

Mental health law profiles

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Though vastly different in geographical size and significantly different in population numbers, Malaysia and Singapore, which separated amicably in 1963 (through Singapore being 'expelled' from Malaysia following a referendum), share some characteristics; for example, they are both multi-ethnic, carry the legacy of the British Empire and have flourished economically since liberation.

The legacy of empire, investment in education and the knowledge economy and increasing economic prosperity perhaps have provided the foundations for significant attention to mental health law and related legislation in both Malaysia and Singapore. The laws, as well as carrying the British influence, also seem to express the divergence of cultures from the old colonial centre that may have occurred since independence. For example, it is interesting to see that in Malaysia 'promiscuity' is lumped together with 'immoral conduct', something that would be unlikely to achieve similar consensus in the UK today, where

different significance would be attached to such behaviour by different people, be that vulnerability and low self-esteem, compulsion, lifestyle choice, poor judgement or even pride.

More worrying perhaps is the situation in Singapore, where the law seems to separate rather too rigidly mental health and general hospital services. For one of the handful of richest countries in the world in terms of per capita income, this seems surprising. However, this country also has one of the highest proportions of millionaires in the world and high degrees of social inequality. The question arises therefore whether high rates of social inequality (despite prosperity) may be associated with retrograde state and social attitudes towards people who are mentally ill. There is evidence from other countries that this may be the case (Bark, 2014).

Reference

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Malaysian mental health law

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The Malaysian Mental Health Act 2001 did not come into effect until the Mental Health Regulations 2010 came into force. The Act provides a framework for the delivery of comprehensive care, treatment, control, protection and rehabilitation of those with mental disorders. The Act governs the establishment of private and government psychiatric hospitals, psychiatric nursing homes and community mental health centres. This paper outlines the provisions of the Act and the Regulations.

The Mental Health Act 2001 was passed by Parliament in Malaysia in August 2001 but did not come into operation until 2010, when the Mental Health Regulations 2010 came into force. In the private sector, the Mental Health Act 2001 is to be interpreted alongside the Private Healthcare Facilities and Service Act 1998. The present paper summarises the legislation only as it relates to non-offender populations. The 2001 Act provides a framework for the comprehensive care of those

with mental disorders. It has provision for the establishment of private and government psychiatric hospitals, psychiatric nursing homes and community mental health centres. According to the World Health Organization (2011), Malaysia has 0.83 psychiatrists, 3.31 nurses and 0.29 psychologists per 100 000 population.

Historical perspective

Before Malaysia gained independence in 1957, the Lunatic Ordinance of Sabah 1951 was enacted by the British. That was followed by the Mental Disorders Ordinance of 1952 for Peninsular Malaysia. In 1961 (after independence) the Mental Health Ordinance Sarawak was passed (Haque, 2005).

The Ministry of Health introduced the Mental Health Act 2001 (together with Mental Health Regulations 2010), which was seen as a turning point for mental healthcare as it contained detailed policy guidelines for the delivery of services. The Act consolidates the law in relation to mental disorder and provides procedures for the admission, detention, lodging, care, treatment, rehabilitation,

control and protection of persons who are mentally disordered and for related matters.

Other significant events which have driven change include the integration of mental healthcare into primary practice in 1998 and the introduction of the Mental Health Policy. Malaysia has seen a significant change for the better in its provision of mental healthcare, as evidenced by the introduction of home treatment teams in 2000, the opening up of new psychiatric units within general hospitals, primary care centres providing mental health services and the setting up and maintenance of family support groups.

How mental disorder is defined in law

The Act defines mental disorder as 'any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired'. It clarifies that a person cannot be construed as suffering from a mental disorder 'by reason only of promiscuity or other immoral conduct, sexual deviancy, consumption of alcohol or drugs, or where he expresses or refuses or fails to express a particular political or religious opinion or belief, or of his antisocial personality'. It further clarifies that the aforementioned exception does not prevent serious physiological, biochemical or psychological effects, temporary or permanent, of drug or alcohol consumption from being regarded as an indication that a person is mentally ill.

Grounds for compulsion

The statutory criteria for detention state that a patient must be suffering from a 'mental disorder of a nature or degree' that 'warrants admission into a psychiatric hospital' for 'the purpose of assessment or treatment in the interests of his own health or safety or with a view to the protection of other persons'.

The Act stipulates that a person can be admitted involuntarily if suspected of being mentally disordered, when the application for detention is made by a relative of the person to the medical director of the psychiatric hospital or on the recommendation of a medical officer or registered medical practitioner following a personal examination no more than 5 days before admission. The application for detention lies solely with the medical profession, unlike in some jurisdictions (e.g. the UK) where an approved mental health professional can also apply.

Relatives of patients or patients themselves can make an application to the medical director for discharge of an involuntary patient. The medical director is then required to examine the patient and to determine whether continued detention is required, and to record the findings in a report. There are a number of safeguards should the family feel they want to appeal the medical director's decision, which includes referral to the hospital's board of visitors (see below) and, failing this, a further appeal, to the Malaysian Director General of Health.

