

MENTAL HEALTH TREATMENT AND PROTECTION ACT

B.S. 2063 (2006 A.D.)

GOVT OF NEPAL/ WORLD HEALTH ORGANIZATION

KATHMANDU

NEPAL

MENTAL HEALTH TREATMENT AND PROTECTION ACT

Preamble:

Whereas, it is expedient to prevent mental disease and mitigate psycho-social problems and to rehabilitate persons with mental illness in the society by making timely provisions for the protection of the rights and interests as well as to take care of persons with mental illness;

Now, therefore, be it enacted by the House of Representatives in the first year of the Declaration of the House of Representatives, 2063.

Chapter-One

Preliminary

1. Short title and commencement:

- (1) This Act may be cited as the "Mental Health (Treatment and Protection) Act, 2063 (2006)".
- (2) This Act shall come into force at once.

2. Definition:

Unless the subject or the context otherwise requires, in this Act:

- (a) "Mental Disease" means a condition which is characterized by abnormal activities of a person due to disorders in the person's mental status, thought, intelligence, judgment, insight and short-term or long-term memory
- (b) "Mental Health Service" means an activity for diagnosis, treatment, care and rehabilitation of a person who is suspected of being mentally unhealthy due to mental disease
- (c) "Psychiatrist" means a person duly registered as a doctor in Nepal Medical Council, and having obtained special training in a discipline related to mental health.
- (d) "Mental health Practitioner" means a person possessing specific skills as prescribed for the mental health practitioner.
- (e) "Person with mental illness" means a person who is suffering from mental disease or receiving mental health care from psychiatrist due to such disease, and this term also includes a patient admitted to a psychiatric treatment facility or institution.
- (f) "Center" means the National Psychiatric Center established and operated pursuant to this Act, and this term includes such other center as prescribed.
- (g) "Rehabilitation Center" means the institution established for the purpose of rehabilitation of the persons suffering from mental disease by protecting human rights and his or her dignity.
- (h) "Mental Health Examination Board" means the Board formed pursuant to Section 4.
- (i) "Guardian" means a person appointed or designated by the local District Administration Office pursuant to this Act for the protection of the rights and interests of, taking care of, protection and management of the assets of, the person suffering from mental disease.
- (j) "Local Authority" means the District Development Committee, Municipal Corporation, Sub-municipal Corporation or Village Development Committee or officials or personnel of the wards there under.

- (k) "prescribed" or "as prescribed" means prescribed or as prescribed in this Act or the Rules framed under this Act.

Chapter-Two

Establishment and Operation of Center

3. Establishment and Operation of Center:

- (1) A National Psychiatric Center shall be established and operated in the State of Nepal for treatment of patients with mental disorder and also to provide tertiary services in the field of mental health.
- (2) The Center shall be situated in the Kathmandu Valley.
- (3) The Government of Nepal may, by a notification in the Nepal gazette, can also establish such center in other places within Nepal.
- (4) The Mental Hospital in operation at the commencement of this Act shall be operated as the National Psychiatric Center established pursuant to this Act.

4. Formation of Board:

- (1) For the management and operation of the Center, a Board e shall be formed comprising of the following members:

(a)	A person nominated by the Government of Nepal from amongst the psychiatrists	-Chairperson
(b)	A person nominated by the Government of Nepal from amongst the renowned female social workers	-Member
(c)	Representative, Ministry of Health and Population	-Member
(d)	Two persons including a female nominated by the Government of Nepal, on recommendation of the Center, from amongst consultant doctors	-Members
(e)	Representative of a non-governmental organization working in the relevant field	-Member

(f)	Representative, Association of Psychologists	-Member
(g)	Matron of the Center	-Member
(h)	Director of the Center	-Member- secretary

- (2) The term of office of the members referred to in clauses (a), (b) and (d) of sub-section (1) of shall be of two years.
- (3) The Government of Nepal may, if it considers so necessary, alter the number of the members in the Board, by a notification in the Nepal gazette.

