

The development of laws related to the disposal of forensic patients in Sri Lanka: A historical review

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Abstract

The current laws in Sri Lanka on the disposal and discharge of mentally ill defendants and offenders (forensic patients) are more than 150 years old. These statutes are found in Chapter 31 of the Code of Criminal Procedure Act 1979 (sections 374 to 386). This article explores the historical development of these statutes. Apart from some changes in wording, the current laws are identical to similar provisions contained in the first Indian Code of Criminal Procedure of 1861. Prior to the adoption of the Indian Criminal Procedure Code, early disposal laws in British Ceylon were influenced

by similar British laws that resulted from the famous trial of James Hadfield in 1800. Although used in modern Sri Lanka, the laws in essence still reflect thinking of those who lived in the 19th century, when no effective treatment for mental illness existed and indefinite custodial detention was the norm.

Keywords: forensic patients, criminal lunacy, criminal procedure code, Ceylon, Sri Lanka

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Introduction

In Sri Lanka, when a person is found unfit to stand trial or not guilty by reason of insanity (NGRI), they are not released from custody. Instead, they are 'disposed' of or discharged according to provisions contained within Chapter 31 of the Code of Criminal Procedure Act 1979 (sections 374 to 386) (1). These provisions can be collectively referred to as Forensic Mental Health Laws (2). The group of patients who fall within the provisions of Chapter 31 include mentally-ill defendants and offenders, as well as mentally-ill prisoners (forensic patients). Chapter 31 details the detention, release, and monitoring of forensic patients (2). Except for minor changes, the content of Chapter 31 is similar to the corresponding chapter in the first Criminal Procedure Code (CPC) of Sri Lanka, Ordinance No. 3 of 1883 (3). This, in turn, was very similar to the corresponding chapter of the Indian Code of Criminal Procedure (CPC) of 1882 (4). The relevant section of the 1882 Indian Code is essentially the same as Chapter 27 of the first Code of Criminal Procedure enacted by the British Parliament for India in 1861 (5). Thus, it can be concluded that the current disposal laws in Sri Lanka dealing with forensic patients are very much the same laws enacted in 1861, making them more than 150 years old.

Forensic patients are referred to as 'criminal lunatics' within 19th-century scientific literature and legislature.

Despite the aforementioned terms being considered archaic, with negative connotations, we have used that term when referring to individuals detained under 19th-century Forensic Mental Health Laws. The terms criminal lunatic and forensic patient are used in the same sense, unless the context suggests differently (1).

In this article, we have attempted to examine the historical origins of laws governing the disposal of forensic patients in Sri Lanka by examining their predecessors in Britain and India.

¹Section 34 of the Mental Diseases Ordinance defines the terms criminal lunatic and insane criminal. Criminal lunatics or insane criminals are defined as individuals who have been detained under the Code of Criminal Procedure for being unfit to stand trial (section 376(2)), or NGRI (section 381). Mentally-ill prisoners detained in a mental hospital under sections 9 and 10 of the Mental Diseases Ordinance are also included in this definition.

Early laws on criminal lunacy in British Ceylon

Before Sri Lanka adopted the Code of Criminal Procedure in 1883, laws on criminal lunacy (forensic mental health laws) were found in the Lunacy Ordinances of British Ceylon. The Lunacy Ordinances of 1839, 1840, and 1873

contained several provisions that detailed the disposal of criminal lunatics. It is submitted that these ordinances were the offspring of legislative reform that took place in Britain at the time.

Origins of criminal lunacy laws in England

In Great Britain, formal law on the disposal of criminal lunatics was introduced only in 1800, after the attempted assassination of King George III by James Hadfield and the emergence of insanity as a special verdict. Before 1800, criminal law had no authority over the insane. Insanity was a common law defence of general acquittal, requiring the madness of an accused to be obvious and overwhelming, resulting in a total incapacity to differentiate between good and evil (6,7).

The attempted assassination of King George III by James Hadfield

On 15 May 1800, James Hadfield shot at King George III at the Theatre Royal in Drury Lane. Hadfield was arrested and charged with High Treason. At interrogation, Hadfield revealed a belief that he needed to die to enable the second coming of Jesus. Thus, had acted with the hope that he would be killed in his attempt on the King's life.

