

A
BILL

to provide for the establishment of the Khyber Pakhtunkhwa Mental Health Authority in the Province of the Khyber Pakhtunkhwa and for the treatment, care, management of properties and affairs of the mentally disordered persons and their families.

WHEREAS it is expedient to establish the Khyber Pakhtunkhwa Mental Health Authority in the Province of the Khyber Pakhtunkhwa and for the treatment, care, management of properties and affairs of the mentally disordered persons and their families and for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:

**Chapter-I
Preliminary**

1. **Short title, extent and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Mental Health Act, 2017.

(2) It extends to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. **Definitions.**---In this Act, unless there is anything repugnant in the subject or context,-

- (a) "approved psychiatrist" means a medical practitioner, possessing a recognized postgraduate qualification in psychiatry and registered with the Pakistan Medical and Dental Council and also approved by the Authority for the purposes of this Act;
- (b) "Authority" means the Khyber Pakhtunkhwa Mental Health Authority established under section 3 of this Act;
- (c) "cost of care" in relation to a mentally disordered person means and includes the cost of lodging, maintenance, clothing, medicine and any other expenditure incurred in removing such persons to and from a psychiatric facility together with any other charges specified in this behalf by Government;
- (d) "Court" means the Court of the District and Session Judge of the concerned district;
- (e) "Government" means the Government of the Khyber Pakhtunkhwa;
- (f) "health facility" means any health facility in the public or private sector providing health care services and supervised by a medical practitioner;
- (g) "hospital management" means personnel, operating and managing any psychiatric facility or health facility, as the case may be, that has provision for indoor treatment for the mentally disordered persons;
- (h) "informed consent" means voluntary and continuing permission of the patient or if the patient is a minor with mental retardation, impairment, dementia or psychotic conditions having no insight, his nearest relative or guardian, as the case may be, for assessment or to receive a particular treatment based on an adequate knowledge of the purpose, nature, likely effects, and risks of that

Asstt. Legal Officer
Govt. of Khyber Pakhtunkhwa
Law Department

treatment including the likelihood of its success and any alternatives to it and the cost of treatment, all in written form;

- (i) "Magistrate" means a Magistrate of the First Class, specially empowered by Government to perform functions and exercise powers under this Act;
- (j) "medical officer" means a medical graduate serving in a Government health facility and registered with Pakistan Medical and Dental Council;
- (k) "medical practitioner" means a medical graduate registered with the Pakistan Medical and Dental Council;
- (l) "mental disorder" means mental illness, mental impairment, personality disorder, and any other disorder or disability of mind;
- (m) "mental impairment" means a state of arrested or incomplete development of mind whether congenital or acquired which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;
- (n) "mentally disordered person" means the mentally disordered person, who is suffering from mental disorder;
- (o) "mentally disordered prisoner" means a prisoner for whose detention in or removal to a psychiatric facility or other place of safety, an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898 (Act V of 1898), section 30 of the Prisoners Act, 1900 (III of 1900), section 130 of the Pakistan Army Act, 1952 (XXXIX of 1952), section 143 of the Pakistan Air Force Act, 1953 (VI of 1953) or section 123 of the Pakistan Navy Ordinance, 1961 (XXXV of 1961);
- (p) "patient" means persons who requires treatment and care for mental disorder and also include persons who are under treatment and care in any psychiatric facility;
- (q) "personality disorder" means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned:

Provided that nothing contained in this clause and in clause (n) shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder or from any other form of such mental disorder defined in this section, by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.

- (r) "place of safety" means a Government run health facility, a psychiatric facility or a premises or residence of a relative who is willing temporarily receive and keep the patient for safe custody;
- (s) "prescribed" means prescribed by rules;
- (t) "Province" means the Province of the Khyber Pakhtunkhwa;
- (u) "psychiatric facility" means a hospital, institute, ward, clinic, nursing home, day-care institution, half-way

Asstt. Legal Drafter
 Govt. of Khyber Pakhtunkhwa
 Law Department

house, whether in public or private sector involved in the care of mentally disordered persons and includes the psychiatric facility established or maintained under section 4 of this Act;

- (v) "psychiatrist" means a medical practitioner possessing a recognized postgraduate qualification and registered with the Pakistan Medical and Dental Council;
- (w) "psychiatric treatment" means the assessment, treatment, care, training, habilitation, re-habilitation of mentally disordered persons, mentally disordered prisoners and their families and include electro-convulsive treatment, anti-psychotic depot injection, psychosurgery, and such other form of treatment as may be specified from time to time;
- (x) "relative" means and includes any person related to the patient by blood or marriage or adoption under his personal law; and
- (y) "rules" mean rules made under this Act.

Asstt. Legal Drafter
Govt. of Khyber Pakhtunkhwa
Law Department

Chapter-II Establishment of the Khyber Pakhtunkhwa Mental Health Authority

3. Khyber Pakhtunkhwa Mental Health Authority.---(1) For the purposes of this Act, Government shall established, by notification in the official Gazette, an Authority to be known as the Khyber Pakhtunkhwa Mental Health Authority.

(2) The Authority shall consist of:

- (a) Secretary to Government, Health Department; Chairperson
- (b) Director General, Health Services, Government of Khyber Pakhtunkhwa; Member-cum-Secretary
- (c) a representative of Home and Tribal Affairs Department, not below the rank of an Additional Secretary; Member
- (d) a representative of Law, Parliamentary Affairs and Human Rights Department, not below the rank of an Additional Secretary;; Member
- (e) a representative of Social Welfare and Women Empowerment Department, not below the rank of an Additional Secretary; Member
- (f) three eminent psychiatrists of at least ten years good standing, including two from Government sector and one from private sector to be nominated by Government; and Members
- (g) three representatives from civil society to be nominated by Government. Members.