5. Functions, duties and authority of Center:

The functions, duties and authority of the Center shall be as follows:

- (a) To formulate, or cause to be formulated, short term or long term plans for the development of the Center;
- (b) To arrange for such means and resources as may be required for the management and operation of the Center;
- (c) To make suggestions to the Ministry for formulating national policies with regard to rights and interests, as well as treatment, of mental patients;
- (d) To approve budget of the Center;
- (e) To determine service charge of the Center;
- (f) To protect, repair and maintain the physical assets of the Center;
- (g) To submit the annual report of the Center to the Government of Nepal;
- (h) To carry out such other functions as may be required for the operation of the Center.

6. Meeting of the Board and decision:

- (1) The meeting of the Board shall be held as specified by the chairperson of the Board.
- (2) The member-secretary shall call the meeting by providing a notice to the Chairperson if one-third members of the Board demand for such meeting in writing.
- (3) The member secretary may, as per necessity, call a meeting of the Board if the office of chairperson is vacant or the chairperson is absent.
- (4) The presence of fifty per cent members of the total number of members of the Board shall be deemed to constitute a quorum for a meeting of the Board.
- (5) The meeting of the Board shall be presided over by the chairperson, and by the person selected by the members present at the meeting from amongst themselves, in the absence of the chairperson.
- (6) A majority opinion shall prevail at the meeting of the Board. In the event of a tie, the person presiding over the meeting may exercise the casting vote.

- (7) The member secretary of the Board shall authenticate the decisions of the Board.
- (8) The Board shall meet at least four times a year.
- (9) The Board may invite any officer or any other expert to attend its meeting as an observer if the Board so deems necessary.
- (10) Other procedures relating to the meeting of the Board shall be as determined by the Board itself.

7. Fund of Center:

- (1) The Center shall have a fund of its own.
- (2) The fund shall consist of the following amounts:
 - (a) Grants received from the Government of Nepal;
 - (b) Amounts received from the services provided by the Center;
 - (c) Grants received from any foreign organizations, governments or international organizations or donor agencies;
 - (d) Amounts received from other sources.
- (3) All the expenditures of the Center shall be chargeable on the fund as referred to in sub-section (1).
- (4) All amounts to be credited to the fund of the Center shall be deposited in an account to be opened with any commercial bank.
- (5) The fund of the Center shall be operated by counter-signature of the Director and the Chief of Accounts of the Center.
- (6) The Center shall obtain approval of the Government of Nepal prior to acquiring the amount pursuant to clause (c) of sub-section (2); and such amount shall be spent in the same program as it has been obtained for.

8. Accounts and Audit:

- (1) The accounts of the incomes and expenditures of the Center shall be maintained in accordance with the accounting system of the Government of Nepal.
- (2) Provisions relating to financial administration of the Center shall be as prescribed.
- (3) The accounts of the Center shall be audited pursuant to the laws in force.
- (4) The Government of Nepal may, if it so desires, inspect, or cause to be inspected, the accounts of the fund of the Center at any time.

9. Provision relating to personnel:

The Center may, with prior-approval of the Ministry, appoint employees as per necessity; and their terms and conditions of service and facilities shall be as prescribed.

Chapter- Three

Mental Status Examination and Treatment

10. Examination of mental health:

- (1) Mental status examination of a person shall, to the extent as possible, be carried out with the informed consent of such person, or with the consent of the guardian of such person if he or she is not in a position to give such consent.
- (2) While seeking consent pursuant to sub-section (1), prior information on such matters as the mode of the proposed treatment to be provided to the patient, tentative period, possible side-effects of the proposed treatment on the physical or mental health of the patient, the facilities available in the Center shall be provided to the patient in a manner to be understood by such patient, or if the patient is not in a condition to understand, then, in a manner understood clearly by his or her guardian.
- (3) Notwithstanding anything contained in sub-section (2), if, after conducting mental status examination of a person who has voluntarily visited the Center for check-up of his or her mental health, two doctors including a psychiatrist are, in their opinion, convinced that he or she has to be admitted to the Center for treatment, nothing shall bar admitting him or her to the Center for his or her treatment, even if , he or she refuses to be admitted to the Center.

