



RESEARCH PAPER**Mental Health Law in Pakistan: An Analysis**

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ABSTRACT

The objective of this research is to study the mental health law in Pakistan. Mental health law in Pakistan is in its budding phase. Although there are mental health laws in Pakistan, these are not functional. The doctrinal legal analysis method was employed to study the mental health law in Pakistan. Since health is a provincial subject, provinces and other administrative units enacted their own mental health laws in Pakistan. As far as the implementation of these laws is concerned, nowhere in Pakistan are these laws being implemented. The province of Sindh is ahead of other provinces and administrative units in Pakistan in the enactment of mental health laws, but still there is a lack of proper implementation of mental health laws in the province of Sindh. Mental health laws across the country need to be amended and implemented to cater to the mental health needs of the masses in Pakistan.

KEYWORDS Health, Law, Mental, Pakistan, Treatment

Introduction

Mental health laws in Pakistan are in the developing phase. Although there are enacted laws on mental health, these laws are not implemented properly (Mufti, 2010). The Constitution of Pakistan, under the fundamental rights, protects the basic rights of mentally disordered persons (*Yasmin Jang v. Advocate General, Punjab*, 2021). However, there is no infrastructure to implement mental health laws in Pakistan (Tareen et al., 2008). As far as the importance of mental health and the consequent need for legislation on mental health and its implementation are concerned, mental health issues are on the rise in Pakistan. It is estimated that 24 million people in Pakistan are suffering from mental disorders and conditions (World Health Organization, 2017).

Mental health is as important as physical health. However, mental health is not given its due importance due to misconceptions and stereotypes about mental health (*Safia Bano v. Home Department*, 2021). Most of the people having mental disorders in Pakistan do not consult with mental health professionals due to multiple factors such as stigma related to mental health, practice of consulting with faith healers, lack of awareness about mental disorders, etc. (Qidwai & Azam, 2002; Gadit, 2007). People with mental disorders go to the faith healers for the treatment of their mental ailments (Farooqi, 2006).

Many people perceive mental disorders because of supernatural influence, and this misconception is found in all segments of society (Saeed et al., 2000). Many people deny their mental ailments (Gadit, 2007). Mental health issues can cause many difficulties in the lives of the people having these issues (Husain et al., 2007). As far as the state of mental health professionals is concerned, most of the psychologists are providing

counseling services rather than therapeutic services. There is a need to train clinical psychologists for proper therapeutic interventions (Javed et al., 2020). Moreover, there is no proper authority that mental health professionals can contact in cases of urgency (Tareen & Tareen, 2016). Such indigenous factors related to mental health and its consequences make the implementation of mental health law in Pakistan more relevant.

Literature Review

Pakistan inherited the Lunacy Act of 1912 after the partition. This law regulated mental health-related matters till the enactment of the Mental Health Ordinance in 2001. Before the promulgation of this ordinance in 2001, the Lunacy Act of 1912 was the exclusive statutory law on mental health. This act was more focused on the detention of the people having mental disorders rather than on their treatment, as there were comprehensive provisions in this act on the detention of mentally disordered people, and the treatment, care, and welfare of mentally disordered people were discussed less (Shah et al., 2022).

The promulgation of the Mental Health Ordinance in 2001 was indeed a step forward in the law on mental health. This ordinance contained several much-needed legal provisions for the regulation of the matters related to mental health in Pakistan. Moreover, the derogatory and outdated terms such as lunatic, unsound mind, asylum, etc. which were used in the Lunacy Act of 1912 were replaced with modern terms such as mental health, mental disorder, health facility, etc. in this ordinance (Gilani et al., 2005). Unsound mind, lunatic, idiot are vague and unscientific terms with no clear definitions (*Muhammad Hanif v. Raja Muhammad Aslam Khan and others*, 2001; *Noor Hussain and others v. Mst. Fatima and others*, 1984).