(3) Members at clauses (f) and (g) shall be appointed on such terms and conditions as may be determined by Government for a period of two years with a renewable period of other two years.

(4) Members at clauses (f) and (g) may, in writing, resign from his office, addressed to Government.

(5) Members at clauses (f) and (g) may be removed from his office by Government, for reasons of misconduct, or if he is unable to perform functions of his office, on account of mental or physical incapacity or for any other reason.

(6) The Authority shall carry out the following functions:

- (a) advise the Government on all matters relating to promotion of mental health and prevention of mental disorder in the Province;
- (b) develop and establish new Provincial standards for care and treatment of patients;
- (c) recommend measures to improve existing mental health services and setting up of child and adolescence, substance abuse or drug dependence, psychogeriatric, forensic, learning disability and community based services;
- (d) prescribe procedures with respect to setting up and functioning of the mental health services and facilities in the Province;
- (e) prescribe a code of practice to be implemented for achieving the purposes and objects of this Act as well as to be followed by all the mental health personnel involved with the care of patients under this Act;
- (f) to ensure that the provisions of this Act for assessment and treatment are being properly carried out, whether or not requested by any individual, patient or his relative, as the case may be;
- (g) prescribe for care, aftercare or rehabilitation, under supervision or otherwise;
- (h) provide for and regulate the setting up of help lines and crisis centres for the general public with regard to mental health;
- (i) provide for, organize and regulate public awareness programs and promote research, publish journals, bulletins, magazines and other educational material on mental health issues;
- (j) arrange and organize such courses and training programs as may be necessary for carrying out the purposes and objects of this Act.
- (k) approve Psychiatrists for the purposes of this Act, in such manner as may be prescribed; and
- (l) discharge such other functions with respect to matters relating to mental health as Government may require

4. Establishment of psychiatric facilities by Government.---(1) Government may, in any part of the Province, establish or maintain psychiatric facilities for the assessment, admission, treatment, rehabilitation, care and after care of the patients at such places, as it deems fit.

(2) The psychiatric facilities established under sub-section (1), may organize or maintain separate units (for both male and female genders) for,-

- (a) persons who are above the age of eighteen years;

Asstt. Legal Drafter
 Govt. of Kerala Palakkad
 Law Department

- (b) child and adolescence psychiatric units;
- (c) psychogeriatric units for the elderly; and
- (d) persons who have been convicted of any offence and are mentally disordered for whom special security measures shall be required.

(3) Where drug dependence units need to be established, they shall be set up separately for both genders, male and female, which may be within the psychiatric facility for people who are not patients, but have drug dependence or with drug induced behavioral changes.

Chapter-III Assessment and Treatment

5. Care in the community.---Community based mental health services shall be set up for providing mentally disordered persons and their families and others involved in their care with guidance, education, rehabilitation, after care and preventive measures and other support services on an informal basis.

Explanation.---For the purposes of this section, community shall include, family, home, workplace, educational institutions and other places where care and after care can be provided on an informal or voluntary basis.

6. Care and treatment on an informal or voluntary basis.---Any person, who himself seeks or is brought by a relative or is referred by a medical practitioner or by any authority for forensic psychiatric assessment, shall be examined by a psychiatrist or a medical officer nominated by him who shall record his findings in writing and decide that such persons be treated on an out-patient basis or otherwise. Any such person, on withdrawal of his consent, may be discharged in accordance with the provisions of this Act.

7. Duration for periods of detention for assessment, treatment, urgent admission and emergency holding.---(1) For the purposes of this Act, there are four types of detention of a patient, namely:

- (a) admission for assessment;
- (b) admission for treatment;
- (c) urgent admission; and
- (d) emergency holding.

(2) The duration for each type of detention shall be as follows:

- (a) the period of detention for the purposes of assessment shall be up to twenty-eight (28) days from the date of application made under section 8;
- (b) the period of detention for the purposes of treatment shall be up to six (06) months from the date of application made under section 9, and is renewable under the provisions of the said section;
- (c) the period of detention for the purposes of urgent admission shall be up to seventy-two (72) hours from the time of application made under section 10; and
- (d) the period of detention in the case of a patient for the purposes of emergency holding already in hospital, shall be up to twenty-four (24) hours from the time of application made under section 11.

8. Admission for assessment.---(1) A patient may be admitted to a psychiatric facility and detained there for the period allowed by sub-section (4), in pursuance of an application made in accordance with sub-sections (2) and (3) of this section.

(2) An application for admission for assessment may be made in respect of a patient on the grounds that-

- (a) he is suffering from mental disorder of a nature or degree which warrants his detention in a psychiatric facility for assessment or for assessment followed by initial treatment for at least a limited period;
- (b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons; and
- (c) specifying that care and treatment in the community and on an informal and voluntary basis is not possible.

(3) An application for admission for assessment shall be founded on the written recommendation in the prescribed form of two medical practitioners, one of whom shall be a medical officer and one shall be a psychiatrist, or where a psychiatrist is not available, a medical practitioner with experience in psychiatry, including in each case a statement that in the opinion of such medical practitioners the conditions set out in sub-section (2) above are complied with.

(4) A patient admitted to a psychiatric facility in pursuance of an application for admission for assessment, may be detained for a period, not exceeding twenty-eight (28) days, beginning with the day on which application was made under this section, but shall not be detained after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application, order or direction under the provisions of this Act.

(5) Where a psychiatrist deems it fit, he may discharge the patient from detention and advise him or to his relative or guardian to continue treatment on voluntary basis.

(6) The patient shall have the right of filing only one appeal against the order of detention under this section to a Court within a period of fourteen (14) days from the day on which the application was made.