11. Treatment of mental patient:

- (1) Every mental patient shall, like any other ordinary citizen, has a legal right to receive psychiatric treatment.
- (2) Every mental patient shall be protected from the abuse of psychiatry and is entitled to receive all kinds of legal service.
- (3) Any person with mental illness shall be provided psychiatric treatment by admitting such person in the Center, in any of the following conditions:
 - (a) If the psychiatrist certifies that a person who has been examined pursuant to Section 10 requires to be admitted to the Center for a certain period of time
 - (b) If, on the basis of the Local Authority, Police or other health institutions recommending admission and treatment for a person in the center and also supported by the proof needing admission after conducting mental status examination of such person.
 - (c) If, while examining the condition of mental health of a detainee or prisoner held in a prison, it is proved that such detainee or prisoner has to be treated by holding him or her in the Center.
- (4) Except as otherwise provided in this Act, a mental patient admitted to the Center shall not, generally, be retained in the Center for a period of more than three months.
 But, if the Mental Health Examination Board makes a recommendation for holding an admitted patient in the Center already receiving treatment, for a period exceeding more than three months, it can be done so for continuing his or her psychiatric treatment and nothing shall bar.

12. Discharge of or leave to patient:

- (1) The patient admitted to the Center and receiving psychiatric treatment may be discharged from the Center at any time, on the recommendation of the Board referred to in Section 26.
- (2) If the spouse or the guardian of a patient, other than a prisoner or detainee, admitted to the Center and receiving psychiatric treatment makes an application for leave of his or patient for a certain period, and if the Psychiatrist of the Center is satisfied with the following matters, the Center may grant permission to take the patient on leave for a certain period, by specifying certain terms and conditions:
 - (a) if, it is felt that the applicant is competent enough to protect and take care of the mental patient;
 - (b) if, it is felt that the applicant is capable of preventing the patient from causing any harm to him or herself or any other person;
 - (c) if, it is convinced that the applicant will bring the patient back to the Center after completion of the period prescribed while granting permission.
- (3) In case of failure to bring back the patient, who was taken on leave pursuant to sub-section (2), to the Center after completion of the prescribed period, the Center shall send a notice thereof to the local District Administration Office.
- (4) The Center shall have no responsibility in relation to a patient while such patient remains on leave.

13. Record of patients:

- (1) The Center shall maintain the records of registration clearly stipulating the following particulars in relation the person who has been admitted to the Center and received medical treatment;
 - (a) Name, surname, age, gender, occupation and address of the patient or his or her guardian;
 - (b) Case history;
 - (c) Duration of treatment in the Center;
 - (d) Particulars of the treatment provided to the patient;
 - (e) In the event of death of the patient, the date, time and cause of death;
 - (f) Name, surname and position of the Psychiatrist and health professionals involved in the treatment of the patient;
 - (g) Other particulars as prescribed.
- (2) The Center shall safely retain the particulars referred to in sub-section (1).

Chapter- Four

Interest and Protection of Mental Patient

14. Guardianship to be provided:

- (1) The guardian appointed or designated by the family of the person with mental illness or the local District Administration Office shall provide proper guardianship to such person.
- (2) If a person without heir is mentally ill, the Local Authority shall provide guardianship to such person.
- (3) The guardian appointed pursuant to this Act shall protect the interests and rights of the mental patient.

15. Protection and utilization of property:

- (1) The spouse or guardian of a person with mental illness may make an application to the Local Administration Office to look for the assets of such person and to protect and manage such assets.
- (2) If any application is made pursuant to sub-section (1), the Local Administration Office may issue an order for appearance of production of the person with mental illness on such date, time and place as prescribed.
- (3) For the purposes of this Section, the Local Administration Office may form a committee comprising two or more persons to look for and investigate the assets of the person with mental illness; and the Local Administration Office shall, after completion of investigation, maintain records of the following matters:
 - (a) Whether the person said to be mentally ill is really mentally ill or not ill;
 - (b) Whether the person said to be mentally ill is competent to take care of him or herself and to protect as well as to manage the assets.
- (4) If the maintained record states that the person with mental illness is unable to take care of him or herself and to protect and manage his or her assets, the Local Administration Office may assign or appoint as a guardian of the person, any one from amongst his or her family members or relatives whom the Local Administration Officer deems appropriate to look after the person and to protect and manage his or her assets.
- (5) While taking action pursuant to this Section, if the Local Administration Officer is confident that the person is not mentally ill and is capable of taking his or her care, protecting and managing his or her assets, the Local Administration Officer may, at any time, cancel the action in this regard.