However, health became a provincial subject after the introduction of the 18th amendment in the Constitution of Pakistan. Consequently, the Mental Health Ordinance, 2001, was adopted by the province of Punjab in the form of the Punjab Mental Health (Amendment) Act, 2014. The KP Mental Health Act, 2017, the Sindh Mental Health Act, 2013, and the Baluchistan Mental Health Act, 2019 were enacted by the provinces of Sindh, KPK, and Baluchistan, respectively (*Safia Bano v. Home Department*, 2021).

Methodology

The doctrinal legal analysis method was used to study mental health law in Pakistan.

Results and Discussion

Since health is a provincial subject under the Constitution of Pakistan, different provinces and other administrative units in Pakistan have their own laws on health.

The Punjab Mental Health (Amendment) Act 2014

After the 18th amendment, the Mental Health Ordinance, 2001, was adopted by the province of Punjab in the form of the Punjab Mental Health (Amendment) Act 2014. This act has its jurisdiction limited to the province of Punjab. It was observed in *Mehr Ashraf and another v. Station House Officer* (2021) that the main objective of the Mental Health Ordinance, 2001, is the protection of mentally disordered people, the provision of care, and management of the affairs of these people. Similar observations were made in (*Yasmin Jang v. Advocate General, Punjab*, 2021). Moreover, it is obvious from the preamble

of the Punjab Mental Health (Amendment) Act 2014 that the objective of this law is the welfare, care, and treatment of people with mental disorders.

However, there is a huge gap between the enactment of mental health law and its implementation in Punjab. The law makes it obligatory for the Government of the Punjab to establish the Punjab Mental Health Authority (Section 3, the Punjab Mental Health (Amendment) Act, 2014). But there is no such authority to date. Furthermore, Section 4 of the Punjab Mental Health (Amendment) Act (2014) makes it obligatory for the Punjab Mental Health Authority to constitute the Board of Visitors, and Section 5 of the Punjab Mental Health (Amendment) Act (2014) deals with the powers and functions of the Board of Visitors, which also does not exist in Punjab to date. Section 7 of this act makes it obligatory for the government to provide community-based care to people who have mental disorders. However, there is no proper community-based mental health care infrastructure in the province of Punjab.

Chapter 3 and Chapter 4 of the Punjab Mental Health (Amendment) Act, 2014 deal with the assessment, treatment, admission, and discharge of people who have mental disorders. Chapter 5 deals with the guardianship, management of property, and contractual matters of mentally disordered people. The human rights of the mentally disordered people are dealt with in Chapter 7 of the Punjab Mental Health (Amendment) Act, 2014. Inspection of mentally disordered prisoners and forensic psychiatric services are dealt with in chapters 9 and 10 of this Act, respectively. The laws dealing with mental health must be revised and amended keeping in view the existing ground realities to better be able to achieve their objectives (Ajmal & Rasool, 2023).

The Sindh Mental Health Act, 2013

The province of Sindh took the lead over provinces across Pakistan in making and implementing the law on mental health. The province of Sindh enacted the Sindh Mental Health Act (2013). The government of Sindh framed the Sindh Mental Health Rules in 2014. Moreover, the policy on mental health has also been launched by the government of Sindh under the name of Mental Health Policy, 2023-2030. In 2015, the Sindh Mental Health Act, (2014) was amended to make mental health examinations of blasphemy accused and persons who attempted suicide mandatory (Rahman et al., 2015). The mental health evaluation of the blasphemy accused is a right step (Ajmal & Rasool, 2023).

The main objective of the Sindh Mental Health Act, 2013 is to regulate matters related to the treatment, the management of the affairs and community care of people having mental disorder(s), and the promotion of mental health. The Sindh Mental Health Authority and Board of Visitors have also been established under Sections 3 and 4 of the Sindh Mental Health Act (2013). Section 6 of this act makes it mandatory for the government to establish psychiatric facilities for the care and treatment of mentally disordered persons (Section 6, the Sindh Mental Health Act, 2013). Community-based psychiatric care is dealt with under Section 7 of this act. The appointment of the guardian and the manager of the properties of a mentally disordered person is dealt with in Chapter 5 of this Act. The matter of human rights of mentally disordered persons is dealt with in Chapter 7 of this act. Dealing with mentally disordered prisoners and the provision of forensic psychiatric services are dealt with under chapters 9 and 10 of this Act, respectively.

