

**Amendment to section 19 of the Mental  
Health Ordinance, 2001**

**Report No.131**

## **AMENDMENT TO THE MENTAL HEALTH ORDINANCE, 2001**

Pakistan inherited the colonial era legislation i.e. the Lunacy Act, 1912, pertaining to psychiatric illnesses. The law was vague as is evident from the term “lunacy” used in the title whose synonym is the word “idiot” or “mad” and thus tended to exhibit an inhumane approach towards the mentally ill. Moreover mental health facilities were referred to “asylums” which again, in the view of the general public, referred to “mad houses”. Moreover, the psychiatric illnesses were not defined adeptly. Generally the law was obsolete and did not cater to the changing modern world.

In 2001, the Mental Health Ordinance, 2001 was promulgated which was a significant improvement in the psychiatric law and was humane in its approach and termed mentally ill patients as “mentally disordered” rather than lunatics. Moreover, mental illnesses were also defined as per international parameters. However there is one lacunae that has not been properly addressed which is the lack of a provision which mandates,—

that a person detained by the police on suspicion of being mentally disordered has to be produced before a magistrate within 24 hours of being detained, and lack of procedure regarding satisfaction or otherwise of the magistrate regarding mental condition of the person detained so that he may be either sent to psychiatric facility or given in care of a relative or if found mentally fit order the release of person detained.

It is viewed that police has been granted arbitrary powers to detain or cause the detention of an allegedly mentally disordered person for upto 72 hours. Empirically, under the scheme of the present law, even a sane person could be detained for days and weeks before it is known that he was not entitled to be treated as a mentally disordered person at all as for instance someone detained under the said law at a distant village in Tharparkar or Kohistan districts may require days of travel to a nearest psychiatric facility and, under the present scheme of section 19 of the Mental Health Ordinance, 2001, an interested hostile relative may obtain the procurement of the alleged mentally disordered person into his

custody which may have drastic effects. Even otherwise, if the mentally disordered person cannot understand the process of detention and no relatives come forward and there is no psychiatric facility in the vicinity then in such case the lodging and treatment of the alleged mentally disordered person may be solely at the discretion of the police for at least 72 hours and may be more. Therefore, the most suitable way to address this issue will be to produce the alleged disordered person before a Magistrate within 24 hours of detention who will apply a judicious mind to cater to such a situation.

As per Article 25 of the Constitution, all citizens are equal before law and are entitled to equal protection of law. Moreover, under Article 4 of the Constitution, all citizens have the right to be dealt with in accordance with law. Similarly, under Article 10 (2) of the Constitution every person arrested and detained in custody shall be produced before a magistrate within a period of twenty four hours of such arrest. However by virtue of vires of section 19 of the Mental Health Ordinance, 2001 a police officer may remove and cause the detention of a person about whom he has a reason to believe that the person is suffering from mental disorder, upto 72 hours. This detention for upto 72 hours is not only opposed to the mandate of the Constitution but comparatively speaking is also non-existent in other countries of the region.

Placed below is a table in which section 19 of the Mental Health Ordinance, 2001 and corresponding section 23 of the Indian Mental Health Law, 1987 and section 11 of the Malaysian Mental Health Act, 2001 are given, which would indicate that in Indian Jurisdiction, the person apprehended/detained by police should be produced before a magistrate within 24 hours of detention while in Malaysian Jurisdiction the person detained has to be taken to a psychiatric institution within 24 hours of detention. For reference, section 24 of the Indian Mental Health Act, 1987 is also reproduced which defines the procedure before the Magistrate where the protected person is produced and which is not provided for in the Pakistani law.

## COMPARATIVE TABLE

<p style="text-align: center;"><b>Pakistani Mental Health Ordinance, 2001. Section 19. Mentally disordered persons found in public places.—</b></p>	<p style="text-align: center;"><b>Indian Mental Health Act, 1987. Section 23. Powers and duties of police officers in respect of certain mentally ill persons</b></p>	<p style="text-align: center;"><b>Malaysian Mental Health Act, 2011, Section 11. Apprehension of mentally disordered person</b></p>
<p>(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, remove that person to a place of safety, which means only a Government run health facility, a government run psychiatric facility, or hand him over to any suitable relative who is willing to temporarily receive the patient.</p> <p>(2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be</p>	<p>1. Every officer in charge of a police station –</p> <p style="padding-left: 20px;">i. may take or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself, and</p> <p style="padding-left: 20px;">ii. shall take or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness.</p> <p>2. No person taken into protection under sub-section (1) shall be detained by the police without being informed, as soon as may be, of the grounds for taking him into such protection, or</p>	<p>(1). Any Police Officer or Social welfare Officer may apprehend any person whom he has reason to believe is mentally disorders and is, because of mental disorder, is dangerous to himself or to others or property.</p> <p>(2). The Police Officer or Social welfare Officer who has apprehended a person under subsection (1) shall as soon as practicable, but not</p>