9. Admission for treatment.---(1) A patient may be admitted to a psychiatric facility and detained there for the period in pursuance of an application made in accordance with this section.

(2) An application for admission for treatment may be made on the grounds that,-

- (a) he is suffering from mental disorder and his mental disorder is of a nature or degree which makes it appropriate for him to receive treatment in a psychiatric facility or health facility, as the case may be; and
- (b) it is necessary for the health or safety of the patient and their families or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is admitted.

(3) An application for admission for treatment shall be found on the written recommendations, on the prescribed form of two medical officers, one of whom shall be an approved psychiatrist, including in each case a statement that in the opinion of such medical officers the conditions set out in sub-section (2), above are complied with and each such recommendation shall include-

- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in clause (a) of sub-section (2) of this sub-section; and
- (b) a statement of the reason for that opinion so far as it relates to the conditions set out in clause (b) of sub-

section (2) of this section specifying, whether other methods of dealing with the patient are available and if so, why they are not appropriate.

(4) A patient admitted to a psychiatric facility may be detained in such facility for a period, not exceeding six months, as specified in clause (b) of sub-section (2) of section 7 of this Act, but shall not be so detained or kept for any longer period unless his detention is renewed under this section.

(5) The detention of a patient may, unless he has previously been discharged, be renewed from the expiration of the period of six months referred to in sub-section (4) above, for a further period of six months.

(6) From the expiration of any period of renewal under sub-section (5), for a further period of one year, if necessary and so on for periods of one year at a time.

(7) A patient may file an appeal against the order of detention under this section to the Court.

10. Admission for assessment in cases of urgency.---In any case of urgent necessity, an application for admission for assessment may be made in respect of a patient as follows:

- (a) an urgent application may be made either by a relative or medical officer and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained and that compliance with the provisions relating to an application for treatment under section 9 shall involve undesirable delay;
- (b) an urgent application shall be sufficient in the first instance, if founded on the medical recommendation of an approved psychiatrist or his nominated medical officer, and if practicable, the nominated medical officer shall not be the same medical officer referred to in clause (a) above; and
- (c) an urgent application shall cease to have effect after seventy-two (72) hours from the time when the patient is admitted to the psychiatric facility unless,-
 - (i) the second medical recommendation required by section 9 is given and received by the in-charge of the psychiatric facility, within the seventy-two (72) hours; and
 - (ii) that such recommendation and the recommendation referred to in clause (b) above together comply with all the requirements as contained in section 15.

11. Emergency holding.---A patient who is receiving treatment in a psychiatric facility who wishes or attempts to leave and it appears to a medical officer-

- (a) that he is suffering from mental disorder to such a degree that it is necessary for his health and safety or for the protection of others, he is to be prevented from leaving the psychiatry facility; and
- (b) that it is not practicable to secure the immediate attendance of the psychiatrist, in charge of psychiatric facility or his nominated medical officer for the purpose of furnishing a medical recommendation,-

the medical practitioner shall record that fact in writing and in that event the patient may be detained in such facility for a period of twenty-four (24) hours from the time when the fact is so recorded or until the earlier arrival of the psychiatrist in charge of the psychiatric facility or his nominated medical officer.

Asstt. Legal Drafter
Govt. of Jammu & Kashmir
Law Department

12. Emergency powers.---Where, in case of an emergency, a medical practitioner is unable to obtain informed consent in writing, he may administer treatment, that in his professional opinion, is necessary for-

- (a) saving the life of a patient; or
- (b) preventing serious deterioration of his condition; or
- (c) alleviating serious suffering by the patient; or
- (d) preventing the patient from behaving violently or being a danger to himself or to others.

13. Application by whom to be presented.---(1) Subject to sub-section (3), an application, on a prescribed form, shall be presented by the relative or in case such relative is prevented by reason of mental disorder, absence from Pakistan or otherwise from making the presentation, by any other person on his behalf.

(2) The application, presented under sub-section (1) by a person other than the relative, shall contain a statement of the reasons why it is not so presented by the relative and of his connection with the patient and the circumstances under which he presents the application.

(3) No person shall present an application unless he has attained the age of majority and has within fourteen (14) days before the presentation of the application, personally seen the said patient.

(4) The application shall be signed and verified by the person who presents it and the statement of prescribed particulars by the person making such statement.

14. Effect of application for admission.---(1) An application for the admission of a patient to a psychiatric facility, under this Act, duly completed in accordance with the provisions of this Act, shall be sufficient authority for the person to take the patient to a psychiatric facility at any time within the following periods:

- (a) in case of an application made other than an emergency application within the period of fourteen (14) days beginning with the date from which the patient was last examined by an approved psychiatrist or medical practitioner, as the case may be, before giving a medical recommendation for the purposes of the application; and
- (b) in case of an emergency, within the period of twenty-four (24) hours beginning at the time when the patient was examined by an approved psychiatrist or his nominated medical officer giving the medical recommendation or at the time when the application is made, whichever is the earlier.

(2) Where a patient is admitted within the said period to a psychiatric facility, as mentioned in sub-section (1), on an application made under sections 8, 9 or 10, as the case may be, the application shall be sufficient authority for the hospital management to detain the patient in the psychiatric facility, in accordance with the provisions of this Act.

(3) Any application for the admission of a patient under sections 8, 9 or 10, as the case may be, and which appears to be duly made and is founded on the necessary medical recommendations, may be acted upon without further proof of the signature or qualification of the person by whom the application or any such medical recommendation is made or given or of any matter of fact or opinion stated therein.

(4) Once a patient is admitted to a psychiatric facility in pursuance of an application for admission for treatment, any previous application under this Act, by virtue of which he was detained in a psychiatric facility, shall cease to have effect.