James Hadfield was a veteran of the Flanders Campaign. In the 1790s, fighting the revolutionary forces of France at Lincelles, Hadfield sustained multiple serious injuries to his head with a Saber. In this battle, he was captured by the French and spent four years as a prisoner of war in France. Following his return to England, he had become a follower of Banister Truelock, a fiery preacher who had been predicting the return of Jesus. At his trial, information made available to the jury revealed that Hadfield had been insane from the time he had been injured (at the battle of Lincelles) and that his insanity had eventually led to his dismissal from the army. Hadfield's experience as a soldier, his injuries sustained in the course of defending King and Country, and his sorry figure during the trial attracted much public sympathy (6,7).

Hadfield's trial took place six weeks after his arrest, on the 26th of June 1800. One of the councils defending Hadfield was Thomas Erskine, a talented young Barrister who was considered the best in London. Erskine argued that Hadfield's actions were the direct product of his delusional beliefs ('immediate and unqualified offspring of the disease'). The accepted understanding at the time was that only those who lacked knowledge of their actions and were unaware that their actions were morally wrong would be eligible for acquittal on grounds of insanity. However, at the trial, the defence counsel argued that delusions were the defining feature of insanity and that even when the ability to reason was intact, the premises on which the reasoning was based were false.

The defendant's head injuries, information of his attempt to kill his own son two days before the assassination attempt on the King, and lay witness statements confirming Hadfield's insanity were enough to secure an acquittal. However, the presiding judge, Lord Kenyan, while acquitting Hadfield of all charges insisted 'the prisoner for his sake and for the sake of society at large, must not be discharged' (6).

The Criminal Lunatics Act 1800

Following the verdict, the British Parliament took urgent action to prevent the release of Hadfield. The Criminal Lunatics Act was hastily passed on 28 July 1800, just thirty-two days after Hadfield's acquittal (8). The Criminal Lunatics Act introduced insanity as a special verdict for those charged with high treason, murder, or felony. The verdict had to be specifically declared by the Judge or the Jury. In addition, the Criminal Lunatics Act codified the procedure to follow, on acquittal due to reasons of insanity. According to this new act, those acquitted needed to be 'kept in strict custody' in a suitable place (an asylum or a prison) for an indefinite period until 'his majesty's pleasure shall be known'. The clause 'until his Majesty's pleasure shall be known' was a phrase that was usually reserved for political prisoners (6). The clause contradicted all penal reforms and safeguards that were present in Britain in 1800. It condemned the criminal lunatic to an indefinite period of detention without any means of challenging it. The detention was neither subject to the recovery of their illness nor was it based on the risk posed by them to society (6,7).

In addition to the above, the Criminal Lunatics Act of 1800, caused anyone who was found insane at trial to be automatically detained for an indefinite period. The right to bail was taken away on the grounds of being mentally unwell. Before the passage of the Criminal Lunatics Act in 1800, when someone was found to be insane at trial, the presiding official instituted a civil commitment procedure. This meant that criminal lunatics could not be held for too long in detention. If there were no obvious dangers, most would be set free or handed over to relatives or families. Few would end up in jails or asylums for life (7).

Amendments to the Criminal Lunatics Act of 1800 and the Insane Prisoners Act of 1840

In 1838, after nearly forty years, the Criminal Lunatics Act of 1800 was amended in the second year of the reign of Queen Victoria (9). The amendment focused on a category of prisoners that was defined in section 3 of the Criminal Lunatics Act of 1800 as 'Dangerous Lunatics'. The new act introduced a legal requirement to have medical officers ('physician, surgeon, or apothecary') to establish the insanity of such prisoners. In the event, they were found to be insane; the new act required judicial officers to move such detainees to a

State lunatic asylum that would have been established since the passage of the 1808 County Asylums Act. This was the first instance when medical expertise was introduced by law in the process of determining a category of criminal lunacy.

The Insane Prisoners Act of 1840 completely repealed the Criminal Lunatics Act (8). Most significantly, this act extended the special verdict (and restrictive disposals) to less serious charges to what was defined in the 1800 Act – treason, murder, and felonies. Thus, following the passage of the Insane Prisoners Act, even those who were not liable for capital punishment could be detained indefinitely.

It was during the reign of Queen Victoria that the first laws on criminal lunacy were introduced to Sri Lanka (British Ceylon).

