

Sexual Rights of the Psychiatric Patients, Consenting Capacity and Contradiction with Local and National Policies and the Law of Sri Lanka: A Case Report


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Abstract

Legally, consensual sexual relationships between adults are a right in our society. However, sexual activity is often prohibited by-laws for psychiatric patients in Sri Lanka. Unless medically contraindicated, all people, whether competent or incompetent or, single or married, should have the right to engage in consensual sexual activities. A 32-year-old female who was on regular treatment and follow-up in the clinic for fifteen years for epilepsy and psychosis was admitted to a tertiary care hospital with a sudden loss of consciousness following severe vomiting. Her medical findings confirmed a 23 weeks intrauterine live foetus. She lived in a separate home for the last three years and had consensual sexual intercourse with her sound-mind long-term partner for one year. Medico-legal investigations excluded the physical forces or donations as contributory factors to request consent for sex, and the circumstantial evidence confirmed that the patient had consented sex. However, the psychiatrist's opinion was that she had severe mental retardation and had no capacity to give consent for sex. According to the law, after the clinical forensic examination, the assailant was arrested and remanded. The sexual rights of the psychiatric patients in Sri Lanka are discriminatory and there is the legal vulnerability of partners who engaged in sex with psychiatric patients. Therefore, local and national policies should be created to provide sexual and reproductive health, education, counselling, and family planning among psychiatric patients. Similar to other countries, the laws of Sri Lanka should be amended with the help of medical professionals and other stakeholders.

Keywords: Consenting Capacity, Law of Sri Lanka, Psychiatric Patients, Sexual Rights

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Introduction

The basic needs should be provided to satisfy hunger, thirst, and sex not only to animals but also to every adult human being.[1,2] Legally, consensual sexual relationships between adults are a right in our society.[2,3] However, sexual activity is often prohibited by laws for psychiatric patients in Sri Lanka.[1] Penner (1991) declares that unless medically contraindicated, all people, whether competent or incompetent or, single or married, should have the right to engage in consensual sexual activities.[1] WHO promotes sexual health even among psychiatric patients to engage in controlled, safe sex, and reproductive activities in accordance with personal and social ethics.[4] Even though the estimated population of Schizophrenia is more than 200,000 in Sri Lanka, and 20 million in the world (2017),[6] this issue is poorly addressed not only in Sri Lanka but also in the world.[5]

Case report

A 32-year-old female who was on regular treatment and follow-up in the clinic for fifteen years for epilepsy and psychosis was admitted to a tertiary care hospital with a sudden loss of consciousness following severe vomiting. Her clinical findings and urine HCG revealed pregnancy and Ultrasound Scan confirmed a 23 weeks intrauterine live foetus.

She lived in a separate home for the last three years and had consensual sexual intercourse with her sound-mind long-term partner for one year but did not remember the date and time of the first incident but she stated that she was hugged and fondled by him while in the kitchen. Then, he removed her panty and inserted his penis in the machinery position. She felt pain but did not bleed or resist and he did not threaten her too. This was repeated once in two to three days but there was no history of anal

or oral sex. She did not remember her menarche or last regular menstrual period. She did not give a history of artificial insemination or in-vitro fertilization.

The clinical forensic examination was performed after receiving informed written consent from her and next of kin, which revealed hyper-pigmentation on the cheeks and well-developed areola and nipple. Abdominal examination revealed symmetrical distention with linear nigra and striae gravidarum. Though the extra-genital examination revealed no injuries or scars, the genital examination revealed an adult female pubic hair pattern, and the crescentic hymen showed healed complete tears at 6 and 8 o'clock positions. Attenuation of the hymen was evident between 6 to 10 O'clock positions. The posterior vaginal wall was visible in the lithotomy position. The peri-anal examination was unremarkable. Medico-legal investigations excluded the physical forces or donations as contributory factors to request consent for sex, and the circumstantial evidence confirmed that the patient had consented sex.

According to the TONI III assessment of the consultant psychiatrist, her total score was 9, deviation intelligent quotient was 69 and description was poor and corresponded with 6 ½ years of mental age and had no understanding of the consequences of pregnancy or sexually transmitted diseases. Finally, psychiatrist's opinion was that she had severe mental retardation and had no capacity to give consent for sex.