15. General provisions as to applications and medical recommendations.---(1) General provisions as to applications shall be as follows:

- (a) subject to the provisions of this section, an application for admission for assessment or for treatment may be made either by the relative, an approved psychiatrist or nominated medical practitioner, as the case may be, and every such application shall specify the qualification of the person to make such an application;
- (b) every application for admission shall be addressed to the hospital management to which admission is sought;
- (c) before or within a reasonable time, after an application for the admission of a patient for assessment, is made by an approved psychiatrist or a nominated medical officer, as the case may be, he shall take such steps as are practicable to inform the relative or any other person, appearing to be the nearest relative of the patient that the application is to be or has been made;
- (d) none of the applications shall be made by relative or any other person in respect of a patient unless that person has personally seen him within the period of fourteen (14) days, ending with the date of application;
- (e) any recommendation given for the purpose of an application for admission for treatment, may describe the patient as suffering from more than one form of mental disorder or any other disorder or disability of mind:

Provided that the application shall be of no effect unless the patient is described in each of the recommendations as suffering from the same form of mental disorder whether or not he is also described in either of those recommendations as suffering from another form.

- (f) each of the applications shall be sufficient, if the recommendations on which it is founded are given either as separate recommendations or as a joint recommendation, signed by a psychiatrist and medical practitioner.
- (2) General provisions as to medical recommendations are as:
- (a) where recommendations are required for the purpose of an application under this Act, the same shall be signed on or before the date of the application, and shall be given by an approved psychiatrist or nominated medical officer, as the case may be, who have examined the patient either together or separately, but where they have examined him separately not more than five days must have elapsed between the days on which those separate examinations took place; and
 - (b) where the medical recommendations, given for the purpose of any application, as referred under clause (a) above, one shall be given by an approved psychiatrist and unless that psychiatrist has previous acquaintance with the patient the other such recommendation shall, if practicable, be given by a medical practitioner who has such previous acquaintance.

16. Rectification of applications and recommendations.---(1) If, within the period of fourteen (14) days, beginning with the day, on which application was made, in respect of the patient to be admitted in a psychiatric facility for assessment or treatment, the application or any recommendation is found, to in

Asst: Legal Drafter
Govt. of Khyber Pakhtunkhwa
Law Department

any respect, incorrect or defective, the application or recommendation may, within that period and with the consent of the hospital management be amended by the person by whom it was signed and upon such amendment, being made the application or recommendation, shall have effect and shall be deemed to have had effect as if it had been originally made as so amended.

(2) Without prejudice to the provisions of sub-section (1), if within the period specified therein, it appears to the hospital management that one of the recommendations, on which the application for admission of a patient is found insufficient to warrant his detention of the in pursuance of the application, they may, within that period, give notice, in writing, to that effect to the person who made it and where any such notice is given in respect of a recommendation, that recommendation shall be disregarded, but the application shall be deemed to have been sufficient, if-

- (a) a fresh recommendation complying with the relevant provisions of this Act, other than the provisions relating to the time of signature and the interval between examinations, is furnished to the hospital management, within that period; and
- (b) the fresh recommendation and the other recommendation, given earlier, on which the application is found, together comply with those provisions.

(3) Where the recommendation, upon which an application for admission is found, is taken together insufficient to warrant the detention of the patient in pursuance of the application, notice under sub-section (2) above may be given in respect of either of those recommendations, but this sub-section shall not apply in a case where the application is of no effect by virtue of clause (e) of sub-section (1) of section 15.

(4) Nothing in this section shall be construed as authorizing the giving of notice in respect of an application made as an emergency application, or the detention of a patient admitted in pursuance of such an application, after the period of seventy-two (72) hours, subject to the conditions set out in sub-clauses (i) and (ii) of clause (c) of section 10 of this Act.

17. Mentally disordered person found in public places.---(1) If an officer, in charge of a police station, finds in a place to which the public have access, a person, whom he has reason to believe, is suffering from a mental disorder and to be in immediate need of care or control, the said officer may, if he thinks it necessary to do so in the interest of that person or for the protection of other persons, takes that person to a place of safety, or hand him over to his relative, who is willing to temporarily receive him.

(2) Such mentally disordered person, as the case may be, may be detained in place of safety for a period, not exceeding seventy-two (72) hours, for the purpose of enabling him to be examined by a psychiatrist or his nominated medical officer and for making any necessary arrangements for his treatment.

Chapter-IV Leave and Discharge

18. Order of leave.---(1) An application, in the prescribed form, for leave of absence, in regard to any mentally disordered person who is formally admitted in any psychiatric facility, may be made to the psychiatrist, in charge of the psychiatric facility by a relative, who is desirous of taking care and custody of such person, for a specified period, requesting that he may be allowed, on his application, to take care and custody of such person and subject to the assessment by a psychiatrist, in charge of the psychiatric facility, who may allow or refuse the said application:

Provided that no application under this sub-section shall be made by a person who has not attained the age of majority.

(2) Every application under sub-section (1), shall be accompanied by an undertaking-

- (a) to take proper care of the mentally disordered person;
- (b) to prevent him from causing injury to himself or to others; and
- (c) to bring him back to the psychiatric facility on the expiry of the period of leave.

(3) On receipt of the application under sub-section (1), the psychiatrist in-charge, may grant leave of absence for such period as he may deem necessary and subject to such conditions as may, in the interests of the personal safety of the patient or for the protection of others, be specified in the order.

(4) In any case, where a patient is absent from a psychiatric facility in pursuance of order of leave, granted under this section, and it appears to the psychiatrist in-charge that it is necessary to do so in the interest of the mentally disordered person or for the protection of other persons, he may, by notice in writing, give him or his relative, who took the responsibility of taking his care, revoke the leave of absence and recall him to the psychiatric facility.