The Ceylon Lunacy Ordinances of 1839 and 1840

The first instance the authors were able to find a reference to criminal lunacy was in Ordinance No. 3 of 1839: To establish lunatic asylums, and make general provisions for the safe custody and care of lunatic persons (10). This law decreed that a lunatic asylum be built in Colombo and be maintained at government expense. The 1839 Ordinance is considered to be the first law of civil commitment in Sri Lanka (12). This law only provided for the involuntary detention of three categories of mentally-ill persons: pauper lunatics; insane persons who were poor and without social or family support ('destitute paupers'), the itinerant mentally ill ('vagrants') and a special category called 'Dangerous Lunatics'; insane persons apprehended in circumstances that suggest a 'purpose of committing a crime'. District Courts were given the authority to detain and transfer such persons to the lunatic asylum or to a 'place of safe custody'.

Sections 6, 7, and 8 of the 1839 Lunacy Ordinance dealt with criminal lunacy. Section 6 related to those who were unfit to stand trial and those who were insane at the time of the offence. The ordinance allowed the colonial government to detain such persons (criminal lunatics) in 'strict custody' for an indefinite period of time until the 'Governor's pleasure' was known. Unlike the Criminal Lunatics Act 1800, which only applied to defendants charged with capital offences, the 1839 Ordinance applied to defendants of 'any crime or offence'. The British Governor of Ceylon was given the authority to move such persons from jails to the lunatic asylums (the colonial government planned to build under the same ordinance). Despite the law being passed in December 1839, a lunatic asylum would not be built in the country until 1847, when the Borella Lunatic Asylum was opened (13). Therefore, it is very likely that those detained under this law languished in prisons.

Unlike criminal lunatics, all other categories of insane (paupers, vagrants, dangerous lunatics) confined under the same ordinance could be released from detention upon an application from family or a friend, or when recovery from mental illness could be certified by a medical officer. No such provisions existed for the release of criminal lunatics. Following the passage of the 1839 Ordinance, any person unable to make their defence at trial or insane at the time of committing an offence would essentially be detained in strict custody for life, irrespective of the crime committed, or the risk posed to society. There were no provisions on how to proceed in the event a person recovered from their illness and became capable of making their defence, or when someone became well enough, not to require detention.

In 1840, the Lunacy Ordinance of 1839 was repealed and replaced with Ordinance No. 11 of 1840 by the Executive Council of Ceylon (14). The 1840 Lunacy Ordinance was largely similar to the previous one, but it removed two progressive features: the requirement for medical expertise in the determination of insanity, and the requirement that staff numbers be proportional to the number of patients in a lunatic asylum (12).

1873 Lunacy Ordinance of Ceylon (2)

Lunacy Ordinance of 1873: An Ordinance relating to the care and custody of Persons of unsound mind, and their Estates was the most comprehensive mental health act that was passed in Sri Lanka until that time (15). This statute would eventually become the modern

² Reflecting wording in the 1858 Indian Lunacy Acts, the 1873 Ordinance, replaced the term 'insanity,' with the term 'unsound mind' (16). A person 'of unsound mind' was defined in law as being someone who was 'so far deranged as to render it necessary that he, either for his own sake or that of the public, should be placed under control' (section 4). This definition was used in civil commitment procedures. It is noteworthy that the 1873 statute reused the word 'unsound mind' in the section dealing with criminal lunacy without reference or explanation on how this would be different to the statutory definition contained in section 4. The criteria for being found insane at the time of an offence were established in 1843 following Daniel McNaughton's trial. The definition of 'unsound mind' contained in section 77 of the Ceylon Penal Code had already been crystallised to its current form by 1873 and was part of the enacted Indian Penal Code of 1862. Sri Lanka would not adopt this Penal Code until 1882. It is unclear why lawmakers at the time did not think of using the definition of unsoundness at the time of the offence contained within the Indian Penal Code.

Mental Diseases Ordinance which is operational in Sri Lanka today. The 1873 Ordinance introduced substantial

changes to the country's civil commitment legislature. It allowed for the involuntary detention of non-pauper lunatics and made medical expertise play a far more important and centralised role in the determination of insanity. In addition, it allowed detainees to appeal the decision to commit them to a lunatic asylum and established a system of external scrutiny of lunatic asylums through the appointment of 'Visitors'. Despite these changes, the legal provisions for the disposal of criminal lunatics remained identical to the 1839 and 1840 Ordinances. The relevant sections (sections 11-13) remained unchanged from those of the 1840 Act (sections 7-9) except for minor changes in phraseology. Those who were unfit to stand trial and those who were insane at the time of the offence were to be detained indefinitely until the 'Governor's pleasure' was known. The Governor had the same role and responsibility of issuing warrants for the removal of those detained under the 1873 Ordinance to the lunatic asylum. Until the warrant was received, the detainee was to be kept in 'a place appointed by the Governor for the reception of persons under remand for further observation'. The authors suspect these to have been jails or houses of observation.