The assailant was arrested and revealed that he worked in a care home as a supervisor. He further stated that he had sex with the victim following several requests made by her. However, he did not know that the consent given by a psychiatric person to have sex is not valid in the court of law. Further, he refused the biological paternity of this pregnancy. According to the psychiatrist, his mental state was normal. After the clinical forensic examination, the suspect was remanded based on the rape law of Sri Lanka.[3]

The review examinations of the female revealed that she developed recurrent relapses of the illness following the imprisonment of her long-term partner. The baby was handover to a child care home at the end of delivery and decide to do a paternity test with a court order in near future. The assailant was released after one month and facing trial in the high court of Sri Lanka under the Rape law, section 363 of the penal code.

Discussion

In this case, the attenuation of the hymen confirmed the frequent and repeated vaginal penetration.

Further, she was pregnant and was confirmed by urine HCG and Ultrasound Scan. With the absence of the history of artificial insemination or in-vitro fertilization, the peno-vaginal penetration was confirmed. Assailant accepted that he had sex with her but denied the biological fatherhood of the foetus. This could be confirmed or excluded by performing a DNA paternity test.

The psychiatric assessment revealed that her psychological age was 6 ½ years and had no capacity to give valid consent for sex. According to the rape law, section 363 of the penal code of Sri Lanka, the consent of an unsound mind person is not valid.[3] Further, the consent is not valid if it was given by a woman less than 16 years of age, but does not state whether psychological or chronological age. This case highlights the significance of these problems to legal and medical professionals and the importance of the role of forensic psychiatrists.

If this had been taken place in a psychiatric care home and the suspect was a supervisor of that home, it could be an influencing factor and the consent would be invalid even the victim was sound mind [3,7] for being in an official or unofficial custody. Further, in-patient sexual activity is prohibited in Sri Lankan health institutes due to legal and ethical dangers, cultural and religious objections, lack of space and staff, and insufficient sexual training and freedom. However, this woman was not under such custody.

Based on the forensic clinical examination and the report of the psychiatrist, the suspect has violated the rape law and was sentenced to remand and in the future, he will be trialed further in High Court for rape.[3] Similarly, if the legal system sentences the partners of unsound persons to jail, who will be able to have sex with them even following love affairs? Further, the sexual rights of adult unsound mind persons are being discriminated against not only in Sri Lanka but also in most countries of the world. [1, 2,8,9] However, in Finland, hetero and homosexual relationships of unsound persons or patients with their outside long-term partners or prostitutes are not illegal.[2]

This patient developed recurrent relapses after sentencing her partner to remand. This may have been due to the failure to take the oral drugs due to the lack of support of her partner. It highlights that the current legal system has augmented the seriousness of her mental illness. Sexuality involves "the totality of being a person"[8,10], and it is a fundamental right of a human being.[10] Perlin and Lynch mentioned that "individuals with mental health disabilities also have the same need as others to have intimate relationships, and denying or undermines their rights for sexuality threatens their

psychological well-being”.[11] Furthermore, there is evidence that relationship well-being and sexuality can resolve psychological problems.[12]

This patient became pregnant as a consequence of a sexual relationship with her long-term partner and it is a common complication among such victims.[13] But she did not develop sexually transmitted diseases. However, this highlights the failure of safe sex and health education and the unavailability of contraceptive advice among long-term psychiatric patients.

Moreover, the management issues of psychiatric patients are left to the judgment of mental health staff who may respond subjectively and paradoxically to patients who were driven into clandestine unnatural sexual activities such as homosexuality, bestiality, paedophilia, necrophilia, and other perverted sexual diversions with the associated risks of sexual crime, hazard to the society, exploitation, prostitution, sexually transmitted disease and unexpected pregnancy. [2,10,12,14,15]

Finally, this case illustrates the failure of the law of sexual offenses in Sri Lanka especially of the sexual rights of vulnerable psychiatric patients, even though it protects normal citizens from dangerous sexual crimes effectively.

Conclusions

The sexual rights of the psychiatric patients in Sri Lanka are discriminatory and there is the legal vulnerability of partners who engaged in sex with psychiatric patients. Therefore, local and national policies should be created to provide sexual and reproductive health, education, counselling, and family planning among psychiatric patients. Similar to other countries, the laws of Sri Lanka should be amended with the help of medical professionals and other stakeholders.

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