<p>examined by a psychiatrist or his nominated medical officer and for making any necessary arrangements for his treatment or care.</p>	<p>where, in the opinion of the officer taking the person into protection, such person is not capable of understanding those grounds, without his relatives or friends, if any, being informed of such grounds.</p> <p>3. Every person who is taken into protection and detained under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection of the Court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate.</p> <p><b>24. Procedure on production of mentally ill person</b></p> <p>1. If a person is produced before the Magistrate under sub-section (3) of Sec.23, and if in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall –</p> <p>a) Examine the person to assess his capacity to understand.</p> <p>b) Cause him to be</p>	<p>later than twenty four after the apprehension, bring the person to a medical officer in a government psychiatric hospital or a registered medical practitioner in a gazetted private psychiatric hospital for examination.</p>
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	<p>examined by a medical officer, and</p> <p>c) Make such inquiries in relation to such person as he may deem necessary.</p> <p>2. After the completion of the proceeding under subsection (1), the Magistrate may pass a reception order authorizing the detention of the said person as an in-patient in a psychiatric hospital or psychiatric nursing home -</p> <p>i. if the medical officer certifies such person to be a mentally ill person, and</p> <p>ii. if the Magistrate is satisfied that the said person is a mentally ill person and that in the interest of the health and personal safety of that person or for the protection of others, it is necessary to pass such order.</p> <p>Provided that if any relative or friend of the mentally ill person desires that the mentally ill person be sent to any particular licensed psychiatric hospital or licensed psychiatric nursing home for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally ill person in such hospital or nursing home, the Magistrate shall, if the medical officer in charge of such hospital or nursing home consents, make a reception order for the admission of the mentally</p>	
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	<p>ill person into that hospital or nursing home and detention therein;</p> <p>Provided further that if any relative or friend of the mentally ill person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally ill person will be properly taken care of and shall be prevented from doing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such relative or friend.</p>	
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It is, therefore, proposed that in line with the Constitution and the current legislative practices, section 19 of the Mental Health Ordinance may be amended so that a person detained on the suspicion of being mentally disordered should be produced before a Magistrate within 24 hours of being taken into detention. Moreover, procedure before Magistrate may also require to be elucidated. The proposal to amend section 19 of the said Ordinance was placed before the Sub-committee, for consideration, as follows;

**19. Mentally disordered persons 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, remove that person to a place of safety, which means only a Government run health facility, a government run psychiatric facility, or hand him over to any suitable relative who is willing to temporarily receive the patient.

**(2) A person removed to a place of safety under subsection (1) of this section shall be produced by the police before the nearest Magistrate within a period of twenty-four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection to the Court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate.**

**(3) If a person is produced before the Magistrate under this section, and if in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall,—**

- a. examine the person to assess his capacity to understand;**
- b. cause him to be examined by a medical officer; and**
- c. make such inquiries in relation to such person as he may deem necessary.**

**(4) After the completion of the proceeding under subsection (3), the Magistrate may pass a reception order authorizing the detention of the said person as an in-patient in a psychiatric facility. The reception order shall include certification, by the Magistrate, to the effect that such person is mentally disordered and specification that it is necessary to pass such order in the interest of the health and personal safety of that person or for the protection of others:**

**Provided that if any relative or friend of the mentally disordered person desires that the mentally disordered person be sent to any particular psychiatric facility for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally disordered person in such psychiatric facility, the Magistrate shall, if the medical officer in charge of such psychiatric facility consents,**

**make a reception order for the admission of the mentally ill person into that hospital and detain there;**

**Provided further that if any relative or friend of the mentally disordered person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally disordered person will be properly taken care of and shall be prevented from causing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such relative or friend.”**

The Sub-committee approved the proposal. The text of the existing provision of law and recommended amendments is given in below comparative table.