Adoption of the Indian Code of Criminal Procedure

In 1883, Ceylon adopted the Indian Criminal Procedure Code of 1882 with changes to suit local requirements (16) as Ordinance No. 3 of 1883: An ordinance for regulating the procedure of the courts of criminal judicature (Criminal Procedure Code of 1883). Prior to 1883, Sri Lanka (similar to all other countries under British rule) did not have a uniform code for criminal procedures. Following its adoption, the provisions dealing with criminal lunacy were removed from the Lunacy Ordinance of 1873, and the Criminal Procedure Code of 1883 became the law dealing with criminal lunatics in Ceylon.

Chapter 33 of the 1883 Criminal Procedure Code dealt with criminal lunacy. This chapter, named 'Lunatics', comprised of 11 sections (431-442). The first five sections dealt with the procedure to follow when a defendant was found incapable of making their defence due to insanity. The next three sections dealt with those found of unsound mind at the time of the offence. The remaining sections detailed the requirements for supervision of those detained under this chapter, as well as provisions about release from detention. Sections 441 and 442 stipulated, for the first time, the conditions under which detained criminal lunatics could be released from detention. Similar to the previous law, criminal lunatics were to be indefinitely detained until the Governor intervened. However, the term 'Governor's pleasure' was removed from all provisions of Chapter 33.

In the opinion of the authors, the provisions on criminal lunacy in the 1883 Code were a massive leap forward from previous standards. It brought back the right of bail for criminal lunatics, allowed for the resumption of inquests and trials postponed due to a defendant's mental illness, and introduced provisions allowing for review and repeal of the indefinite detention that had become the law due to previous statutes. In addition, the law assigned the responsibility of monitoring detained criminal lunatics to the highest administrator in prisons, the Inspector-General (and if detained in an asylum, to Visitors of the asylum). The Inspector-General and Visitors were to report back on the well-being as well as on the state of recovery of criminal lunatics to the Governor. Section 436, provided the modern definition for the term 'of unsound mind' in relation to the determination of criminal responsibility at the time of offence ('Incapable of knowing the nature of the act, or that it was wrong or contrary to the law'). These enhancements placed Ceylon well ahead of similar laws in Britain.

Chapter 31 of the current Criminal Procedure Code Act (1979) of Sri Lanka is identical to Chapter 33 of the first Criminal Procedure Code of Ceylon (in 1883). These two chapters are compared in Table 1. The changes seen in some sections reflect the amendments made to incorporate changes in administrators of justice. No substantial enhancements to the 1883 law have been made in relation to criminal lunacy in current law, except for the addition of section 386. Thus, it is submitted that the criminal procedure used in the disposal of criminal lunatics in Sri Lanka at present is very much the same as how this would have been done in 1883.

Chapter 33 of the Ceylon Criminal Procedure Code of 1883 is very similar to the corresponding chapter (Chapter 34: Lunatics) of the 1882 Indian Code of Criminal Procedure (See Table 1). Except for a few words being changed to accommodate differences in the structure of courts and government officials, the two chapters are essentially the same. Chapter 34 of the 1882 Code of Criminal Procedure is very similar to the corresponding chapter (Chapter 27: Of Lunatics) of the first Indian Code of Criminal Procedure: Act XXV of 1861. Thus, it is submitted that the modern criminal procedure for criminal lunacy in Sri Lanka is the offspring of the procedure contained within Chapter 27 of the first Indian Code of Criminal Procedure of 1861.

Origins of criminal lunacy legislature in India

As Sri Lanka adopted the Indian Code of Criminal Procedure in 1882, the historical evolution of criminal lunacy laws in India holds significance in any investigation into the genesis of Sri Lankan law.

Table 1.