(5) In case a patient pursuance to the notice under sub-section (4), is not returned by the relative after a specified period of leave, the psychiatrist in-charge shall report to the Magistrate, in whose jurisdiction such psychiatric facility, is situated, and the Magistrate, if satisfied, may direct the local police to recover the patient and to produce him before the Magistrate on a specified date and the Magistrate after hearing the patient, the person in-charge and the concerned psychiatrist or their representative, may make an order placing the patient in the psychiatric facility, or allow him to continue being in the care and custody of the person in charge or may make such other orders as he may deem fit.

(6) Without prejudice to the generality of foregoing powers, the period of admission for assessment and treatment as provided in section 8 or section 9, as the case may be, shall continue during the period for which order of leave was granted:

Provided that a patient in whose favour order of leave has been granted shall not be recalled, after he has ceased to be liable to be detained for the periods specified under section 8 or section 9, as the case may be, unless he is absent at the expiration of period specified under the above referred sections, without leave from the psychiatric facility.

19. Discharge.---(1) The psychiatrist in-charge treating a patient may, by order in writing, by his own cause or pursuance to an application, direct his discharge at any time, as he may deem appropriate:

Provided that no patient shall be discharged, if such psychiatrist, certifies in writing that he is unfit to be discharged for reasons of his own health and safety or the safety of others to magistrate.

(2) Where any order of discharge is made under sub-section (1), a copy of such order shall, forthwith, be forwarded to the psychiatrist by whom such patient was referred and to relative if any.

20. Application to Magistrate.---(1) A patient, who feels that he has recovered from his mental disorder, or any of his relative or guardian, as the case may be, may make an application to the Magistrate, within the local limits of whose jurisdiction the psychiatric facility, is situated, for his discharge from such facility, when he is refused by the psychiatrist in-charge to discharge.

(2) The Magistrate may after making such inquiry, as he may deem fit, pass an order discharging the person or dismiss the application.

21. Discharge of a detained person found not to be mentally disordered person after assessment.---If any person, admitted in a psychiatric facility is subsequently found not to be a mentally disordered person and is capable of

taking care of himself and managing his affairs, a psychiatrist in charge shall forthwith discharge such person from the such facility and notify the fact to the referring psychiatrist and his nearest relative at least seven days, before the date of discharge.

22. Notice about serious illness or death.---If a mentally disordered person becomes seriously ill or dies, that fact shall be notified to his relatives, if known or on whose application he was admitted and also to the referring psychiatric by whom he was referred to the psychiatric facility.

23. Transfer and removal.---Transfer and removal of patient, as the case may be, placed in a psychiatric facility to another psychiatric facility within the Province or some other Province, shall be carried out in accordance with any general or special order of Government with the consent of the other Provincial Government; provided that a notice of such intended transfer or removal has been given to the patient or his relative or guardian, as the case may be.

24. Foreign nationals.---When an arrangement has been made with any foreign state with respect to the placement of a patient, the Government in consultation with the Federal Government, shall refer the matter to the Authority for getting a notification issued in this behalf and the agent of the foreign state may make an application thereafter to the Government.

Chapter-V
Judicial Proceedings for Appointment
of Guardian and manager of
the Property of the mentally disordered person

25. Judicial proceedings.---Whenever any person is possessed of property and is alleged to be mentally disorder, the Court, within whose jurisdiction such person is residing, may, upon application by any of his relatives, having obtained consent in writing of the Advocate General of the Province, by order direct an inquiry for the purpose of ascertaining whether such person is mentally disordered and incapable of managing himself, his property and his affairs.

26. Regulation of proceedings of the Court.---(1) The following provisions shall regulate the proceedings of the Court with regard to the matter to which they relate, namely:

- (a) notice shall be given to the mentally disordered person of the time and place at which it is proposed to hold the inquiry, the Court may also direct copy of such notice to be served upon any relative and any other person to whom, in the opinion of the Court, notice of the application is to be given;
- (b) if it appears that personal service on the mentally disordered person, shall be ineffectual, the Court may direct such substituted service of notice as it thinks fit;
- (c) the Court may require the alleged mentally disordered person to attend, at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or to any person from whom the Court may desire to have a report of the mental capacity and condition of such person;
- (d) the Court may likewise make an order authorizing any person or persons therein named to have access to the alleged mentally disordered person for the purpose of his personal examination; and
- (e) the attendance and examination of the alleged mentally disordered person under the provisions of sub-clauses (c) and (d) shall, such person be a woman, be regulated by the law in practice for the examination of such persons in other civil cases.

(2) The Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said proceedings.

(3) Upon the completion of the inquiry, the Court shall determine whether the person is suffering from mental disorder and is incapable of managing himself and his affairs, or may come to a special finding that such person lacks the capacity to manage his affairs, but is capable of managing himself and is not dangerous to himself or to others, or may make any such order it deems fit, in the circumstances of the case, in the best interest of such person.

27. Inquiry by sub-ordinate Court on commission issued by the Court and proceedings thereon.---(1) If the alleged mentally disordered person resides at a distance of more than fifty kilometers from the place where the Court is situated to which the application is made, the said Court may issue a Commission to any sub-ordinate court to make the inquiry, and such subordinate court shall thereupon conduct the inquiry in the manner hereinbefore provided.

(2) On the completion of inquiry the sub-ordinate court shall transmit the record of its proceedings with the opinion of the assessor, if any, and its own opinion on the case and the Court shall thereupon proceed to dispose of the application in the manner provided in sub-section (3) of section 26:

Provided that the Court may direct the sub-ordinate court to make such further or other inquiry as it thinks fit before disposing of the application.

