

MENTAL HEALTH LEGISLATION IN COMMONWEALTH COUNTRIES: Time for a Review



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Dr Pathare said the 'gold standard' for mental health legislation is the United Nations Convention on the Rights of Persons with Disability (CRPD) which came into force in 2006. To date 166 countries have ratified the convention (62% of Commonwealth countries).

Approximately 10% of the world's population, 650 million people, live with disabilities (the 'world's largest minority'), Dr Pathare said. Twenty per cent of the world's children and adolescents, regardless of culture, are estimated to have mental ill health.

Mental ill health is the third highest cause of disease burden in the world, predicted to be the leading disease burden by 2030. One third of the anticipated spend on NCDs over the next 20 years is on mental ill health which is a common co-morbidity of NCDs, infectious diseases and poverty.

Prior to the CRPD, existing international human rights instruments failed to adequately promote and protect the rights of persons with disabilities. A Convention was needed which specifically focused on protecting and promoting the rights of persons with disabilities. The CRPD sets out a full range of, civil, cultural, economic, political, and social rights that governments are required to put into effect.

Despite the affirmation in the Universal Declaration of Human Rights, all over the world, persons with mental disorder are subject to inhuman and degrading treatment because of stigma associated with mental disorders. Violations of basic human rights and freedoms and denial of civil, political, economic, social and cultural rights to those suffering from mental disorders is a common occurrence across the world, both within institutions and in the community, including physical restraint, seclusion and denial of basic needs.

The CRPD introduced a paradigm shift: from seeing people with mental health disorders as objects of charity to subjects with rights; from seeing them as a burden on society to active members of society; and from paternalism to respect for human rights.

In 2013, the Commonwealth Health Professions Alliance with funding from the Commonwealth Foundation, undertook a research project to assess mental health legislation in Commonwealth countries against the CRPD. The 53 Commonwealth countries were contacted for copies of their mental health legislation. There was no dedicated legislation in four countries and legislation was unable to be obtained for another four countries leaving 45 countries whose legislation was analysed. Only dedicated mental health legislation was analysed; other legislation which might impact on persons with mental health issues such as employment, property, employment etc was not examined.

The research was conducted by the Indian Centre for Mental Health Law and Policy. The key findings were that mental health legislation in Commonwealth countries failed the standard of the UN Convention on Rights of Persons with Disability. Mental health legislation in 20 per cent of Commonwealth member states was enacted prior to 1960 before modern medical treatments became available and before many of the international human rights instruments came into force.

Mental health legislation in only 11 per cent of Commonwealth member states specifically include provisions that state mental health care should be provided on an equal basis with physical health care.

	Low (n ₁ =7)	Low-middle (n ₂ =18)	Upper-middle (n ₃ =10)	High (n ₄ =10)	Total (N=45)
Yes	0	2 (11%)	1 (10%)	2 (20%)	5 (11%)
No	7 (100%)	16 (89%)	9 (90%)	8 (80%)	40 (89%)

Provisions for protection from cruel, inhuman and degrading treatment are included in the legislation in only 23 (51 per cent) countries.



The informed consent of persons with mental disorders for participating in clinical and experimental research is specifically mandated in mental health legislation in only five (11 per cent) countries.

	Low (n ₁ =7)	Low-middle (n ₂ =18)	Upper-middle (n ₃ =10)	High (n ₄ =10)	Total (N=45)
Yes	0	2 (11%)	2 (20%)	1 (10%)	5 (11%)
No	7 (100%)	16 (89%)	8 (80%)	9 (90%)	40 (89%)

The legislation in only four countries (9 per cent) promote voluntary admission as the preferred alternative to involuntary admission.

The legislation in only 14 countries (31 per cent) provides for review of treatment given during an involuntary admission.

Article 12 of the CRPD requires countries to move to a regime of supported decision making. Only four Commonwealth countries (9 per cent) have supported decision making provisions in their legislation.

Laws in only two (4 per cent) countries restrict involuntary admission of minors with mental health problems, and laws in only three (7 per cent) countries ban any irreversible treatments on children with mental health problems.



Only 11 Commonwealth countries (24 per cent) had provision in their legislation to promote community care and deinstitutionalisation, rehabilitation and a psychosocial approach.

Provisions in and the language of mental health laws in many instances add to negative perceptions and further stigmatisation of persons with mental disorders.

The word "Lunatic" is used in the mental health laws of 12 countries; the term "Insane" is used in the mental health laws in 11 countries; the term "Idiot" is used in the mental health laws in 10 countries; two mental health laws use the term "Imbecile"; and two mental health laws use the term "Mentally defective". Overall 21 (47 per cent) laws use 1 of the above terms.

Dr Pathare said the conclusions were both devastating and clear. Mental health legislation in many Commonwealth member states is outdated and does not fulfil member states' international human rights obligations toward persons with mental disorders. Mental health legislation in many Commonwealth member states is not compliant with the Convention on Rights of Persons with Disabilities.

Mental health legislation in many countries is based on an outdated understanding of mental disorders; ignores advances in the care and treatment of mental disorders and denies the capacity of persons with mental disorders to manage their lives with the result that, instead of protecting the rights of persons with mental disorders, is likely to lead to violation of rights.

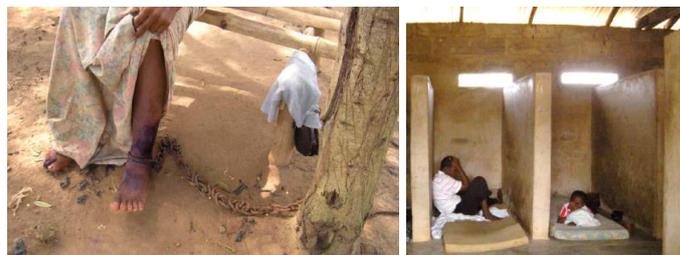
Most mental health laws pay little attention to protecting the rights of vulnerable groups with mental health problems such as minors, women, and minorities and the special needs of such vulnerable groups.

Many mental health laws in Commonwealth countries do not address the issue of (a lack of) access to mental health care, in particular, making care and treatment easily available; provided in a manner which enhances the capacities of individuals and protects and promotes their rights; and enables them to live and participate in their communities.

There is little participation of persons with mental disorders and their families and care-givers in the development and implementation of legislation.

The subsequent report of the research, titled: *Mental Health: a legislative framework to empower, protect and care*, made several recommendations (available from <http://www.chpa.co>):

1. Commonwealth member states should urgently undertake reform of mental health legislation.
2. Member states should ensure that the legislation meets their obligations under international human rights treaties, in particular the Convention on Rights of Persons with Disabilities.
3. The Commonwealth should consider providing financial and technical support to low and middle income member states to undertake mental health law reform.
4. Commonwealth member states need to thoroughly review all legislation to comprehensively address all civil, political, economic, social and cultural rights of persons with mental disorders.
5. Commonwealth member states should introduce provisions to promote supported decision making in mental health legislation.
6. Commonwealth member states must involve persons with mental disorders and care-givers, apart from other stakeholders, in the mental health law reform process.



This is no way to care for people with mental disorders. People with mental disability have been neglected for too long. There is much that can be done and the work needs to start now.