
UNIT 2 COMPETENCY TO STAND TRIAL IN THE COURT AND WAIVER OF MIRANDA RIGHTS AND DEATH PENALTY MITIGATION

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2.0 INTRODUCTION

In this unit, the issues of the competency of an accused to face trial in the court of law, waiver of Miranda rights and death penalty mitigation will be discussed. In this unit we start with the assessment by forensic psychologist in regard to a person's Competency to stand trial in the court of law. We deal with various methods of assessment in this regard. This is followed by another assessment by forensic psychologist in regard to waiver of the Miranda rights. This aspect is being dealt with in great detail. The last issue taken up here is the death penalty and mitigation and the various factors that affect the jury decision and explaining the developmental approach to the same. We also present how a forensic psychologist present himself as an expert and give expert testimony in this regard.

2.1 OBJECTIVES

After completion of this unit, you will be able to:

- Define competency;
- Explain the Meaning of competency to stand trial;
- Elucidate the legal standard for mental competence;
- Analyse the role of psychologist in understanding the competency issue;

- Elucidate waiver of Miranda rights; and
- Explain death penalty mitigation by plea bargaining.

2.2 COMPETENCY TO STAND TRIAL IN THE COURT OF LAW

2.2.1 Definition and Concept

The right to select is a fundamental societal value, but in certain situations, an individual's ability to make personal choices may be questioned. In such situations, individual autonomy must be weighed against another societal interest that of protecting the individual. Competency as a legal term has been defined by Black's Law dictionary as "the mental ability to understand problems and to make decisions". The precise meaning of competency assumes different forms depending upon the context for which it is addressed.

The legal requirement of competence to stand trial is an extension of the general rule that no one should be tried for a crime in his/her absence. If a defendant must be physically present to defend against criminal charges, that defendant must also be present "mentally".

An individual should not be subjected to the process of legal system if he/she is unable to understand the nature and purpose of those proceedings. Disorders that interfere with the psychological participation of a defendant at trial render that defendant incompetent to stand trial and require the postponement of the proceeding till effective participation can be assured. The issue of an accused/defendant's competency is present throughout the legal proceeding against him/her.

The question of competency to stand trial involves three separate questions – (i) does the defendant have a genuine mental disorder sufficiently severe to justify a finding of incompetence (diagnosis), (ii) is the defendant unable to understand rationally and factually the legal proceedings and to assist counsel in defense (incapacity), and (iii) is this incapacity caused by the mental disorder (causation).

Competency may be significantly affected by pre existing cognitive limitations or an underlying psychiatric disorder. However, the presence of a mental illness alone is insufficient to indicate a lack of capacity. A genuine mental disorder causes a defendant to be incapacitated and a genuine mental disorder does not cause a defendant to be incapacitated.

Some special legal and/or clinical problems may be posed in following circumstances i.e. in case of defendants who have a genuine diagnosis that causes an insufficient incapacity to stand trial, in case of defendants who have a genuine mental disorder but whose impaired capacity to stand trial is due to fabrication or exaggeration and in case of defendants who have a genuine mental disorder, who are incapable of standing trial, but whose mental disorder is not severe enough to justify a finding of incompetence. A context specific functional impairment should also be present.

2.2.2 Assessment and Evaluation of Competency to Stand Trial

Competency issue arises in both civil and criminal arenas, and in general court conducts such evaluations in an effort to safeguard the individuals. Assessment

and evaluation of competence is based on four elements, specifically with regard to having the requisite mental skills for the acquisition, comprehension, and processing of relevant information in order to make a decision. The individual must understand the basic facts of a given situation, implication of the situation and its relation to himself/herself.

The process of referring a person for an evaluation to assess competency can occur any time prior to the adjudication. The question of the defendant's competence to proceed in a court trial can be raised by the arresting officer, jail staff, prosecution or defense counsel, or even by a family member. Whenever, the sanity of the accused is likely to be a significant factor at the time of trial, the access to psychiatric evaluation is a must.

In actual practice, all the participants in the criminal process are usually able to identify readily the majority of incompetent defendants. Actively psychotic, demented, and severely mentally retarded persons are usually recognised by arresting officers, jail personnel, or defense attorneys and transferred to treatment facilities prior to any court appearances. However, defendants charged with particularly notorious crimes and defendants who decompensate while awaiting trial often require professional evaluation before criminal proceedings are postponed.