28. Appointment of guardian.---(1) Where a mentally disordered person is incapable of taking care of himself, the Court may appoint any suitable person to be his guardian or order him to be looked after in a psychiatric facility and order for his maintenance.

(2) The guardian of a mentally disordered person, appointed under this Act, shall be paid from out of the property of the mentally disordered person, such allowances as the Court may determine.

29. Management of property of the mentally disordered person.---(1) Where the property of the mentally disordered person, who is incapable of managing it, the Court shall appoint any suitable person to be the manager of such property.

(2) No legal heir of a mentally disordered person shall be appointed as a manager of the property of the mentally disordered person, unless the Court, for reasons to be recorded in writing, considers that such appointment is for the benefit of the mentally disordered person.

30. Responsibilities and powers of the manager.---(1) A person, appointed as a manager of the property of a mentally disordered person, under this Act, shall be responsible for the management and maintenance of the property belonging to mentally disordered person.

(2) The manager of the property of the mentally disordered person shall pay to the guardian of the mentally disordered person such allowances as may be fixed by the Court for the care and maintenance of the mentally disordered person and of such members of his family as are dependent on him.

(3) The manager shall exercise the same power in regard to the management of the property of the mentally disordered person, in respect of which he is appointed as manager, as the mentally disordered person shall have exercised as owner of the property, had he not been mentally disordered and shall realize all claims due to the property of such mentally disordered person and pay all debts and discharge all liabilities legally due from that property of and in exercise of powers under this section regard shall be had first of all to the requirements of the mentally disordered person and the rights of the creditors, if any;

Provided that no manager shall, without the permission of the Court,-

- (a) mortgage, create any charge on, or transfer by sale, gift, exchange or otherwise, any movable or immovable property of the mentally disordered person; or
- (b) lease out or give on bailment any such property.

(4) The permission, under sub-section (1), may be granted, subject to such conditions or restrictions, as the Court may think fit to impose.

(5) The Court shall cause notice of every application for permission to be served on any relative and after considering objections, if any, received from the relatives and after making such inquiries as it may deem necessary, grant or refuse permission having regards to the interest of mentally disordered person.

31. Furnishing of inventory of immovable property, etc.---(1) The manager of the property of the mentally disordered person shall, within a period of three months from the date of his appointment, deliver to the Court an inventory of the immovable property, belonging to the mentally disordered person and of all assets and other movable property received on his behalf, together with a statement of all claims due on and all debts and liabilities due by a mentally disordered person.

(2) All transactions under this Act shall be made through a bank, authorized by the Court.

(3) A manager of the property of the mentally disordered person shall also furnish to the Court, within a period of three months of the closure of every financial year, an account of the property and assets in his charge, the sums received and disbursed on account of the mentally disordered person and the balance remaining with him.

(4) If any relative impugns, by a petition to the Court, the accuracy of the inventory or statement referred to in sub-section (1) or any annual account referred to in sub-section (3), the Court may summon the manager and summarily inquire into the matter and make such order thereon as it thinks fit.

(5) Any relative may, with the leave of the Court, sue for an account from the manager or from any such person after his removal from office or trust, or from his legal representatives in the case of his death, in respect of any property then or formerly under his management or of any sums of money or other property received by him on account of such property.

32. Inquiry by Court in certain cases.---Where a mentally disordered person had, before the onset of his mental disorder, contracted to sell or otherwise disposed of his property or any portion thereof, the Court may, after conducting an inquiry, direct the manager of the property of the mentally disordered person to perform such contract and to do such other acts in fulfillment of the contract as the Court considers necessary and thereupon, the manager shall be bound to act accordingly.

33. Disposal of business premises under the direction of the Court.---Where a mentally disordered person had been engaged in business, before he falls in mental disorder, the Court may, if it appears to be in the best interest of such person, after proper hearing, notices have been issued to relatives for hearing to dispose of his business premises, direct the manager of the property of the mentally disordered person, in relation to property of such person to sell and dispose of such premises and to apply the sale proceeds thereof in such manner as the Court may direct and thereupon such manager shall be bound to act accordingly.

34. Investment of assets of mentally disordered person.---All sums received by a manager of the property of a mentally disordered person, on account of any property in excess of what may be required for the current expenses of a mentally disordered person or for the management of his property, shall be paid into the public treasury on account of the property, and shall be invested, from time to time, through state owned investment agencies, in the interest of the mentally disordered person.

35. Appointment of a new guardian or manager.---(1) The guardian or manager of the property of a mentally disordered person may resign with the permission of the Court, or for sufficient cause and for reasons to be recorded in writing, be removed by the Court and such Court may appoint a new guardian or manager in his place, as the case may be.

(2) Any guardian or manager of the property of the mentally disordered person, removed under sub-section (1), shall be bound to deliver the charge of such person or his property to the new guardian or manager, and to account for all monies received or disbursed by him.

36. Dissolution of partnership.---(1) Where a person, being a member of a partnership firm, is found to be mentally disordered person, the Court may, on the application of any other partner, order for the dissolution of the partnership or on the application of any person who appears to that Court to be entitled to seek such dissolution, dissolve the partnership in accordance with the provisions of the Partnership Act, 1932 (IX of 1932).

(2) Upon dissolution a partnership firm to which sub-section (1) applies, the manager may, in the name and on behalf of the mentally disordered person, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership as the Court may direct.

(3) Notwithstanding anything contained in the foregoing provisions, the Court may, instead of appointing a guardian or a manager, order that in the case of cash, or in the case of any other property, the produce thereof, shall be realized and paid or delivered to such person as may be appointed by the Court in this behalf, to be applied for the maintenance of the mentally disordered person and of such members of his family as are dependent on him.