The Khyber Pakhtunkhwa Mental Health Act, 2017

The Khyber Pakhtunkhwa Mental Health Act (2017) is the statutory law which deals with the care, treatment, management of affairs, etc. of people with mental disorder(s). It is an exclusive statutory law on mental health, and its jurisdiction is limited to the province of Khyber Pakhtunkhwa. Section 3 of the Khyber Pakhtunkhwa Mental Health Act (2017) makes it mandatory for the government to establish the Khyber Pakhtunkhwa Mental Health Authority. However, no such authority has been established so far. Section 4 of this act makes it compulsory for the government to establish the psychiatric facilities for the care and treatment of the people with mental disorders across the province (Section 4, the Khyber Pakhtunkhwa Mental Health Act, 2017). Section 5 of the Khyber Pakhtunkhwa Mental Health Act (2017) deals with the community-based care of mentally disordered people. Sections 48 and 49 of this act deal with the inspection of mentally disordered prisoners and the provision of forensic psychiatric services, respectively (Sections 48 & 49, the Khyber Pakhtunkhwa Mental Health Act, 2017). The law on mental health is not implemented in the province of Khyber Pakhtunkhwa.

The Balochistan Mental Health Act, 2019

The Balochistan Mental Health Act (2019) is the statutory law dealing with the care, treatment, and management of the affairs of the persons with mental disorders and other ancillary matters related to the mental health. The jurisdiction of this act is limited to the province of Balochistan. Section 3 of the Balochistan Mental Health Act (2019) made it mandatory for the provincial government to constitute Balochistan Mental Health Authority within six months of the enactment of this law. However, no such mental health authority exists to date in Baluchistan. To carry out the purpose of this act, Section 4 of the act makes it mandatory for the Balochistan Mental Health Authority, which itself does not exist, to constitute a Board of Inspection (Section 4, the Balochistan Mental Health Act, 2019). However, no Board of Inspection exists in the province of Balochistan. The establishment of psychiatric facilities for the assessment, treatment, care, rehabilitation, etc. of mentally disordered persons by the provincial government is dealt with under Section 6 of this act (Section 6, the Balochistan Mental Health Act, 2019). The provision of community-based mental health services is mandatory under Section 7 of the Balochistan Mental Health Act (2019). The appointment of a guardian for a person with mental disorder(s) and the appointment of the manager of the property of such a person are dealt with under Chapter 5 of this act. Human rights of mentally disordered persons are dealt with under Chapter 6 of this act. Section 49 of this act makes mental health examination of blasphemy accused and persons who attempted suicide mandatory (Section 49, the Balochistan Mental Health Act, 2019). Inspection of mentally disordered prisoners and the provision of forensic psychiatric services are dealt with under Chapters 9 and 10 of this Act, respectively.

Administrative units other than the four provinces of Pakistan have their own statutory laws on mental health. The federal territory of Islamabad amended the Mental Health Ordinance, 2001, in the form of the Mental Health (Amendment) Act, 2020. The jurisdiction of this act is limited to the Islamabad capital territory (Section 1(1)(2), Mental Health (Amendment) Act, 2020). In 2003, the Azad Jammu and Kashmir (Adaptation of Mental Health Ordinance, 2001) Act, 2003, was adapted by the legislative assembly of Azad Jammu and Kashmir. Azad Jammu and Kashmir (Adaptation of Mental Health Ordinance, 2001) Act, 2003 is the exclusive statutory law on mental health in Azad Jammu and Kashmir. Section 3(1) of the Azad Jammu and Kashmir (Adaptation of Mental Health Ordinance, 2001) Act (2003) makes it mandatory for the government to

establish a Mental Health Authority to carry out the purpose of this act, but no such authority exists so far. As far as the region of Gilgit Baltistan is concerned, there is no comprehensive legislation on mental health in Gilgit Baltistan, and mental health is an undeveloped and neglected area in Gilgit Baltistan (Asif, 2017).