At times the defense attorneys raise issue of competence to stand trial for their apparently competent clients in order to secure a court ordered professional evaluation of the defendant which would be otherwise unavailable. These evaluations may produce evidence relevant to an insanity plea, to the question of diminished capacity, or to mitigating factors which may be considered at the time of sentence.

The competency to stand trial is a legal standard and not a psychological or psychiatric or medical concept. The Psychologists/ Psychiatrists as mental health consultants are, therefore, faced with the challenge of explaining the court about a defendant's mental symptoms that affect his capacity to understand, participate, and make decisions. The role of the forensic psychologist/psychiatrist as court consultants is, therefore, to explain a defendant's capacities in relation to the relevant legal concepts. The mental health consultant will consider three primary factors which are relevant to the defendant's competency to stand trial:

- The examination of general cognitive capacities of the defendant will reveal his basic level of knowledge and about court related matters. If a defendant displays the symptoms which will interfere with his general capacities, there is little reason to go further.
- The examination of decisional capacity of the defendant will indicate whether he can apply these capacities to the specific decisions he is facing in the legal case. It is important to recognise that competency to stand trial is based upon a capacity to make reasonable decisions, not whether the decisions were reasonable. People are free to make unreasonable decisions, although they may be having the capacity to do otherwise.
- The examination of the defendant's capacities relevant to his specific case will indicate how the defendant's mental condition or situation interacts with the unique features of the case.

Various forensic assessment instruments have been developed by different researchers in the field. These are: MacArthur Structured Assessment of the Competencies of the Criminal defendants, Georgia Court Competency Test, Georgia Court Competency Test-Mississippi Version Revised, the Competency Assessment Instrument, the Interdisciplinary Fitness Interview, and competency Screening Test. There are numerous assessment tools but there is no standard tool to evaluate capacity, and evaluations include minimum clinical interview and review of available records. Forensic evaluator should utilise validated and current instruments and methods within a broadly designed assessment approach, which includes assessment of present psychopathology and response styles.

2.3 COMPETENCY TO CONFESS AND WAIVE *MIRANDA RIGHTS*

2.3.1 Concept and Meaning

In *Miranda vs. Arisona* the US Supreme Court ruled that any statement arising from a custodial interrogation of a suspect would be presumed to be involuntary and not admissible unless the suspect is informed of his right to remain silent, to avoid self incrimination, to obtain legal counsel before and during police questioning, and to obtain free legal counsel if indigent.

Litigation concerning a defendant's capacity to confess has been increasing in criminal and juvenile courts. A confession or incriminating statement given by a suspect can greatly influence the final court judgment of a defendant's guilt or innocence.

Self-incriminating statement to a law enforcement agency, even in the absence of other incriminating evidence, often produce guilty verdicts. The psychologists or mental health professional have assisted the court in assessing the defendant's capacity to have waived *Miranda Rights* at the time of interrogation. *Miranda* focused evaluation involves a retrospective analysis of the defendant's mental state at the time of police questioning.

In 1966, the Supreme Court of USA ruled in *Miranda vs. Arisona* that a suspect's statement is presumed involuntary and inadmissible in the court if the law enforcement does not provide four warnings, that is,

- i) the right to remain silent
- ii) that any statement can be used against the suspect in the future court proceedings
- iii) the right to the presence of an attorney before and during the interrogation, and
- iv) an attorney provided free of charge if the suspect is unable to pay for one.

The terms competency to confess or competency to waive *Miranda* rights have been used interchangeably with capacity to waive *Miranda* rights. Competency generally refers to legal determination by the court, capacity has to do with the individual's ability to waive the rights at the time of interrogation. A forensic evaluation must be functionally based i.e. integrated with the legally relevant criteria.

2.3.2 Assessment and Evaluation of Competency to Waive Miranda Rights

Mental Health Professionals has to assess whether a waiver of *Miranda* right was made knowingly, intelligently and voluntarily:

Waiver of a right knowingly implies that the individual is able to understand and comprehend the rights in addition to the manner in which the rights were administered. The rights can be read by the law enforcement or the suspect may be given a written “*Miranda* waiver form”. In such cases, where the suspect has read and signed the waiver form, the assessment of reading comprehension is important. The readability of waiver form can be analysed by the Flesch-Kincaid readability formula, easily calculated with word processing programs.