37. Securities etc; of mentally disordered person.---(1) Where any stock or Government securities or any share in a company are standing in the name of, or vested in, a mentally disordered person beneficially entitled thereto, or if the manager dies or himself mentally disorder, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager appointed in his place, within fourteen (14) days after being required by the Court to do so, then the Court may direct the company or Government to make such transfer, or to transfer the same, and to receive an pay over the dividends in such manner as it may direct.

(2) The Court may direct those dividends, the profit of shares, stock and Government securities shall be deposited in the mentally disordered person's bank account.

(3) Where any stock or Government securities or shares in a company is or are standing in the name of, or vested in any person, residing out of Pakistan, the Court, upon being satisfied that such person has been declared to be mentally disordered person and that his personal estate has been vested in a person, appointed for the management thereof, according to the law of the place where he is residing, may direct the company or Government concerned to make transfer of such stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds, as the Court thinks fit.

38. Maintenance during temporary mental disorder.---If it appears to the Court that the mental illness of a person is in its nature temporary and that it is expedient to make provision for a temporary period, for his maintenance or for the maintenance of such members of his family as are dependent on him, the Court may direct his property or a sufficient part thereof to be applied for the purpose specified therein.

39. Inquiry by Court into cessation of mental disorder.---(1) Where the Court has reason to believe that any person who was found to be mentally disordered person has ceased to be mentally disorder, it may direct any court subordinate to it to inquire whether such mentally disordered person has ceased to be mentally disorder or otherwise.

(2) If after an inquiry under this section, it is found that the patient has ceased, the Court shall order all actions taken in respect of such person to be set aside on such terms and conditions as the Court thinks fit to impose.

(3) Without prejudice to the generality of foregoing sub-sections, the Court shall have powers to make such orders and give such directions as it thinks fit, for the betterment of such mentally disordered person.

40. Appeal to High Court.---An appeal shall lie to the High Court from an order made by a Court, within a period of sixty (60) days from the date of order of the said Court.

Chapter-VI Liability and Maintenance of the Patient

41. Cost of maintenance of a patient admitted in a psychiatric facility.---

--(1) The cost of maintenance of a mentally disordered person admitted in a Government owned psychiatric facility shall be borne by the Government:

Provided that-

- (a) the authority which made the order has not taken an undertaking from any person to bear the cost of maintenance of such a person; and
- (b) there is no provision for bearing the cost of maintenance of such person by the Court under this Act.

(2) Person holding public office or a public servant who is paid by Government and is mentally disordered shall continue to receive benefit as per entitlement even after he retires voluntarily or on attainment of the age of superannuation or on the basis of medical invalidation.

(3) Where any such person admitted in a psychiatric facility has an estate or where any person legally bound to maintain such person has the means to maintain such person, the Government or local authority, as the case may be, shall liable to bear the cost of maintenance of such a person under any law, for the time being in force, may make an application to the Court within whose jurisdiction the estate of such a person is situated or the person legally bound to maintain the said person and having the means therefore resides, for an order authorizing it to apply his estate towards the cost of maintenance or directing the legally bound person to bear the cost of maintenance.

(4) Nothing contained in the foregoing provisions shall be deemed to absolve a person legally bound to maintain a mentally disordered person from maintaining such a person.

42. Maintenance out of pay, pension, etc.---(1) Where any sum is payable in respect of pay, pension, gratuity or any allowance to any person by Government and the person to whom the sum is payable is certified by a Magistrate under this Act to be a mentally disordered person, the officer under whose authority such sum shall be payable, may pay to the person having charge of the mentally disordered person so much of the said sum, as he thinks fit, having regard to the cost of maintenance of such person and may pay to such members of the family of the mentally disordered person as are dependent on him for maintenance, the surplus, if any, or such part thereof, as he thinks fit, having regard to the expenses of maintenance of such member.

(2) Where there is any further surplus amount, available out of the funds, specified in sub-section (1) after making payments as provided in that sub-section, Government shall hold the same to be dealt with as follows, namely:

- (a) where a mentally disordered person is certified to have ceased to be mentally disordered by the Court within the local limits of whose jurisdiction such person resides or is admitted, the whole of the surplus amount shall be paid back to that person;

- (b) where a mentally disordered person dies, before payment, the whole of the surplus amount shall be paid over to those of his heirs who are legally entitled to receive the same; and
- (c) where a mentally disordered person dies during his mental disorder without leaving any person legally entitled to succeed to his estate, the whole of the surplus amount shall be paid into the State Treasury.

Chapter-VII Protection of Human Rights of mentally disordered persons

43. Cases of attempted suicide.---A person, who attempts suicide shall be assessed by an approved psychiatrist and if found to be suffering from a mental disorder shall be treated appropriately under the provisions of this Act.

44. Confidentiality.---No mentally disordered person shall be publicized nor his identity disclosed to the public through press or media.

45. Informed consent.---(1) Before commencing any investigation or treatment a psychiatrist or nominated medical officer shall obtain written informed consent, on a prescribed form, from the mentally disordered person or if the he is a minor or otherwise unable to give consent due to his mental disorder, his relative or a guardian, as the case may be.

(2) Where the consent of a patient to any form of investigation and or treatment has been given the mentally disordered person or if the patient is a minor, his nearest relative or a guardian, as the case may be, may withdraw his consent in writing at any time before the completion of the treatment.

(3) Without prejudice to the application of sub-section (2), any treatment given under the plan of treatment to which a mentally disordered person or if the he is a minor, his nearest relative or a guardian, as the case may be, who has consented, to such a plan may, at any time withdraw his consent in writing to further treatment, or to further treatment of any description under the plan of treatment.

