

Mental Health (Treatment and Protection) Act, 2006

Preamble (Proposal)

In accordance to the announcement of the House of Representative 2063, this act has been formulated within the first year of announcement to rehabilitate the people with mental disorders in the society by taking timely care of the mental diseases and safeguard the fundamental rights of persons with mental disorders.

Chapter I **Preliminary**

1. Short Title and Commencement

1. This Act may be called "Mental Health (Treatment and Protection) Act, 2063".
2. This act shall come into force immediately.

2. Definitions

In this Act, unless the context otherwise requires -

- (a) "Mental disease" means a person who displays abnormal activities due to disorders in the person's mental status, thoughts, intelligence and short term or long term memory.
- (b) "Mental Health Service" means an activity for diagnosis, treatment, care and rehabilitation of a person suspected to suffer from mental illness.
- (c) "Psychiatrist" is defined as a doctor with a specialized training in the subject of mental health and registered with the Nepal Medical Council as a doctor.
- (d) "Mentally Unhealthy Person" specifies a person suffering from mental disorder and receiving treatment from a Mental Health Worker and the phrase also implies to a person admitted in a mental health institution.
- (e) "Center" means the National Mental Health Center established and operated in accordance to this act.
- (f) "Rehabilitation Center" means an organization established with an objective of rehabilitating a mentally ill person in the society thereby in the process respecting the human rights and the dignity of the same.
- (g) "Mental Health Examination Committee" implies to the committee organized under clause (4) below.
- (h) "Guardian" means a person appointed by the Chief District Officer in accordance to this act to care for a mentally unhealthy person and safeguard and manage his/her property.
- (i) "Local Body" means the District Development Committee, Metropolis, Sub-metropolis, Municipality, Village Development Committee or ward authorities and staff.
- (j) "Prescribed" or "As prescribed", means prescribed or as prescribed by rules made under this act.

Chapter II

Establishment and Operation of the Center

3. Establishment and Operation of the Center

1. A National Mental Health Center will be established in the kingdom of Nepal to provide specialized services in the field of mental health.
2. The Center will be situated in Lalitpur.
3. The mental hospital in operation at the time of this act coming into force will be operated in the name of the National Mental Health Center.

4. Organizational Structure

1. A committee comprising of the following members will be organized for the purpose of the Center's management and operation.
 - (a) One person nominated by the Government of Nepal Chairman Nepal
 - (b) One person nominated by the Government of Nepal from among prestigious women social workers Member Nepal
 - (c) Representative, Ministry of Health and Member Population
 - (d) Two, nominated by the Government of recommendation from the committee from among the consultant doctors, inclusive of one woman Member Nepal under
 - (e) Matron from the Center Member
 - (f) Director of the Center Member Secretary
3. The tenure of the members under section (a), (b) and (f) of sub clause (2) shall be of two(2) years.
4. The Government of Nepal can, with notification in the national gazette, add or remove members in and from the committee or make changes as deemed necessary.

5. Work, Duties and the Rights of the Committee

The work, duties and the rights of the committee shall be as stated below:

- (a) Operate short term and long term programmes for the development of the Center.
- (b) Raise necessary funds and resources for the Center's management and operation,
- (c) Determine the fees for the services provided by the Center,
- (d) Protect and maintain the physical property of the Center,
- (e) Submit annual report of the Center to the Government of Nepal,
- (f) Operate other activities beneficial for the operation of the Center.

6. Assembly (Meeting) and Decision of the Committee

1. Assembly (meeting) of the Committee shall be as prescribed by the chairman of the Committee.
2. Under the condition that one third of the members submit a written demand for a meeting, the member secretary shall call for the meeting with due notification to the chairman.
3. The member secretary of the committee can, in cases of the post of the chairman lying vacant or in his/her absence, call for a meeting as necessary.
4. The quorum for any meeting of the committee shall be the presence of at least fifty (50) percent of the total number of members of the committee.
5. The chairman shall chair the committee meetings and in his/her absence, a member selected from among them shall chair the meetings.
6. Vote of majority shall be exercised for making decisions and in the case of equality in the number of votes, the person chairing the meeting reserves the right to cast his/her vote for or against the motion for the decision.
7. All decisions made by the committee shall be certified by the member secretary.
8. The committee shall meet at least once in every four months of the year.
9. If deemed necessary, the committee can invite any gazetted officer of the Government of Nepal or a specialist in the form of an observer for the meeting.
10. The committee itself can determine the agenda for the committee meetings.

