

## ASSESSING MENTAL CAPACITY

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### ABSTRACT

The issue of assessment of capacity has gained a paramount importance in day to day clinical settings. With the introduction of Human Rights and other related legislations, capacity of the patients for accepting treatment or medical interventions and making decisions for health & other related issues have assumed even more importance in current clinical practices. This paper describes the principles about assessment of capacity for the clinicians for assessing mental capacity in their patients with reference to the guidelines as recommended by current legislations in UK.

**KEY WORDS:** Assessment, Mental Capacity.

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With an increased awareness about human rights, the issue of competency of patients for their participation in the treatment procedures is becoming very important. The capacity issues assume importance in almost all settings of health care & the clinicians are now expected to respect patient's decisions, wishes and take their informed consent for any medical or surgical procedures.<sup>1,2</sup> Current studies estimate that in general hospitals, more than 30 percent of patients in acute medical wards may lack capacity whereas a higher proportion of patients with mental health problems may require clinician's attention in dealing with capacity problems.<sup>3,4</sup>

Mental capacity is thus emerging as an important construct that determines the ability of an individual in making decisions, with reference to their well being. Although capacity is generally assessed for the patients who refuse the treatment or management recommended by their doctors<sup>5,6</sup> but there has been a growing interest in assessing capacity in many patients and individuals who even lack judgment for many day to day functioning and may require assistance in making such decisions.

Mental capacity is a legal term and in clinical perspectives it consists of the procedures and formulation of assessments that determine the capacity of individuals with reference to providing safeguards to their rights and giving them more control for their health related decisions.<sup>7</sup> Capacity mainly refers to making decisions and relates to the everyday ability that individuals possess to make decisions or to take actions that may influence their life, from simple tasks to far-reaching decisions about serious medical treatment. In a legal context it refers to a person's ability to do something, including making a decision, which may have legal consequences for the person or for other people.<sup>8</sup> A person will lack capacity if, at the

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time the decision needs to be made, he or she is unable to make or communicate the decision because of an impairment of, or a disturbance in the functioning of the mind or brain.

The assessment of capacity carries significant importance in personal, social and health related matters.<sup>9-11</sup> Any inability to make such decisions may be related to impairment or disturbance of mind and could also be the result of a variety of factors, including mental illness, learning disability, dementia, brain damage, intoxication or presence of medical or physical health problems. The important point is that the impairment or disturbance needs to be identified that renders the individual unable to make the decision in question. Incapacity may be temporary or may fluctuate at different timings and may also be 'task-specific' meaning focusing on the specific decision that needs to be made at a specific time when that particular decision is required. Clearly, if the impairment is temporary and the decision can realistically be put off until such a time as the individual is likely to regain capacity, it should be deferred and reassessed again.

The person who wishes to make a decision on behalf of an incapacitated person should make the assessment in a formal way. Where consent to medical treatment is required, the health professional proposing the treatment needs to decide whether the patient has the capacity to consent. The reasons why capacity is in doubt should be clearly recorded in the medical notes, along with the details of the assessment process and its findings. The more serious the decision, the more formal the assessment of capacity is likely to be, and where appropriate, it might be advisable to refer to a psychiatrist or psychologist for a second opinion.

The legal dimensions of capacity comprises of a two-stage test: Is there an impairment of or disturbance in the functioning of the person's mind or brain and if so, is the impairment or disturbance sufficient that the person lacks the capacity to make that particular decision?

Where an individual fails one or more parts of this test, then they do not have the relevant capacity and needs to be considered as unable to make a decision. There may be a difficulty in making decisions, particularly where there is fluctuating capacity or where some capacity is demonstrable but its extent is uncertain. Similarly the fact that an individual makes an unwise or irrational decision, or begins to act out of character, is not itself proof of incapacity. Such actions may raise questions about capacity – where for example they follow a period of illness or an accident – but they are in no way determinative.

Current medical & legal literature have seen a growing interest in the assessment of capacity & there are many tools available to test mental capacity in clinical situations.<sup>12-15</sup> A person is generally regarded as being unable to make a decision if, at the time of making a decision, he or she fails:

- \* *To understand the information relevant to the decision*
- \* *To retain the information relevant to the decision*
- \* *To use or weigh the information, or*
- \* *To communicate the decision (by any means)*

Appropriate legislation has also been enforced in many countries that take care the rights of the patients and the medical and health professionals are obliged to adhere to such directions in this regard. In UK, the newly implemented Mental Capacity Act in 2007 is one of the latest additions to this list and highlights a number of dimensions of capacity that has major impacts in clinical as well as in many non clinical settings.<sup>16</sup> It widens the authority to decisions about personal welfare, including health and social care. While this act protects people who lack mental capacity to make decisions, it also provides guidelines for code of practice for the professionals.

While assessing capacity, some fundamental principals need to be followed & the UK act provides<sup>8,17</sup> a very practical approach towards this and describes the following principles in this regard. (Table-I)

Table-I: UK Mental Capacity Act Principles

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- \* Every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
  - \* Individuals being supported to make their own decisions & a person must be given all practicable help before anyone treats them as not being able to make their own decisions;
  - \* Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision;
  - \* An act done or decision made under the Act for or on behalf of a person who lacks capacity must be done in their best interests; and
  - \* Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.
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The first principle in the law is based on the fact that adults have the right to make decisions on their own behalf and have the capacity to do so, unless it is proven otherwise. The responsibility for proving that an adult lacks capacity falls upon the person that challenges it.

The second principle is closely linked to the presumption that everything practicable is desired to be done to support individuals to make their own decisions, before it is decided that they lack capacity. The aim is to ensure that individuals who are not capable of making decisions for them, but may need some support, are not inappropriately assessed as incapacitated.

The next principle is based on the assumption of ensuring freedom to make decisions. This clearly echoes one of the main ethical principles governing medical practice that respect should be given for the freedom to make decisions and individuals must be supported to make their own decisions, before it is decided that they lack capacity.

Another determinant of capacity is based on the principle that any decision or action taken on one's behalf must be in his or her best interests. Practically speaking, what constitutes an individual's best interests will depend upon the circumstances of each individual case but the main emphasis stays as this needs to be considered in the best interest of the individual.

The last principle emphasises that whenever a person is making a decision on behalf of an adult who lacks capacity, he or she must ensure that the decision is the least restrictive of that individual's fundamental rights or freedoms. Similarly, there are often several ways to achieve a desired outcome, and the choice must be the one that interferes least with the individual's freedoms while still achieving the necessary goal.

To summarise, the recent guidelines & directions conclude that mental capacity assumes a paramount importance in clinical settings and may have far reaching implications with reference to legal and ethical perspectives in medical practices. This issue becomes even more relevant & appropriate for patients with mental health problems who are generally neglected for their basic rights.

Capacity can be assessed reliably and efforts should be made to train clinicians about the different aspects of this assessment. It is true that there are many issues that pose some limitations to the assessment of capacity like patients may have the capacity for some decisions but not for others and similarly there may be some variation for the use of the term in legal and clinical perspectives, but despite these limitations, there is a growing interest in this area and a strong need is felt to get this topic included in the current curriculum in medical education and training programmes. Equally important is the strengthening of links between

mental health professionals and legal professionals so that we can improve the legal structures used in healthcare settings. It is worth noting that this issue is also very important & relevant for the developing countries where human rights are getting more attention & require further awareness for practical implications in medical settings.

It is hoped that assessment of mental capacity will gain due recognition in health care systems of different countries and the medical professionals will continue updating themselves with the current directions and guidelines in this regard.

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