Chapter-VIII Offences and Indemnity

46. Penalty for making false statement, etc.---(1) Any person who willfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorized to be made for any of the purposes of this Act, with an intent to get someone to be detained for assessment or for treatment of mental disorder; or with intent to deceive, makes use of any such entry or statement which he knows to be false, shall be guilty of an offence under this Act.

(2) Any person employed in a psychiatric facility, who strikes, ill-treats, maltreat or willfully neglects any mentally disordered person confined in such psychiatric facility or willfully violates or neglects any of the provisions of this Act shall be guilty of an offence.

(3) Any guardian or manager of estate of a mentally disordered person who willfully neglects or refuses after him or to deliver his accounts or any property in his possession within the time fixed by the Court shall be guilty of an offence.

(4) Without prejudice to criminal prosecution under any other law for the time being in force, whoever is guilty of an offence under sub-sections (1), (2) or (3), shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees, or with both.

(5) Any person who carries out any form of inhumane treatment, on a mentally disordered person which includes; trepanning, branding, scalding, beating, exorcising, chaining to a tree etc. of any such person or subjecting a child to the cultural practice of rendering him mentally retarded, by inducing

Asstt. Legal Drafter
Govt. of Punjab
Law Department

microcephaly, or subjecting any such person to physical, emotional or sexual abuse, shall be guilty of an offence, punishable with rigorous imprisonment which may extend to five years or with fine extending up to rupees fifty thousand Rs.50,000 or with both.

(6) Any person who contravenes any of the provisions of this Act or of any rule made thereunder, for the contravention of which no penalty is expressly provided in this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

47. Indemnity.---(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or the rules made there under.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of this Act or the rules or orders made there under.

Chapter -IX Inspection of Mentally Disordered Prisoners

48. Inspection of mentally disordered prisoners.---(1) Where any person is detained under the provisions of section 466 or section 471 of the Code of Criminal Procedure 1898 (Act V of 1898), section 130 of the Pakistan Army Act, 1952 (XXXIX of 1952), section 143 of the Pakistan Air Force Act, 1953 (VI of 1953, or section 123 of the Pakistan Navy Ordinance, 1961 (XXXV of 1961), the Inspector-General of Prisons, if the accused person is detained in a jail, and the Authority or any two members of such Authority, if the accused person is detained in a psychiatric facility, may visit him in order to ascertain his state of mind and such a detainee shall be visited once at least in every six months by the Inspector-General of Prisons or, as the case may be, the Authority or any two members of such Authority, shall make a report as to the state of mind of such person to the Authority under whose order the accused person is detained and the Inspector-General of Prisons or, as the case may be, the Authority or any two members of such Authority, shall make a report as to the state of mind of such person to the Authority under whose order the accused person is detained.

(2) The Government may empower the officer in charge of the jail in which such accused person is detained to discharge all or any of the functions of the Inspector General of Prisons under sub-section (1).

Chapter-X Forensic Psychiatric Services

49. Forensic psychiatric services.---(1) Special security forensic psychiatric facilities shall be developed by Government to house mentally disordered prisoners or mentally disordered offenders, as the case may be, as may be prescribed.

(2) Admission, transfer or removal of patients concerned with criminal proceedings in such facilities shall be under the administrative control of the Inspector-General of Prisons.

(3) The Authority shall have an access to such persons admitted in forensic psychiatric facility in accordance with the provisions of this Act.

Chapter-XI Miscellaneous

50. Specialized psychiatric treatments.---(1) Specialized Psychiatric treatment may be carried out with the informed consent of the patient, on the orders in writing by the Psychiatrist of the patient or his relative or guardian, if the patient is a minor.

(2) All electro-convulsive treatments shall preferably be administered under general anesthesia.

Asstt. Legal Drafter
Govt. of Punjab, Ferozpur
Law Department

(3) All electro-convulsive treatments shall be advised by a psychiatrist, recording the reasons for such advice and stating the reasons as to why the alternative available methods of treatment are not appropriate.

(4) Administration of long acting anti-psychotic depot injections shall only be carried out upon the advice of a psychiatrist for a period as specified in the prescription and such cases shall be reviewed periodically.

(5) No person shall advise and carry out psychosurgery or make any decision to carry out psychosurgery, except in cases where it is decided to be necessary and appropriate in a meeting in this regard, attended by a neurosurgeon, a Neurologist, a physician, two approved psychiatrists and a clinical psychologist.

51. Act to apply other psychiatric facilities.---The provisions of this Act shall be applicable to any other psychiatric facility of the Province, whether in public or private sector, as the case may be.

52. Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Act, Government may make such order, not inconsistent with the provision of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

53. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

54. Repeal and savings.---(1) The Mental Health Ordinance, 2001 (VIII of 2001), in its application to this Province, is hereby repealed.

(2) Notwithstanding the repeal of the said Act, everything done, action taken, obligation, liability, penalty or punishment incurred, inquiry or proceeding commenced, officers appointed or person authorized, jurisdiction or power conferred, rules made and order or notification issued under any of the provisions of the said Act, shall, if not inconsistent with the provisions of this Act, be continued, and so far as may be, be deemed to have been respectively done, taken, incurred, commenced, appointed, authorized, conferred, made or issued under this Act.

STATEMENT OF OBJECTS AND REASONS

It is desirable to establish the Khyber Pakhtunkhwa Mental Health Authority in the Province of the Khyber Pakhtunkhwa and for the treatment, care, management of properties and affairs of the mentally disordered persons and their families. Hence, this Bill.

Peshawar,
dated the

07-04-2017.


MINISTER-IN-CHARGE.

Asstt. Legal Drafter
Govt. of Khyber Pakhtunkhwa
Law Department