

**POSSIBLE LEGAL REFORMS ON THE RIGHTS OF THE
MENTALLY INCAPACITATED PERSONS IN SRI LANKA:
A COMPARATIVE ANALYSIS**



by

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ABSTRACT

Mental illnesses are diseases that impairs thinking, emotions and behaviours leading to functional impairments and incapacity of independent decision making. Patients are subjected to involuntary hospital admissions, invasive treatments and are denied of autonomy in various aspects in their lives. Prevailing stigma towards mental illnesses result in discrimination and abuse of patients leading to violation of rights in multiple aspects of their lives. In this backdrop there is a critical need to explore the extent of existing Sri Lankan legal framework on Mentally incapacitated and to suggest legal reforms to protect their rights. This research is based on qualitative legal research of the technique of desk research. It was conducted using Sri Lankan legislations including Lunacy ordinance No. 1 of 1873, Mental Decease Ordinance No 27 of 1956, international conventions and declarations. Furthermore, researcher reviewed journals, conference presentations and conducted interviews with experts in the field. Sri Lanka's archaic legislation on mental illness dates to the Lunacy Ordinance of 1873. These laws still operate with minor modifications with the last of these in 1956. In the current MDO, involuntary admissions criteria based of risk to the patient and the community are loosely defined with a large room for individual interpretations leading to unnecessary hospital admissions of patients under the Mental Health Act. This study evaluates the right violation of incapacitated patients based on their mental illnesses in Sri Lanka. UN human rights are used as the gold standard in determining the right of mentally incapacitated patients. This paper explores the structure and extent of the mental health legislations in United Kingdom and India as comparison standards against the MDO in Sri Lanka. As opposed to Sri Lanka, MHAs of both UK and India have gone through major modifications on multiple occasions leading to law reforms that are better suited to ensuring the rights of mentally incapacitated persons. A careful consideration of the available data suggests that Sri Lankan MDO needs urgent reforms on multiple aspects including the autonomy, and dignity, during mental healthcare and ensuring the basic rights of mentally incapacitated persons in society. The involuntary admission criteria should be redefined with the emphasis on the imminent serious risks to the individual and the society. Patients and the family members should be allowed to challenge the admission in Mental Health Act Review Tribunals with an immediate effect. Legal reforms should facilitate the independent decision making for patients in all aspects of life including education, occupation, marriage, and independent living.

Key words: Mentally incapacitated, Rights