Table 1.			
India		Sri Lanka	
Code of Criminal Procedure, 1861 Chapter 27 388 – 397: 10 sections	Code of Criminal Procedure, 1882 Chapter 34 464 – 475: 12 sections	Criminal Procedure Code, 1883 Chapter 33 431 – 442: 12 sections	Criminal Procedure Code Act, 1979 Chapter 31 374 – 386: 13 sections
388. Procedure in case of accused person being lunatic	464. Procedure in case of accused being lunatic	431. Procedure in case of accused being a lunatic	374. Procedure in case of accused being of unsound mind
389. Procedure in case of person committed before a Court of Session being Lunatic	465. Procedure in case of a person committed before Court of Session or high Court being lunatic	432. Procedure in case of person committed before superior court being a lunatic	375. Procedure in case of person committed before High Court being of unsound mind
390. Release of lunatic pending investigation or trial	466. Release of lunatic pending investigation or trial	433. Release of lunatic pending investigation or trial and Custody of lunatic	376. Release of person of unsound mind pending investigation or trial
391. Resumption of investigation of case	467. Resumption of inquiry or trial	434. Resumption of inquiry or trial	377. Resumption of inquiry or trial
392. Procedure on accused appearing or being brought before Magistrate or Court of Session	468. Procedure on accused appearing before magistrate or court	435. Procedure on accused appearing before police or superior court	378. Procedure on accused appearing before court
393. Procedure in case of acquittal of accused person on the ground of being lunatic	469. When accused appears to have been insane	436. When accused appears to have been insane	379. When accused appears to have been of unsound mind
	470. Judgement of acquittal on ground of lunacy	437. Judgement of acquittal on ground of lunacy	380. Judgement of acquittal on ground of unsoundness of mind
394. Person so acquitted to be disposed of by Magistrate or Court of Session for safe custody & c.	471. Person acquitted on such ground to be kept in safe custody	438. Person acquitted on such ground to be kept in safe custody	381. Person acquitted on ground of unsoundness of mind to be kept in safe custody
395. Clause 1 Lunatics to be visited and reported on by Inspector of jails	472. Lunatic prisoners to be visited by Inspector General	439. Lunatic prisoners to be inspected by Inspector General	382. Person confined under this Chapter to be visited by Commissioner of Prisons or Visitors of the mental hospital
395 Clause 2 If lunatic confined under Section 390 is reported capable of making his defence	473. Procedure where lunatic prisoners is reported capable of making his defence	440. Procedure where lunatic prisoner is reported capable of making his defence	383. Procedure where a person confined under section 376 is reported capable of making his defence
395. Clause 3 If a lunatic confined under Section 394 is declared capable of being discharged	474. Procedure where a lunatic confined under section 466 or 471 is declared fit to be discharged	441. Procedure where a lunatic confined under section 433 or 438 is declared fit to be discharged	384. Procedure where a person confined under section 376 or 381 is declared fit to be discharged
	475. Delivery of lunatic to care of relative	442. Delivery of lunatic to care of relative	385. Delivery of person confined to care of relative or friend
			386. Person suspected to be of unsound mind where and how to be remanded

Disposal of criminal lunatics in India before the passage of the Indian Criminal Procedure Code

Before 1857, the administration of law in India was through a system of courts established by the British East India Company in the Presidential Towns of Madras, Bombay and Calcutta (currently the cities of Chennai, Mumbai, and Kolkata, respectively). Each of these Presidential Towns contained a court called the Sudder court, where criminal matters of native Indians were heard. In the adjudication of cases, British judges (instructed by Islamic law officers) used a mixture of Mohammedan law (Islamic law), case precedents and statute law. The Sudder courts considered Insanity at the time of the criminal act to be grounds for acquittal. The standard practice following acquittal appears to have been for the Sudder courts to issue warrants of detention to a safe place of custody until a medical officer can confirm that the insanity had settled enough for the person to be in 'a fit state to be set at large' (released) (17). However, the commentary on several cases reveals that these rules were not always followed and that there was much discrepancy in how such prisoners were disposed of (17). It is in this context that the highest criminal court of Calcutta, the Sadr Nizamat Adalat, in 1845 proposed the need for new statutes to provide authority for the custody of those who have been acquitted on grounds of insanity and had not recovered from their illness.

Act for the safe custody of criminal lunatics (Act IV of 1849) and the Criminal Lunatics Removal Act of 1851

Act IV of the Legislative Council of India (1849): Act for the safe custody of criminal lunatics was the first mental health law enacted in India. This was soon complemented by the Criminal Lunatics Removal Act of 1851 (18). These two laws had jurisdiction over all natives and Europeans living in all areas of India which fell under the administration of the East India Company. At the time, India did not have any formal legal provisions for civil commitment. The confinement of the mentally-ill in lunatic asylums was done without any formal legislative sanction (19).