Board of visitors

The Act describes the functions and responsibilities of an external agency called the 'board of visitors', which has a number of functions, including reviewing patients' detention, looking into complaints and inspecting facilities. The Minister of Health appoints a board of visitors for each psychiatric hospital and psychiatric nursing home and each board consists of not fewer than three members. The visitors to a psychiatric hospital must include a medical officer or registered medical practitioner, preferably a psychiatrist, who does not work in the hospital, and two other visitors, one of whom must be a woman.

At the review of a case, the visitors may, following the report of the medical director and personal examination of the person, direct that the patient is immediately discharged or discharged at a later date as specified, or the detention is continued for a period not exceeding 12 months. A patient is required to be reviewed by the visitors at least every 12 months.

Consent

The Act deals with consent to surgery, to clinical trials for patients with a mental disorder and to electroconvulsive therapy. The Act states that consent for these can be given 'by the patient himself if he is capable of giving consent as assessed by a psychiatrist', by 'his guardian in the case of a minor or a relative in the case of an adult, if the patient is incapable of giving consent' or by two psychiatrists, one of whom shall be the attending psychiatrist, if there is no guardian or relative of the patient available or traceable and the patient him- or herself is incapable of giving consent.

The Act specifically states that 'no consent is required for other forms of conventional treatment', which include psychiatric medication.

The criteria used for assessing consent (by the attending psychiatrist) as detailed in the Act are that the person understands the following:

- the condition for which the treatment is proposed
- the nature and purpose of the treatment
- the risks involved in undergoing the treatment
- the risks involved in not undergoing the treatment.

Power to discharge

The Act states that the medical director of a psychiatric hospital may at any time discharge an involuntary patient from the hospital if it is in the best interests of the patient and the patient is not in need of further care.

Involuntary patients are allowed leave of absence for up to 1 month, but further leave not exceeding 1 month is possible if they continue to meet the criteria for detention but require further testing in the community. The medical director may, though, revoke the leave of absence and require the involuntary patient to return to the

psychiatric hospital. The patient may be taken into custody by any police officer or social welfare officer or any person authorised in writing by the medical director.

Community care

The 2010 Mental Health Regulations specifically state that a psychiatric hospital or community mental health centre shall ensure establishment of a community mental health team for community mental healthcare services. The community mental health team shall be multidisciplinary, preferably led by a psychiatrist.

Any involuntary patients discharged or granted leave of absence from a psychiatric hospital may undergo community treatment if required by the medical director or the visitors. The Act permits compulsory community treatment but, practically, this does not work at present.

Patients' rights

The Regulations place a specific duty on the medical director of every psychiatric hospital to ensure all patients are provided with statements of

their rights that shall be in a manner and language understood by the patients. Statements of patients' right shall be exhibited in a conspicuous part of the psychiatric facility.

Conclusion

It has been suggested that the turning point for the provision of mental healthcare in Malaysia was the introduction of the Mental Health Act in 2001 (Chong & Mohamad, 2013). The Act's support for community treatment should promote the growth of community mental health services, with a reduction in the number of beds at mental health hospitals, resulting in a more effective and comprehensive service which better suits the needs of patients.

References

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An overview of mental health legislation in Singapore

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This article summarises the development of mental health legislation in Singapore in three distinctive periods: pre-1965; 1965–2007 and 2007 onwards. It highlights the origin of mental health legislation and the relationship between mental health services and legislation in Singapore. The Mental Health (Care and Treatment) Act 2008 and Mental Capacity Act 2008 are described in detail.

History

The Republic of Singapore is a city state with a population of 5.3 million, mainly of Chinese, Malay, Indian and Eurasian background. Singapore was a British colony from 1819 to 1963, was briefly part of Malaysia and then became an independent nation in 1965. The legal system in Singapore is based on the English common law. As a result, the mental health legislation originated from England and there have been parallel developments. The first local mental health law, the Lunacy Act 1858, was implemented in 1863 (Bewley, 2008, pp. 1–9) and the lunatic asylum was established. Several officials

from the colonial government were appointed as visitors to ensure the safe treatment of the asylum's residents. Police officers but not medical professionals were empowered to apprehend 'lunatics' and commit them to the asylum.

In 1935, the Mental Disorders and Treatment Ordinance was introduced. It allowed the compulsory detention of persons of unsound mind. In 1960, the government of Singapore made an amendment to the Ordinance which empowered medical practitioners to send a person with a mental illness to the mental hospital (Woodbridge Hospital) for assessment. The Mental Disorders and Treatment Act 1965, modelled on the UK Mental Health Act 1959, was the only mental health law governing involuntary admission from 1965 to 2007.

Mental health services

In Singapore, mental health services are provided by: the government general hospitals; the Institute of Mental Health (IMH), a state mental health hospital; out-patient poly-clinics; and private psychiatric services. The IMH has 50 psychiatric wards and has around 2000 in-patient beds. There