16. Responsibility of and facility for guardian:

- (1) Any guardian appointed or designated pursuant to Section 10 shall take proper care of the person with mental illness and protect and manage the assets.
- (2) The guardian shall have the right to utilize the assets for the interest and welfare of the person with mental illness. Provided that the guardian shall have no right to mortgage, sell, transfer, gift, exchange or otherwise dispose of the assets, without obtaining permission of the concerned Local Administration Office.
- (3) The guardian appointed or designated pursuant to this Act shall be entitled to obtain such monthly remuneration from the assets of the patient as may be determined by the Local Administration Office for taking care of the concerned patient as well as making protection and management of his or her assets.

- (4) The guardian shall submit the statements of property of the concerned patient to the Local Administration Office on trimester basis.

17. Prohibition on discrimination or abuse:

- (1) No one shall do any kind of discriminatory action against any person on the ground of mental illness.
- (2) No one shall do or take any such act or action as to cause adverse effect in the physical or mental health of any patient with mental illness, by battering or manhandling or intimidating or coercing such person or in any other manner.
- (3) Notwithstanding anything contained in sub-section (2), if the person with mental illness causes any harm or loss to others or disturbs peace and security, and if, there is a valid reason that the person may harm or damage himself or herself if he or she is not kept under control, this Section shall not be deemed to bar keeping him or her under control by adopting reasonable measures

18. Not to use on clinical test and research:

- (1) Any person with mental illness shall not be subjected to a clinical test or research except in any of the following circumstances:
 - (a) If such research is directly beneficial for the diagnosis of his or her disease and treatment thereof;
 - (b) If he or she grants consent for research with his or her full consciousness or his or guardian gives such consent where he or she is not in a condition to give such consent;
 - (c) Such other conditions as prescribed.

19. Prohibition on forced labor:

A person with mental illness shall, in no circumstance, be subjected to forced labor without remuneration or wage.

20. Confidentially:

- (1) No person shall disclose confidentiality of any person with mental illness, stating that the person was admitted to the Center due to his or mental illness or held in a rehabilitation Center or cured by receiving mental health service.
Provided that a disclosure of details in any of the following circumstances shall be deemed to be a breach of confidentiality:
 - (a) If the concerned person grants consent;
 - (b) If the court required the details of his or her health;
 - (c) If the Psychiatrist is confident that if the information about the mental health of any person is not provided it would create a serious risk in the health of such patient himself or herself and it would cause any public loss or damage and holds that it is not proper to maintain confidentiality;

- (2) The Center may provide the following particulars of a person with mental illness pursuant to sub-section (1):
 - (a) Whether the patient whose information is intended to be obtained is admitted to the Center;
 - (b) Date and particulars of his or her admission to or discharge from the Center, or in the event of death, the date and details thereof;
 - (c) Nature of the disease of the patient.

21. Supervision:

- (1) It is essential to supervise and inspect the place and living condition of a person with mental illness who is handed over to his or her guardian for the protection of his or her interests, rights and security.
- (2) There shall be the following committee for the purposes of sub-section (1):
 - (a) A human right activist nominated by the Government of Nepal
- Coordinator
 - (b) Representative, Ministry of Woman, Children and Social Welfare
- Member
 - (c) Representative, Local Administration Office - Member
 - (d) Representative, Nepal Bar Association
- Member
 - (e) Chairperson of the Ward where inspection is carried out
- Member
- (3) The committee referred to in sub-section (2) shall carry out inspection and supervision at least twice in every year.
- (4) If the committee reaches a conclusion from the inspection and supervision pursuant to sub-section (3) that the place, where the person with mental illness is placed, and the treatment done by his or her family or guardian is not based on the minimum humanitarian norms or dignity, the committee referred to in sub-section (2) may make necessary arrangements for the interests and protection of the person.
- (5) The Committee shall submit its reports of inspection and supervision pursuant to this Section to the National Human Right Commission and the Ministry of Women, Children and Social Welfare.
- (6) Other provisions relating to inspection and supervision shall be as prescribed.