An intelligent waiver of rights involves a decision making capacity, an appreciation of the rights based on the knowledge of legal process. A defendant may understand the “rights” in the perspective but may not exercise it because of the fear that doing so may not go against him/her.

The evaluation of voluntariness of the waiver has to be done very carefully. The clinicians can assess relevant psychological factors that make an individual more susceptible to the effects of police conduct. Information regarding the defendant’s interrogative suggestibility, compliance, submissiveness, coping skills, impulse control, intelligence, anxiety, memory, the effects of drug intoxication and sleep deprivation can be submitted to the court.

Information on psychological characteristics, which may make a defendant more likely to be misled by the interrogating and investigating officers or to change response under pressure compared to others should also be provided to the court. The judicial decision of validity of a *Miranda* waiver is based not only on the evaluation results but also on the totality of circumstances surrounding the *Miranda* waiver.

For conducting an evaluation of capacity to waive *Miranda* rights the following steps should be taken:

- i) Review of third party data which includes the copy of *Miranda* waiver form or the card from which the *Miranda* was read. The forensic psychologist should obtain school records, work records, psychological and medical records and any other record which will help the interpretation of evaluation findings in a historical perspective.
- ii) If any videotape or audiotape of interrogation is available, it should be reviewed and presented in the court of law. The content analysis of the interrogation has to be done.
- iii) Clinical interview including psycho-social history and mental status examination has to be conducted. An important process involved in the interview is to obtain step-by-step version of what transpired during first contact with the law enforcement personnel up through *Miranda* waiver and subsequent statement.

This is necessary to assess the defendant’s capacity to recite the rights from memory, and also the rights can be remembered after they are read by the

examiner or by the defendant himself. This also helps in assessing the defendant's reading and hearing abilities.

- iv) Intelligence test administration is required to obtain IQ scores and also to understand the cognitive capacities to understand and appreciate the abstract concepts contained in *Miranda*. Reading comprehension testing is also needed.
- v) Personality testing is required to assess the psychological variables which may affect the individual's ability to comprehend and process information for issues relevant to the voluntariness of the *Miranda* waiver. The assessment of minimisation or exaggeration of cognitive and psychopathological symptoms should also be done.
- vi) Specialised tests: Grisso developed four tests to evaluate the defendant's capacity to make a knowing and intelligent waiver of *Miranda* rights at the time of police questioning. The four tests are the Comprehension of *Miranda* rights, the Comprehension of *Miranda* rights-Recognition, the Comprehension of *Miranda* vocabulary, and the Functions of Rights in Interrogation. Wechsler scales for intelligence testing and personality tests like MMPI-2, PAI, and 16 PF are also administered to know the intelligence and personality factors of the defendant.

The ultimate determination of capacity to waive *Miranda* rights at the time of police interrogation is the jurisdiction of the court and the forensic mental health professionals can provide valuable data to the court in order to assist in the determination whether the defendant made a knowing, intelligent, and voluntary waiver of rights.

2.4 DEATH PENALTY AND MITIGATION

2.4.1 Definition and Concept

Death penalty has been considered cruel and unusual by the US courts. Chief Justice Warren Burger then touched upon the changes that would have to be made to allow the use of death penalty in compliance with the result of the case. The court implied that capital punishment would be sanctioned if the penalty is uniformly and consistently applied. The United States Supreme Court was concerned with the sentencing process. Although there is a growing consensus against the death penalty in the United States, a large number of people believe in capital punishment. As such, imposition of death penalty may not be readily influenced by issues which have led to the decrease in support for death penalty (wrongful execution, lack of deterrent value). In 1979, the US Supreme Court upheld the use of guided discretion in the application of death sentence for specific crimes in a bifurcated trial: the first stage requires the jury to determine guilt or innocence, and the second to determine sentence after consideration of aggravating and mitigating circumstances.

Aggravating circumstances are the factors which define and narrow the class of defendants eligible for the death penalty. The aggravating circumstances are delineated by the factors that can be classified into four categories:

- i) defendant's characteristics,

- ii) elements of crime,
- iii) motive of the crime, and
- iv) victim's characteristics.