7. Treasury

1. The committee shall have its own separate treasury.
2. The treasury shall comprise of the following funds:
 - (a) Donations received from the Government of Nepal,

- (b) Funds collected from the services provided by the Center,
 - (c) Funds received from any foreign organization or government, or international organizations or other donor agencies.
 - (d) Funds from any other source.
3. All expenses of the committee shall be borne by the treasury mentioned in sub clause (1) above.
 4. Funds received for the treasury shall be deposited in any commercial bank of the country.
 5. The signatories for the operation of the committee's treasury shall be the Director of the Center and the Chief of Accounts, jointly.
 6. Funds received under section (c) of sub clause (2) must bear the approval from the Government of Nepal and funds received for specific programmes must be spent (utilized) for the stipulated programme.
- 8. Accounts and Audit**
1. The account of income and expenditure of the committee shall be in accordance to the system adopted by the Government of Nepal.
 2. Provisions for financial administration shall be as prescribed.
 3. Auditing of accounts of the committee shall be in accordance to the prevalent laws of the Government of Nepal.
 4. The books of account can be inspected as and when the Government of Nepal finds it necessary.
- 9. Provision for staff**
- The committee can, with prior approval from the Ministry, appoint staff, if necessary and the terms and conditions of the service and the facilities provided shall be as prescribed.

Chapter III

Mental Health Examination and Treatment

- 10. Mental Health Examination**
1. Mental Status Examination of a mentally ill person must be carried out only with his/her approval or his/her guardian's approval, in case of inability to approve by the mentally ill person.
 2. In accordance to sub clause (1), detailed information about the nature of the treatment, period of time involved in the treatment and the physical and mental pain involved in the proposed treatment must be offered to the patient or to his/her guardian, in case of his/her inability to comprehend or unconsciousness, prior to obtaining approval.
 3. Irrespective of what is mentioned in clause (2) this act shall not prove hindrance to admit and treat a person with mental disorder even under the condition that a person who has voluntarily come for a mental status examination but does not want to be voluntarily admitted provided that such treatment with admission is required according to a joint examination of two doctors, inclusive of one psychologist.
- 11. Treatment of the Mentally Ill Person**
1. Every mentally ill person reserves the lawful rights to be treated as a general citizen.
 2. Every mentally ill person shall be safeguarded against psychiatric abuse and reserves the right to access to all law services.
 3. Any person with mental illness can be admitted to the center for treatment under the conditions listed below:
 - (a) When a psychiatrist certifies, in accordance to clause 10 that a person needs to be admitted to the Center and treated.

- (b) Based on the recommendation from Local Body, any other center or health organization a person can be admitted to the center and treated if on examination mental illness is found.
 - (c) When a prisoner is sent for a mental status examination, if the prisoner is certified for treatment with admission to the Center.
4. Unless stipulated otherwise in this act, in accordance to sub clause (1), a mentally ill person shall not be institutionalized for more than three (3) months,
BUT
A patient receiving treatment from the center shall not be deprived of extended treatment under recommendation from the Mental Health Status Examination Committee.

12. Discharge and Leave for the patient

- 1. In accordance to this act, a patient admitted and receiving mental health treatment services can be at any time discharged from the Center upon recommendation from the Mental Health Status Examination Committee formed under clause (26).
- 2. Apart from the prisoners, patients admitted and receiving treatment in the Center can be taken out on leave for a stipulated time period under stipulated conditions by his/her wife/husband or his/her guardian with written application for the same and only when the psychiatrist of the Center believes in the fulfillment of the following criteria:
 - (a) The applicant is able to care for the mentally ill person,
 - (b) The applicant is able to restrain the patient from harming him/her self or others,
 - (c) The applicant can be trusted to bring the patient back to the Center upon completion of the leave.
- 3. In accordance to sub clause (2), if the patient is not brought back after the completion of the leave period, the Center shall inform the local District Administration Office.
- 4. In accordance to this clause, the Center shall not be held responsible for any acts or deeds of the patient during the period of leave.

13. Patient's Record

- 1. Following details must be registered for record for all the mentally ill persons admitted and receiving treatment in the Center:
 - (a) Patient's name, family name, age, sex, occupation and address,
 - (b) Nature of the disease,
 - (c) Period for which the patient is admitted and treated for in the Center,
 - (d) Details of the treatment provided to the patient,
 - (e) In the case of death of the patient, date, time and the reason for death,
 - (f) Name, family name and post of the Psychiatrist and Mental Health Workers involved in the treatment of a patient,
 - (g) Other details as prescribed.
- 2. The Center must keep all records as prescribed in sub clause (1) safely.

Chapter IV

Benefits and Protection of a mentally ill person.