The architect of Act IV of 1849 was an English lawyer named John Elliot Drinkwater Bethune (1801-851). In 1848, following his appointment as the new Law Member of the Governor-General's Council, he highlighted the complete absence of laws that allowed for the detention of criminal lunatics in India and stated the need for laws similar to what existed in Britain (20), (21). Act IV of 1849 introduced insanity (unsoundness of mind) as a special verdict (for any crime), and defined the legal test to be used in its adjudication (21). It contained explicit provisions preventing the release of those who were found to be unsound at the time of the criminal act until

the 'pleasure of the Government can be known'. Criminal lunatics were 'to be kept in strict custody, for such time and in such manner as the Government shall seem fit'. Prior to the passage of the act, recovery from insanity allowed for criminal lunatics to be released from custody if family or friends could assume responsibility of care and custody. Following the passage of this law, the disposal of criminal lunacy was made very restrictive and made to come in line with the British standard, albeit without the safeguards that were being introduced into the law in Britain. Act IV appears to have been introduced with the single purpose of preventing the release of perpetrators who plead insanity as a defence. Interestingly, unlike similar British law at the time, this law did not contain any provisions for those who had been found unfit at the time of the trial. Apart from its historical importance for being the first piece of mental health legislation in India that allowed for the detention of criminal lunatics, this law did not have any influence on future laws and was repealed and included in High Court Criminal Procedure Act X of 1875 (22). While the exact origins of this law are unclear, some of the wording that made up Act IV appears to have been from the Seventh and Eighth English Law Commissioners Reports of 1843 and 1846 respectively (21).

Criminal Lunatics Removal Act of 1851 was passed to allow for the repatriation of European criminal lunatics detained under the Act IV of 1849. The East India Company found it expensive to maintain insane Europeans in prisons or in lunatic asylums in India. Moreover, this did not sit well with the Colonial Government's attitude of European superiority over Indian natives to have insane Europeans managed by native Indians in prisons or in asylums (19).

Codifying English criminal law and the English Law Commissioner's Reports – 1834 to 1845 Following the end of the wars with Napoleonic France, the British embarked on a project of legislative codification, spurred on by the English utilitarian philosopher and jurist Jeremy Bentham. In 1833, the Royal Commission on the Criminal Law was established and entrusted with the complete codification of criminal law (23). From 1834 to 1845, the English Law Commissioners produced eight voluminous reports to both houses of the British parliament. The eighth report (in 1845) contained a digest of criminal procedure. While the efforts of the English Law Commissioners ultimately failed, the reports they produced and the Criminal Procedure Code that was drafted by them appear to have influenced the codification process in India. The Act of Procedure contained in the eighth and final report of the English Law Commissioners consisted of several sections dealing with issues arising from the insanity of those in contact with criminal courts. It summarised and captured the state of procedural law in Great Britain in relation to insanity within its provisions. Footnotes and references indicate that these

said provisions were influenced by the writings of early jurists such as Hale and Blackstone, as well as by common law and parliamentary laws enacted in the first half of the 19th century (24).

Historical origins of the first Indian Code of Criminal Procedure, 1861

Around the same time the British were attempting to codify the law in the United Kingdom, the Colonial British Government of India was keen to have a comprehensive and a well-defined code of law, governing the whole of the subcontinent to replace the fragmented system that was in place. The task of codification was the responsibility of the first Indian Law Commission established in 1834 under the Charter Act of 1833. The law commissioners made a promising start by drafting near-complete penal code by 1837 (24). However, the momentum of the codification endeavour stalled after the chair and the chief architect of the draft penal code, Lord Babington Macaulay, left the commission in 1838 (26). Following his departure, the remaining members of the first law commission continued to work on the codification effort. They drafted a scheme of procedure corresponding to the crimes listed in the draft penal code (24). Despite being presented to the British Parliament by early 1848, no action was taken to enact either the penal code or the criminal procedure code (26). After several more years of making voluminous reports and recommendations, the first Indian law commission expired without being able to effect any change to the system of law in India.

The second Indian Law Commission was established on 9 November 1853 under the Charter Act 1853. This commission was instructed to devise a simple and uniform code of criminal procedure for the whole of India (26). At the time, India had eight different systems of courts, each with different codes of procedure. In response, the second Indian law commission produced a draft code of criminal procedure in 1856. This code was submitted to the Legislative Council of India for revision in 1857. This draft code would eventually become the first code of criminal procedure in India (in 1861). It is of note, that the 1856 draft did not have provisions pertaining to criminal lunatics. However, the final version of the code passed by the British Parliament in 1861 contained a whole chapter (Chapter 27) detailing the disposal of criminal lunatics (5).