Mitigating circumstances are the factors that decrease a capital defendant's culpability to the level at which the death penalty is considered undeserved. Mitigating factors are not limited to those defined by statute, but instead include "any aspect of character or record, and any circumstance of the offence that might serve as a basis for a sentence less than death" (Lockett vs. Ohio, 438 U.S. 586, 1978). Mitigating circumstances include severe neglect and physical abuse, sexual abuse, and borderline mental retardation.

The mitigating circumstances lessen a defendant's moral culpability and go against a sentence of death as against the aggravating circumstances increase the defendant's moral culpability and may be used to support the imposition of death sentence.

2.4.2 Factors Affecting Jury Decision

Garvey (1998) studied the impact of certain factors on Jury decision making in capital cases and found that the Jury is most likely to impose death sentence in the event of the murder being particularly heinous, a child being the victim of murder, the defendant being remorseless, and the defendant being a risk for future dangerousness.

The factors like doubt regarding guilt, a defendants youthfulness, presence of mental retardation, and other factors beyond the control of the defendant like mental illness were found to be strong mitigation elements. The Jurors were almost unconcerned about the development factors like child abuse or a background of extreme poverty.

2.4.3 Developmental Approach to Mitigation

The capital defendant is similar to any other person in that they have a developmental history. In the field of developmental psychology these life events have been identified as risk factors and protective factors respectively. A risk factor is a predictor which has a strong link to adverse outcomes such as delinquency, adult antisocial behaviour, substance abuse, unemployment, and violence.

The risk factors include perinatal difficulties, family history of criminal behaviour and substance abuse, early exposure to violence, economic deprivation, media portrayals of violence, academic failure and lack of commitment to school, and low intelligence. Studies have shown that these individuals are more likely to experience psychiatric disturbances, engage in criminal behaviour, have limited occupational success, function poorly in school, have impaired marital relationships, isolate from others, and experience poor physical health.

On the other hand the fact is that in spite of living in most disadvantaged situation, an individual experiences one or more protective factors in his/her environment. An increase in access to the protective factors may help in reduction of negative effects of risk factors. The protective factors are appropriate parental supervision, mutual connectedness between parent and child, a commitment to education by

both child and parent, association with a peer group that have conventional values, parental approval of peer group, positive self esteem, and child involvement in pro-social activities.

Resiliency is a construct which explains that an individual may reflect signs of adaptation despite significant life adversity. The presence of any single risk factor does not cause adverse outcomes. The convergence of the risk factors leads to widespread dysfunction, and the presence of protective factors causes resilience.

2.4.4 Expert Testimony on Mitigation

During the presentation of mitigation, it is important to clearly mention what could have been done to change the defendant's life course, what was done to assist in the process of change, and what tools were readily available yet not implemented. In order to provide expert testimony on mitigation, the mental health professional must be aware of the risk factors experienced by the defendant and be able to discuss the influence of these factors in relation to interventions that were or were not implemented.

The individual risk factors need to be evaluated over the life course, and discussed with respect to cumulative stress and the interaction among factors. The issue of resiliency is of great importance in capital mitigation. A large no. of people experience adverse life events, but only some of them indulge in capital crime. The success of mitigation depends largely on the fact that the Trier of the fact must be convinced that the defendant's experience of the similar life events was unique and the uniqueness of the defendant's response explains the violent behaviour.

It is necessary for the mental health professional to be aware of the fact that jury decision making is influenced by the juror's own life experience. The knowledge that they have accumulated from previous interactions over many years has a direct influence on their thought and response. The strength of mitigation evidence is at least in part related to the relationship between the defendant, the crime and the pre-existing schemata of each juror.

In situations where jurors' schemata are based on biased or inaccurate information that are detrimental to the defendant, the power of mitigation testimony is likely to be greatly reduced. The mental health professional must be ready to discuss stereotypes and to present information which will challenge the myths that may surround the character and life history of the defendant, then only mitigation testimony will have its impact in decision making in the court.

Self Assessment Questions

- 1) Explain the concept and meaning of competency to stand trial?

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2) What are the factors which will affect an individual's competency to stand trial?

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3) What are the methods of assessment of a defendant's ability to understand and comprehend the *Miranda* warning?

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4) Explain the developmental approach to mitigation trial?

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5) What are the factors influencing the jury decision in capital trials?

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2.5 LET US SUM UP

In this unit we have defined competence to stand trial at the court of law. Competency as a legal term has been defined as the mental ability to understand problems and to make decisions. The precise meaning of competency assumes different forms depending upon the context for which it is addressed.