14. Provide Protection

- 1. All mentally ill persons must be provided with proper protection by his/her family or the guardian appointed or designated by the local District Administration Office.
- 2. In the case of a patient without any family members or relatives, the Local Body shall provide the protection.
- 3. A guardian nominated as per this act shall extend his/her guardianship towards a mentally ill person's rights and self.

15. Protection and Use of Property

1. The husband or wife or the guardian of a mentally ill person can apply to the local Administration Office for investigation, protection and management of such person's fixed or liquid properties.
2. Upon receipt of application as per sub clause (1), the local administration office can order for the patient to be present or to be presented on specific date, time and place.
3. For the purpose of this clause, the local administration office can appoint a committee comprising two or more than two people to investigate and inquire about the mentally ill person's property and upon completion of the same, the local administration office shall record the following:
 - (a) If the person alleged to be mentally ill is in fact mentally ill,
 - (b) If the alleged mentally ill person is in the state of taking care of his/her self and protect and manage his/her property.
4. Upon recording the fact, in accordance to clause (3), that a mentally ill person is not in the capacity to take care of his/her self and protect and manage his/her property, the local administration officer can appoint a guardian from among the patient's family or relatives or any other person deemed fit for the purpose.
5. If, at any point during the process of appointment of a guardian for a mentally ill person, the local administrative officer believes that the person alleged to be mentally ill or unfit is on the contrary fit and can take care of one's self and protect and manage one's property, the local administrative office has the right to discontinue or cancel the process at any given time.

16. Duties and Facilities of a Guardian

1. A guardian appointed in accordance to clause 10) of this act must take proper care of the mentally ill person and protect and manage his/her property.
2. The guardian may make use of a mentally ill person's property for his/her benefit and betterment but may not sell, use as collateral against loan, transfer right of ownership, gift, exchange or destroy in any way without the prior permission from the local administration office.
3. In accordance to this act, the appointed or designated guardian may receive a monthly salary as fixed by the local administration office for taking care of the patient and protecting and managing his/her property.
4. The guardian must produce a quarterly report of the details of the patient's property to the local administration office.

17. Act against discrimination and maltreatment

1. No person is authorized to make any kind of discrimination towards a mentally ill person.
2. No adverse effect on the physical or mental health of a mentally ill person shall be exercised by means of use of force, coercion and beating or others.
3. Contrary to what is prescribed in sub clause (2), this clause shall not prove hindrance to taking control of the mentally ill person, using humane methods, who poses a threat to him/her self, others or the peace and security itself or under valid reasons of foreseen damage to self or others.

18. Act against the Use of mentally ill person for Health Status Examination and Research

- A mentally ill person shall not be used for research except under the following conditions:
- (a) that such research proves beneficial for the treatment or cure of the patient,
 - (b) that the patient gives consent, in the case of his ability to do so, or his/her guardian does so,
 - (c) in conditions as prescribed.

19. Act against Forced Labor

A mentally ill person shall not be made to work without providing him/her salary or wages or against his/her will.

20. Confidentiality

1. The confidentiality of a mentally ill person being treated or admitted for the same in the Center or a rehabilitation center and that of betterment or cure after receiving treatment shall not be breached.
BUT,
Providing details under the following conditions shall not be treated as breach of confidentiality:
 - (a) upon consent of the related person,
 - (b) upon demand for details of the mental health of a person from the court.
 - (c) if a mental health doctor believes and proves that maintenance of confidentiality proves a danger to the health of the patient him/herself or the general public.
2. In accordance to sub clause (1) above, the Center may furnish the following details with regards to mentally ill person:
 - (a) if the patient inquired about is admitted in the Center or not,
 - (b) if the patient is admitted in the Center, discharged from the Center or in the case of death, the date and details regarding the death.
 - (c) the nature of the patient's disease.

21. Supervision

1. For the purpose of betterment and security of a mentally ill person, the place and the lifestyle of the patient must be inspected and supervised.
2. For the purpose of sub clause (1) above, a committee comprising of the following shall be formed.

(a) A human right office appointed by the Government of Nepal	Coordinator
(b) Representative, Ministry for Women, Children And Social Welfare	Member
(c) Representative, Local District Administration Office	Member
(d) Representative, Nepal Bar Association	Member
(e) Ward president for inspection	Member
3. The committee stated in sub clause (2) above, shall inspect and supervise at least two times a month.
4. The committee formed under sub clause (2) reserves the right to make necessary arrangements for the mentally ill persons' benefit and security, if the committee, during inspection and supervision as per clause (3), believes that the facility where the patient is kept or the behaviour towards the patients from his/her family or guardian is not based on minimal human values.
5. As per this clause, the committee shall submit a report of the inspection and supervision to the National Human Rights Commission and the Ministry for Women, Children and Social Welfare.
6. Other arrangements for inspection and supervision shall be as prescribed.