The Indian uprising of 1857 and the subsequent changes in judicial processes

The first Indian uprising of 1857 ushered in a period of dramatic changes to India's judicial and administrative system (27). The British Crown took India over from the East India Company the very next year, in 1858. Following the takeover, the British Parliament started to play a direct role in the creation of law in India. The years that followed the uprising saw the introduction of several significant

pieces of legislation that have been languishing for several decades. These included (among others) the Indian Penal Code (passed in 1860) and the Criminal Procedure Code (passed in 1861). Thus, by the beginning of 1862, India had a new court system, a uniform penal code and a simple and efficient criminal procedure code.

The years that followed the Indian uprising also saw the legislative building blocks of the British system of psychiatry being laid with the passage of numerous laws detailing civil commitment procedures, including the passing of the Lunacy Acts of 1858 (28). The Lunacy Acts of 1858 laid the foundation for the expansion of the lunatic asylum system across the Indian subcontinent (29).

The first Code of Criminal Procedure in India – Act No XXV of 1861

The first Code of Criminal Procedure of India – Act No XXV of 1861 – was applicable to all of British India (except the Presidency Towns) (30). Chapter 27 ('Of Lunatics') of this Code consisted of ten sections (sections 388 to 397) detailing the judicial procedure to follow when dealing with those with mental illness in contact with the criminal justice process. This was the first instance, anywhere in the British Commonwealth, that provisions dealing with criminal lunacy were codified and consolidated in a single statute. The section on criminal lunacy in the 1861 code does not appear to take after any preceding law. In addition to providing the procedure to follow when a defendant was acquitted due to insanity, the code, for the first time in India, provided for those who were unfit to plead and stand trial. Moreover, the 1861 code allowed for the review, supervision, and release of detained criminal lunatics.

Passage of the Code of Criminal Procedure – Act No X of 1882

The 1861 Code of Criminal Procedure underwent various amendments over the next ten years. None of these amendments made changes to the provisions related to criminal lunacy. The seventh report of the 3rd Indian Law Commission in 1870 and the work of Sir Fitzjames Stephens (law member of the Imperial Legislative Council of India at the time) led to the passage of a new criminal procedure code in 1872 (Act X of 1872) replacing the 1861 code (31). Neither the 1861 nor the 1872 codes of criminal procedure had jurisdiction over the presidency towns of Madras, Bombay, and Calcutta. Instead, these places continued to function under different codes of criminal procedure until 1882. Soon after the 3rd Indian Law Commission produced their seventh report in 1870, the law commissioners resigned from their posts following disagreements that developed between them and the Imperial Legislative Council in India (26). Progress would not be made until the 4th Indian Law

Commission was established, almost a decade later, under the chairmanship of Dr Whitley Stokes in 1879. This commission consolidated the 1872 Code of Criminal Procedure with the High Courts Act and the existing code of criminal procedure in presidency towns (Presidency Magistrates' Act) to give rise to the Code of Criminal Procedure of 1882 in the spring of the same year (Act X of 1882) (4). Unlike the previous codes of criminal procedure, this code was a single and uniform code that had jurisdiction over the entire Indian Subcontinent (including the Presidency towns of Madras, Bombay, and Calcutta). By the time the 1882 code was passed, the Supreme and Sudder courts of the presidency towns had been amalgamated to create a single High Court system that had jurisdiction over native Indian people as well as Europeans living in India (22). It was the 1882 Code that was modified and adapted as the Criminal Procedure Code in 1883 in Sri Lanka (16).

Provisions for criminal lunacy in the codes of criminal procedure from 1861 to 1882

The 1861 code had provisions for the disposal of three types of criminal lunatics: those who were of unsound mind at the time of the trial, those who were acquitted due to being of unsound mind at the time of the offence, and prisoners found to be insane. Those who were found unsound and unable to make their defence (by a medical officer or by the relevant court) would have their court cases postponed. Unlike early English statutes, which did not allow bail for insane defendants, the 1861 code had provisions allowing release on bail. Prisoners acquitted on grounds of being of unsound mind at the time of offence were to be kept in safe custody (in a lunatic asylum or any other place of safe custody). This law made provisions to ensure that even this group of detainees could be released, if it can be declared that their mental illness has abated and that they would be without danger of 'injury to himself or to any other person' in the community. The 1861 code also mandated the inspection of criminal lunatics in detention for their welfare by the Inspector-General of prisons or by the Visitors of an asylum. Relatives or friends of those detained criminal lunatics could apply to have them released to their custody as long as they could demonstrate that the individual would be 'properly taken care of' and 'prevented from doing injury to himself or others. The third category of criminal lunatics identified in the 1861 code was those who were already sentenced or in remand for a crime, becoming mentally unwell in prison (insane prisoners). The 1861 code required such persons to be moved to lunatic asylums until recovery from their mental illness.