The legal requirement of competence to stand trial is an extension of the general rule that no one should be tried for a crime in his/her absence. If a defendant must be physically present to defend against criminal charges, that defendant must also be present "mentally".

An individual should not be subjected to the process of legal system if he/she is unable to understand the nature and purpose of those proceedings. Disorders that interfere with the psychological participation of a defendant at trial render that defendant incompetent to stand trial and require the postponement of the proceeding till effective participation can be assured. The issue of an accused/defendant's competency is present throughout the legal proceeding against him/her. Competency may be significantly affected by pre existing cognitive limitations or an underlying psychiatric disorder. However, the presence of a mental illness alone is insufficient to indicate a lack of capacity. A genuine mental disorder causes a defendant to be incapacitated and a genuine mental disorder does not cause a defendant to be incapacitated.

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Actively psychotic, demented, and severely mentally retarded persons are usually recognised by arresting officers, jail personnel, or defense attorneys and transferred to treatment facilities prior to any court appearances. However, defendants charged with particularly notorious crimes and defendants who decompensate while awaiting trial often require professional evaluation before criminal proceedings are postponed.

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Litigation concerning a defendant's capacity to confess has been increasing in criminal and juvenile courts. A confession or incriminating statement given by a suspect can greatly influence the final court judgment of a defendant's guilt or innocence.

Self-incriminating statement to a law enforcement agency, even in the absence of other incriminating evidence, often produce guilty verdicts. The psychologists or mental health professional have assisted the court in assessing the defendant's

capacity to have waived *Miranda Rights* at the time of interrogation. *Miranda* focused evaluation involves a retrospective analysis of the defendant's mental state at the time of police questioning.

Mental Health Professionals has to assess whether a waiver of *Miranda* right was made knowingly, intelligently and voluntarily:

The evaluation of voluntariness of the waiver has to be done very carefully. The clinicians can assess relevant psychological factors that make an individual more susceptible to the effects of police conduct. Information regarding the defendant's interrogative suggestibility, compliance, submissiveness, coping skills, impulse control, intelligence, anxiety, memory, the effects of drug intoxication and sleep deprivation can be submitted to the court.

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- v) Personality testing
- vi) Specialised tests

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Mitigating circumstances are the factors that decrease a capital defendant's culpability to the level at which the death penalty is considered undeserved. Mitigating circumstances include severe neglect and physical abuse, sexual abuse, and borderline mental retardation. The mitigating circumstances lessen a defendant's moral culpability and go against a sentence of death as against the aggravating circumstances increase the defendant's moral culpability and may be used to support the imposition of death sentence.

The factors like doubt regarding guilt, a defendant's youthfulness, presence of mental retardation, and other factors beyond the control of the defendant like mental illness were found to be strong mitigation elements. The Jurors were almost unconcerned about the development factors like child abuse or a background of extreme poverty.

During the presentation of mitigation, it is important to clearly mention what could have been done to change the defendant's life course, what was done to assist in the process of change, and what tools were readily available yet not implemented.

It is necessary for the mental health professional to be aware of the fact that jury decision making is influenced by the juror's own life experience. The knowledge that they have accumulated from previous interactions over many years has a direct influence on their thought and response. The strength of mitigation evidence is at least in part related to the relationship between the defendant, the crime and the pre-existing schemata of each juror.

2.6 UNIT END QUESTIONS

- 1) Define and conceptualise competency to stand trial
- 2) What are the assessment and evaluations carried to assess a person's competency to stand trial?
- 3) Explain what is meant by competency to confess and waive Miranda Rights.
- 4) What are the ways one could assess the competency to waive Miranda Rights?
- 5) What are the measures of evaluating the competency to Waive Miranda Rights?
- 6) Define death penalty and mitigation and bring out its characteristic features.
- 7) Define and conceptualise death penalty and mitigation.
- 8) Delineate the factors that affect jury's decision.
- 9) Describe the developmental approach to mitigation.
- 10) Critically examine the significance of expert testimony on mitigation.

2.7 SUGGESTED READINGS

Heilburn, Kirk, Grisso, Thomas and Goldstein, Thomas (2008). *Foundations of Forensic Mental Health Assessment* (Best practices in forensic mental health assessment). Oxford University Press, Oxford.

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