Chapter- Five

Offense and Punishment

22. Offense considered being committed:

The commission of any of the following acts shall be deemed to be an offense:

- (a) If a doctor or health professional makes false or misleading details and certifies a mentally sound person to be mentally ill or cured by psychiatric

treatment or kept under control due to his or her abnormality or a mentally ill person to be mentally sound;

- (b) If the guardian referred to in Section 10 fails to take care of the person with mental illness or fails to protect him or her;
- (c) If one causes loss of and damage to the assets without being able to have proper protection and management of the assets pursuant to Section 11;
- (d) If one causes engagement in forced labor without remuneration pursuant to Section 15;
- (e) In the case of disclosure of confidentiality in contravention of Section 16;
- (f) In the case of commission of any other act prohibited under this Act.

23. Punishment:

- (1) The person who commits the offense mentioned in Section 22 shall be punished with a fine of from five hundred rupees to twenty five thousand rupees.
- (2) In addition to sub-section (1), if the guardian causes any loss to or damage of the assets of the person with mental illness, such loss or damage shall be recovered from the guardian, along with two-fold amount thereof as compensation, to be collected as government dues.

24. Institution of case:

Initial proceeding and settlement of the case to be proved as an offence under this Act shall be executed by the concerned District Court.

25. To be state case:

A case, which is considered as an offence under this Act, shall be a state case.

Chapter- Six

Miscellaneous 26. Board of Mental Health Examination:

- (1) There shall be a Board of Mental Health Examination, as follows, for the purposes of this Act:
 - (a) Chief Psychiatrist of the Center - Chairperson
 - (b) A psychologist nominated by the Government of Nepal - Member
 - (c) Renowned person nominated by the Government of Nepal
From the psychiatric sector -Member
 - (d) One female Doctor or Psychiatric Nurse nominated
by the Government of Nepal - Member
- (2) The functions, duties and power of the Board referred to in sub-section (1) shall be as prescribed.
- (3) The meeting of the Board referred to in sub-section (1) shall be held as per necessity.

27. Functions, duties and power of the Board of Mental Health Examination:

- (1) Except as otherwise provided in this Act, the functions, duties and powers of the Board of Mental Health Examination shall be as follows:
 - (a) To re-examine the mental condition of the person with mental illness and award certificate if any dispute arises on the authenticity of the certificate issued by a Psychiatrist;
 - (b) To perform such other functions as prescribed.

28. Establishment of Rehabilitation Center:

- (1) The Government of Nepal may establish and operate a Rehabilitation Center for the interest and welfare of the persons who are recommended by the Board pursuant to Section 17, stating that the person with mental illness need to be kept under observation of a Psychiatrist or mental health professional or psychologist for a certain period even if the person with mental illness have received mental health service from any health facility or the Center.
- (2) The Rehabilitation Center referred to in sub-section (1) shall have the following facilities:
 - (a) Sports, physical exercise and the facilities of various types of entertainment and recreations;
 - (b) Availability of purchasing of the means of information and communication to be required day-to-day;
 - (c) Appropriate professional treatment to be provided by Doctors having qualification in the concerned subject or trained health professionals;
 - (d) Supply of medicines and regular treatment services;
 - (e) Such other facilities or activities as specified by the government of Nepal, by a notification in the Nepal gazette.
- (3) The operation of the Rehabilitation Center established pursuant to sub-section (1) shall be as prescribed.

29. Power to frame rules:

The Government of Nepal may frame necessary Rules for the attainment of the objectives of the Act.

30. Liaison Ministry:

The Center shall liaise with the Government of Nepal through the Ministry of Health regarding the execution of this Act.

31. Repeal and Saving:

- (1) The Mental Hospital Development Board (Formation) Order, 2059 and the Rules and Bye-Rules framed there under are hereby repealed.
- (2) No..... of the Chapter on Medical Treatment is hereby repealed.
- (3) All movable or immovable properties of the Mental Hospital Development Board formed under the Mental Hospital Development Board (Formation) Order, 2059, the rights and liability, contract and agreement shall be transferred to the National Psychiatric Center, Patan.

- (4) The existing employees of the Mental Hospital Development Board shall be transferred to the service of the Center constituted under this Act.
- (5) All acts done and actions taken under the Mental Hospital Development Board (Formation) Order, 2059 shall be deemed to have been done or taken under this Act.