Chapter V
Penal Codes and Penalties

22. Crime

Following cases shall be considered a crime as per this act:

- (a) False or misleading certification by a medical officer or a health worker of a mentally healthy person to be mentally ill or mentally healthy after treatment or kept under control for mental misbalance or a mentally ill person to be mentally healthy,

- (b) For not providing care and protection by the guardian to the mentally ill person as per clause (10),
- (c) For damaging or destroying the property of the mentally ill person by not managing and protecting it as per clause (11),
- (d) Forced into labor without salary as per clause (15),
- (e) For breach of confidentiality as against clause (16),
- (f) For any action or deed against the spirit of this act.

23. Penalties

- 1. A penalty of five thousand to twenty five thousand shall be levied on a person who commits a crime stated in clause (22) above.
- 2. Besides sub clause (1), in the case of a guardian destroying or damaging the property of a mentally ill person, an amount double that of the property destroyed or damaged shall be recovered from the guardian and the recovery shall be treated as a government recovery.

24. Right of a law suite

Convicted under this act, a legal suite shall begin, proceed and be resolved in the related district court.

25. Government as plaintiff

In legal hearings for conviction under this act, the government shall be the plaintiff.

Chapter VI
Miscellaneous

26. Mental Health Status Examination Committee

- 1. For the purpose of this act a mental health status examination committee comprising of the following shall come into force:

(a) Chief psychiatrist from the Center	Chairman
(b) Government of Nepal appointed or nominated psychologist	Member
(d) One Government of Nepal nominated female medical officer or a psychiatric nurse	Member
- 2. The work description, duties and rights of the committee formed in accordance to sub clause (1) shall be as prescribed.
- 3. The committee formed in accordance to sub clause (1) shall meet as and when deemed necessary.

27. Work description, Duties and Rights of the Mental Health Status Examination Committee

- 1. Unless expressed otherwise in this act, the work description, duties and rights of the mental health status examination committee shall be as mentioned below:
 - (a) In the case of controversy of the psychiatrist's report regarding the certification of a mentally ill person, the committee shall issue a certificate after a re-examination of the same case.
 - (b) Other works as prescribed.

28. Establishment of a Rehabilitation Center

- 1. If a mentally ill person receiving treatment from a mental health organization or the Center is recommended by the committee formed under clause (17) to be kept under supervision of a psychiatrist or a mental health worker or a psychologist for a fixed period of time, the Government of Nepal shall establish

- and operate a rehabilitation center for the benefit and welfare of the mentally ill persons.
2. The rehabilitation center thus established as under sub clause (1) shall provide the following services and facilities:
 - (a) Facilities for games, physical exercises and different entertainment and refreshments,
 - (b) Provision for purchase of different mediums of information and media of daily need,
 - (c) Appropriate treatment by doctors qualified in related subject or trained health workers.
 - (d) Medical supply and regular treatment services,
 - (e) Other facilities and activities as published and prescribed from time to time in the gazetted paper by the government of Nepal.
 3. The operation of the rehabilitation center established in accordance to sub clause (1) shall be as prescribed.

29. Right to frame rules

The Government of Nepal reserves the right to frame rules for achievement of the objectives of this act.

30. Contact Ministry

The Center in the process of contacting the government of Nepal shall do so through the Ministry of Health and Population.

31. Repeal and Saving

1. The ordinance of National Psychiatrist Center Development Committee (organization) 2059 and the rules and regulations under the same is hereby dissolved.
2. National Act, treatment Number is dissolved.
3. All fixed and moveable property, rights and liabilities, contracts and agreements of the mental hospital development committee organized under the mental hospital developed committee (organization) ordinance 2059 is shifted to Patan.
4. Staff currently working for the mental hospital development committee shall be reallocated to the Center organized in accordance to this act.
5. All work and procedures completed in accordance to the mental hospital development committee (organization) ordinance 2059 shall be considered as completed in accordance to this act.

Members of the Draft Committee

1. Dr. Kapil Dev Upadyaya, Director, Mental Hospital
2. Dr. Dhruva Man Shrestha, Senior Mental Diseases Specialist
3. Sapana Malla Pradhan, Advocate, Women Development and Law Forum
4. Rishi Rajbhandari, Legal Officer, Ministry of Health
5. Tikaram Pandey, Ministry of Law and Justice
6. Krishna Bahadur Katuwal, Department Chief, Ministry for Women, Children and Social Welfare
7. Janaki K.C., Nursing Association