**COMPARITIVE TABLE**

<b>Existing section 19 of the Mental Health Ordinance, 2001</b>	<b>Proposal of the Secretariat</b>	<b>Approved by Sub-committee</b>
19. Mentally disordered persons 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, remove that person to a place of safety, which means only a Government run health facility, a government run psychiatric facility, or hand him over to any suitable relative who is willing to temporarily receive the patient.	19. Mentally disordered persons 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, remove that person to a place of safety, which means only a Government run health facility, a government run psychiatric facility, or hand him over to any suitable relative who is willing to temporarily receive the patient.	

<p>(2) A person removed to a place of safety under this section may be detained there for a period not exceeding 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 or care.</p>	<p>(2) A person removed to a place of safety under <b>subsection (1) of this section shall be produced by the police before the nearest Magistrate within a period of twenty-four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection to the Court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate.</b></p> <p><b>(3) If a person is produced before the Magistrate under this section, and if in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall, -</b></p> <ul style="list-style-type: none"> <li><b>(a) examine the person to assess his capacity to understand;</b></li> <li><b>(b) cause him to be examined by a medical officer; and</b></li> <li><b>(c) make such inquiries in relation to such person as he may deem necessary.</b></li> </ul> <p><b>(4) After the completion of the proceeding under subsection (3), the Magistrate may pass a reception order authorizing the detention of the said</b></p>	<p><b>Approved</b></p>
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	<p>person as an in-patient in a psychiatric facility. The reception order shall include certification, by the Magistrate, to the effect that such person is mentally disordered and specification that it is necessary to pass such order in the interest of the health and personal safety of that person or for the protection of others:</p> <p>Provided that if any relative or friend of the mentally disordered person desires that the mentally disordered person be sent to any particular psychiatric facility for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally disordered person in such psychiatric facility, the Magistrate shall, if the medical officer in charge of such psychiatric facility consents, make a reception order for the admission of the mentally ill person into that hospital and detain there;</p> <p>Provided further that if any relative or friend of the mentally disordered person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally disordered person shall be properly taken care of and shall be prevented from causing</p>	
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	<b>any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such relative or friend.</b>	
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**Commissions deliberations on 8<sup>th</sup> September, 2013**

The proposed amendments were placed before the Commission for consideration. Accordingly, the Commission deliberated upon the proposed amendments and approved the same.

Draft Bill for amendment of the law is hereby enclosed.

## A

### Bill

to further amend the Mental Health Ordinance, 2001

**WHEREAS** it is expedient to further amend the Mental Health Ordinance, 2001 (Ordinance No.VIII of 2001) for the purposes hereinafter appearing.

It is hereby enacted as follows:-

**1. Short title and commencement.**—(1) This Act may be called the Mental Health Ordinance (Ordinance No. VIII of 2001) (Amendment), Act 2013.

(2) It shall come into force at once.

**2. Substitution and insertion of new sub-sections to Section 19.**—(1) In the Mental Health Ordinance, 2001 (Ordinance No. VIII of 2001) herein after referred to as the said Ordinance, for sub-section (2) of section 19 the following sub-section (2) shall be substituted, namely;-

“(2) A person removed to a place of safety under subsection (1) of this section shall be produced by the police before the nearest Magistrate within a period of twenty-four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection to the Court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate.”

(2) In the said Ordinance, after the substituted sub-section (2) of section 19, the following new sub-sections (3) and (4) shall be added, namely;-

“(3) If a person is produced before the Magistrate under this section, and if in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall,—

- (a) examine the person to assess his capacity to understand;
- (b) cause him to be examined by a medical officer; and
- (c) make such inquiries in relation to such person as he may deem necessary.

(4) After the completion of the proceeding under subsection (3), the Magistrate may pass a reception order authorizing the detention of the said person as an in-patient in a psychiatric facility. The reception order shall include certification, by the Magistrate, to the effect that such person is mentally disordered and specification that it is necessary to pass such order in the interest of the health and personal safety of that person or for the protection of others:

Provided that if any relative or friend of the mentally disordered person desires that the mentally disordered person be sent to any particular psychiatric facility for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally disordered person in such psychiatric facility, the Magistrate shall, if the medical officer in charge of such psychiatric facility consents, make a reception order for the admission of the mentally ill person into that hospital and detain there:

Provided further that if any relative or friend of the mentally disordered person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally disordered person shall be properly taken care of and shall be prevented from causing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such relative or friend.”.