The 1872 code made no changes or additions to the 1861 provisions but removed the provisions dealing with mentally ill prisoners from the code. Thus, despite the number of sections increasing from ten to twelve in the 1872 code, the content of the procedure had reduced.

The 1882 code was identical to the 1872 code, except for changes in the wording when referring to judicial processes, reflecting the changes in the structure and constituency of the courts that had taken place since 1872.

It should be noted that all three codes contained enlightened views on the disposal of criminal lunatics, and had evolved significantly from the times of indefinite detention without reprieve that characterised the Criminal Lunatics Act of 1800. The new codes reflected the legal fraternity's acknowledgement that insanity is a mental illness and that medical professionals play an important role in determining unsoundness of mind and confirming recovery. Release of detained prisoners were based on risk criteria similar to how modern legislature would determine risk in mental illness. The acts also recognised the higher level of care needed for mentally-ill persons in custodial settings. There was no mention of 'dangerous lunatics' or about individuals apprehended 'in the course of committing a crime'. Laws relating to this category of persons were moved to the Indian Lunacy Acts of 1858, (28) in effect decriminalising the care and custody of insanity.

Evolution of the Ceylon Code of Criminal Procedure from 1883 to the present times

The first Ceylon Criminal Procedure Code of 1883 was replaced five years later by Ordinance No. 15 of 1898: an Ordinance for Consolidating and Amending the Procedure of the Courts of Criminal Judicature (32). This remained the law of criminal procedure in Sri Lanka for over three-quarters of a century. In 1973, The National State Assembly of Sri Lanka passed the Administration of Justice Law (No. 44 of 1973), repealing the Criminal Procedure Code of 1898. This for the first time established High Courts and High Court Zones in Sri Lanka. The Administration of Justice Law was the result of extensive work done by the Criminal Courts Commission of 1950 and the Law Commission appointed to look into improving the criminal procedure between 1965 and 1974 (33). However, this act only operated for four years before being replaced by the Code of Criminal Procedure Act and Judicature Act of 1978, as amended by the Judicature (amendment) Act of 1979 (1). Despite these changes to the parent law, the provisions dealing with criminal lunacy did not change and remained in their original form.

Table 1 compares Sri Lanka's current law on the disposal of criminal lunatics with the Indian Codes of Criminal Procedure of 1861 and 1882. As demonstrated, except for section 386, detailing the remand of those who are suspected to be of unsound mind, all other sections remain identical to the 1882 code. Apart from changes in some wording, the disposal options, supervision requirements and release provisions are essentially the same as the 1882 and 1861 codes. The 1883 Ceylon Code was ahead of its time in terms of provisions for criminal

lunacy. However, over a century and a half later, the laws have become outdated and no longer meet modern requirements. The criminal lunacy disposal laws in Sri Lanka lack many of the features and safeguards seen in modern law (34). In Sri Lanka, in its current form, it does very little to ensure the rights of a very vulnerable group of prisoners. This has resulted in many individuals with mental illness being detained in custody or in mental hospitals for long periods of time for minor offences (35, 36).

Conclusion

In this article, we have attempted to demonstrate how the laws determining the disposal of forensic patients developed over time in Sri Lanka through the influence of British and Indian law under the British Colonial Government. Sri Lanka moved from having no laws relating to criminal lunacy at the beginning of the 19th century to adopting fairly comprehensive and progressive laws towards the end. It could be said that the forensic mental health laws in the country moved in step with similar British laws until 1883 and that they took a great leap forward with the adoption of the Indian Criminal Procedure Code. The forensic statutes of 1883 were far ahead of those in the Colonial power. They were more liberal in that they gave defendants more rights, such as the right to get bail and to be released upon recovery of their mental illness. They were also more progressive in that they focused on rehabilitation rather than punishment and detention. This meant that mentally ill defendants would not be arbitrarily detained for definite periods without oversight. Despite these early developments, little to no progress has taken place in criminal lunacy laws despite multiple amendments to the Criminal Procedure Code since 1883. The current law pertaining to forensic patients in Sri Lanka is based on the thinking of 19th-century legislators, a time when psychiatric asylums were on the rise, psychiatry was beginning to mature as a profession, and society was grappling with the balance between individual rights and societal protection. Reform is urgently needed.

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