Recommendations

Proper Legislation

After the enactment of the Mental Health Ordinance in 2001 and later after the 18th Amendment in the Constitution of Pakistan, the making of mental health laws by different administrative units in Pakistan is indeed a great leap forward in the direction of the improvement in the mental health laws in Pakistan. However, the legislation needs to be improved further. Lacunas in the existing mental health law need to be addressed to better be able to implement these laws to achieve its desired objectives.

Implementation of Existing Laws

Although the existing laws on mental health need to be amended, the bigger issue is the implementation of existing laws. Mental health laws across Pakistan are not properly implemented. The province of Sindh is far ahead of other provinces in the enactment and implementation of mental health laws. However, these laws are not implemented even in the province of Sindh in letter and spirit. The provinces other than the province of Sindh and other administrative units even do not have infrastructure for the execution of laws on mental health. The laws on mental health need to be implemented across the country on urgent basis.

Effective Policy Making and its Implementation

There is no solid policy on mental health in either of the administrative units across Pakistan. The government of Sindh gave a policy on mental health, but this policy has not adopted and implemented properly so far. It is highly recommended that all provinces and administrative units across Pakistan devise a proper policy on mental health and implement it in letter and spirit.

Awareness about Mental Health

Awareness of mental health is very important for making and implementing laws on mental health. Most people do not understand the importance of mental health. Even most of the people in Pakistan do not understand the concept of mental health properly. There are many stereotypes and misconceptions found in public about mental health. Moreover, the enlightened segment of Pakistani society is not properly aware of mental health. There is a dire need to spread awareness about mental health among the masses. To spread awareness about mental health, seminars, workshops, and lectures must be arranged by the government on a regular basis.

Specialized Training of Mental Health Professionals

There is a need for specialized training of psychiatrists and psychologists. There is a scarcity of trained psychiatrists and psychologists in Pakistan. There must be an institutional mechanism for the capacity building of the psychiatrists and psychologists. On-the-job trainings must be introduced on the institutional level. Specialized institutions must be built for the specialized training of psychiatrists and psychologists across the country.

Conclusion

Mental health and mental health law are not given their due attention in Pakistan. The law on mental health is enacted in all the provinces in Pakistan, but these laws are not implemented. Even in most of the provinces, the statutory bodies to implement mental health laws do not exist. Consequently, the laws on mental health are not functional. The statutory law across the country makes it obligatory for the respective government to establish community care for the people with mental disorders, but there is no community-based care mechanism for such people across the country. There is a need to amend existing laws on mental health in Pakistan to make it more conducive and implement the law in letter and spirit. Moreover, spreading awareness about mental health and the specialized training of psychiatrists and psychologists is recommended.

