situation, an extended assessment of the significance and interactive nature of the mental health and substance abuse, the length of the current abstinence, with delay of diagnosis if abstinence has not been achieved, mental health symptoms at the end of 4-6 week's abstinence, re-evaluation of mental health symptoms and appropriateness of treatment placement has been suggested.

The assessment of dual diagnosis should aim at acquiring information on the following areas:

- Symptoms of dual-diagnosis disorders.
- Drugs: types, dose (amount, cost), frequency, duration and mode of use, effects, complications (physical, social, and psychological), presence of any withdrawal symptoms.
- Alcohol: number of units, frequency and duration of use, withdrawal symptoms, and complications.
- Psychiatric history: nature of illness, and details of any previous treatment, whether illness was related to drug and alcohol.
- Interaction with dual diagnosis disorders.
- Family and social relationships.
- Medical history and current health status.
- Criminal justice history.
- Mental state: appearance/behaviour (withdrawals or intoxication), speech (slurred or rapid), mood and thought disorder, suicidal thoughts/intent, sleep, appetite, perceptual disturbances, insight into problem.

Other key areas to address include employment/vocational status, educational history and status, literacy levels, IQ and developmental disabilities, interpersonal coping strategies, skills deficits (e.g. related to problem solving or communication).

Self Assessment Questions

1) How will you structure the assessment plan of a mentally ill person?

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2) What are the factors to be considered in the assessment of a drug addict?

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3) Whether on account of substance abuse an individual can be absolved of his criminal responsibility?

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4) Differentiate between mental disability and mental illness?

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5) How the question whether a person is mentally ill have its effect in the deliverance of justice?

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1.6 LET US SUM UP

Mental disability refers to all kinds of intellectual sub-normality. The level of intellectual functioning of those suffering from mental disabilities can be extremely low. These persons are also labeled as mentally retarded persons who have an IQ of 70 and below on an intelligence test. Mental retardation is a failure to develop intellectually and otherwise, at a rate comparable to other individuals within the same age group. Those with extremely limited mental ability reveal very clearly the lack of development and inability to manage themselves in their day-to-day living and it is not difficult to assess their mental abilities. The mentally disabled persons are less able to make discriminations and to use good judgment in practical life situations. As adults such persons may be quite successful in simple works where little judgment or planning is required. Many of them find useful and satisfying place in the society, manage their own affairs with reasonable success and prudence and generally behave as a good citizen.

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Mentally Disabled person as witness or as an Accused or Suspectwill not be able to get any justice and cannot report events also in the correct manner.

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treatment. According to M'Naghten Rules 1843, in order to establish a defense of insanity it must be proved that the accused 'was laboring under such a defect of reason, from disease of 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.

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1.7 UNIT END QUESTIONS

1) Define mental disability and indicate the characteristic features of the same.
2) Elucidate the concept of malingering and put forth how this affects justice.
3) How does mental illness affect judgement in regard to criminal cases?
4) In what way substance abuse cause criminal behaviour and how this affects judgement?
5) What are the relationship between mental disability and criminal behaviour?
6) What relationship exists between mental illness and criminal behaviour?
7) Will substance abuse make a person criminal?
8) Discuss critically the various assessment techniques to decide mental abnormality.

1.8 SUGGESTED READINGS

Jennifer M Brown and Elisabeth A Campbell (Eds).(2010). *The Cambridge Handbook of Forensic Psychology*. Cambridge University Press, UK

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Bennett, Paul (2006). *Abnormal and Clinical Psychology – An Introductory Text Book*. (2nd edition). Open University Books, Philadelphia.