References

- Ajmal, A., & Rasool, F. (2023). Insanity defense in blasphemy offences in Pakistan. *Global Social Sciences Review*, 8(1), 447-453
- Asif, A. F. (2017). Healthcare challenges in Gilgit Baltistan: The way forward. *Pakistan Journal of Public Health*, 7(2), 113-116.
- Farooqi, Y. N. (2006). Traditional healing practices sought by Muslim psychiatric patients in Lahore. *Pakistan Int J Disability Devel Edu.*, 53, 401-415.
- Gadit, A. A. (2007). Psychiatry in Pakistan: 1947-2006: A new balance sheet. *J Med Biol Sci.*, 1,1-20.
- Gilani, A. I., Gilani, U. I., Kasi, P. M., & Khan, M. M. (2005). Psychiatric Health Laws in Pakistan: From Lunacy to Mental Health. *PLOS MEDICINE*.
- Husain, N., Chaudhry, I. B., Afridi, M. A., et al., (2007). Life stress and depression in a tribal area of Pakistan. *Br J Psychiatry.*, 190, 36-41.
- Javed, A., Khan, M. N. S., Nasar, A., & Rasheed, A. (2020). Mental Healthcare in Pakistan. *Taiwanese Journal of Psychiatry*, 34(1), 6-14
- Mehr Ashraf and another v. Station House Officer*, Writ Petition No. 66032/2021, (2021).
- Mufti, K. (2010) Implementation of mental health policy in Pakistan. *Journal of the Postgraduate Medical Institute*, 24, 246.
- Muhammad Hanif v. Raja Muhammad Aslam Khan and others*, CLC 97 (2001).
- Noor Hussain and others v. Mst. Fatima and others*, MLD 438 (1984).
- Qidwai, W., & Azam, S. I. (2002). Psychiatric morbidity and perceptions on psychiatric illness among patients presenting to family physicians, in April 2001 at a teaching hospital in Karachi, Pakistan. *Asia Pacific Fam Med.*, 1, 79-82.
- Rahman, R., Siddiqi, M. N., & Ahmed, S. H. (2015). Implementation of the Mental Health Act; Are we ready? *J Pak Med Assoc.* 65(12),1339-1343. PMID: 26627519.
- Saeed, K., Gater, R., Hussain, A., et al., (2000). The prevalence, classification and treatment of mental disorders among attenders of native faith healers in rural Pakistan. *Soc Psychiatry Epidemiol.*, 35, 480-485.
- Safia Bano v. Home Department, Government of Punjab and others*, PLD, SC 488 (2021).
- Section 1(1)(2) of the Mental Health (Amendment) Act, (2020).
- Section 3(1) of the Azad Jammu and Kashmir (Adaptation of Mental Health Ordinance, 2001), Act (2003).
- Section 3, the Balochistan Mental Health Act, (2019).
- Section 3, the Khyber Pakhtunkhwa Mental Health Act, (2017).
- Section 3, the Punjab Mental Health (Amendment) Act, (2014).

- Section 3, the Sindh Mental Health Act, (2013).
- Section 4, the Balochistan Mental Health Act, (2019).
- Section 4, the Khyber Pakhtunkhwa Mental Health Act, (2017).
- Section 4, the Punjab Mental Health (Amendment) Act, (2014).
- Section 4, the Sindh Mental Health Act, (2013).
- Section 48, the Khyber Pakhtunkhwa Mental Health Act, (2017).
- Section 49, the Balochistan Mental Health Act, (2019).
- Section 49, the Khyber Pakhtunkhwa Mental Health Act, (2017).
- Section 5, the Khyber Pakhtunkhwa Mental Health Act, (2017).
- Section 5, the Punjab Mental Health (Amendment) Act, (2014).
- Section 6, the Balochistan Mental Health Act, (2019).
- Section 6, the Sindh Mental Health Act, (2013).
- Section 7, the Balochistan Mental Health Act, (2019).
- Section 7, the Punjab Mental Health (Amendment) Act, (2014).
- Section 7, the Sindh Mental Health Act, (2013).
- Shah, S. M., Sun, T., Xu, W., Jiang, W., & Yuan, Y. (2022). The mental health of China and Pakistan, mental health laws and COVID-19 mental health policies: a comparative review. *General Psychiatry*, 35(5). doi:10.1136/gpsych-2022-100885
- Tareen, A., & Tareen, K. I. (2016). Mental health law in Pakistan. *BJPsych Int.*, 13(3), 67-69. doi: 10.1192/s2056474000001276. PMID: 29093907; PMCID: PMC5618880.
- Tareen, A., Mirza, I., Mujtaba, M., et al. (2008). Primary care treatment for child and adolescent neuro-psychiatric conditions in remote rural Punjab, Pakistan – a cross-sectional survey. *Child: Care, Health and Development*, 34, 801–805.
- The Lunacy Act, (1912).
- The Mental Health Ordinance, (2001).
- World Health Organization (2017). Mental Health Atlas. Geneva World Health Organization.
- Yasmin Jang v. Advocate General, Punjab etc.* Intra Court Appeal No.37924, (2021).