A COMPARATIVE ANALYSIS OF PAKISTAN'S MENTAL HEALTH LEGISLATION VIS-À-VIS THE INTERNATIONAL LEGAL FRAMEWORK: A CONCISE EXAMINATION

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ABSTRACT

This article aims to provide a comprehensive examination of the evolution of mental health legislation in Pakistan. It seeks to explore the historical background while analysing the trajectory of mental health laws over the years across different provinces. Additionally, the article will scrutinise the legal structures within each province. Furthermore, it intends to assess Pakistan's mental health legislation against international benchmarks, emphasising the disparities between local legal frameworks and global standards. Employing a comparative lens, in the final chapter, the article will pinpoint areas where Pakistan's legislation falls short in comparison to international norms and provide recommendations for improvement.

KEYWORDS: Mental Health Legislation, Pakistan's Mental Health Laws, Mental Health Ordinance 2001, Mental Health Act, International Standards of Mental Health Legislation, Mental Illness.

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1. INTRODUCTION

With a population of 244 million, Pakistan is home to the fifth-largest population in the world.[1] Pakistan faces a growing mental health crisis, with reports suggesting that between 22% and 60% of the population in major

[1] Worldometer, Pakistan Population https://www.worldometers.info/world-population/pakistan-population/ accessed 1 March 2024.

cities suffers from mental health issues such as anxiety and depression.[2] According to another estimate, one in four Pakistanis over the age of 18 may experience a mental health illness at some point in their lives, out of which over 80% will not be able to obtain mental health support.[3] Despite this, Pakistan lacks a comprehensive national mental health policy, and past legislative efforts have fallen short of effectively addressing the wider requirements of mental health care.[4] This gap is evident both in health care services and the legal framework that governs the care and rights of individuals with mental illnesses.

From a psychiatric perspective, 'mental health' refers to 'a state of well-being in which individuals can cope with the normal stresses of life, work productively, and contribute to their community.'[5] The World Health Organisation (WHO) defines mental health as an integral part of overall health, highlighting its importance in ensuring that individuals live fulfilling and meaningful lives.[6] Some common mental health conditions are 'depression, anxiety disorders, bipolar disorder, and schizophrenia' – many of these remain untreated in Pakistan due to stigma and a lack of access to healthcare.[7]

However, in terms of the law, mental health is largely confined to discussions surrounding criminal liability and civil capacity. In criminal law, mental illness is often invoked as a defence to reduce criminal responsibility, as seen in the principle of diminished responsibility in cases involving persons with serious mental disorders. In civil matters, mental health is primarily discussed in the

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[2] Zafar Iqbal, Ghulam Murtaza and Shahid Bashir, 'Depression and Anxiety: A Snapshot of the Situation in Pakistan' (2016) 4(2) International Journal of Neuroscience and Behavioral Science 32-36 https://www.hrpub.org/journals/article_info.php?aid=5112 accessed 1 March 2024.

[3] Ikram Junaidi, '80pc Pakistanis Lack Mental Health Treatment Facilities' Dawn (Islamabad, 11 October 2021) https://www.dawn.com/news/1651249 accessed 1 March 2024.

[4] National Commission on Human Rights, 'Malpractice in Mental Health in Pakistan: A Call for Regulation' (2022) https://www.nchr.gov.pk/wp-content/uploads/2022/08/Mental-Health-Report.pdf accessed 1 March 2024.

[5] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-5* (5th edn, American Psychiatric Publishing (2013) https://doi.org/10.1176/appi.books.9780890425596 accessed 1 March 2024.

[6] World Health Organisation, 'Mental Health' (*WHO*) https://www.who.int/health-topics/mental-health#tab=tab_1 accessed 1 March 2024.

[7] World Health Organisation, 'Mental Disorders' (*WHO*) https://www.who.int/news-room/fact-sheets/detail/mental-disorders accessed 3 March 2024.

context of contracts and property transactions, where individuals of 'unsound mind' may lack the legal capacity to engage in binding agreements.[8]

The evolution of mental health legislation in Pakistan reflects this limited legal scope. The Mental Health Ordinance 2001 (MHO) replaced the archaic Lunacy Act 1912 but fell short of providing a comprehensive framework for mental health care.[9] While the MHO represented progress, it primarily focused on addressing severe mental illnesses, leaving gaps in addressing common but debilitating conditions like depression and anxiety.[10] The devolution of health legislation to the provinces after the 18th Amendment to the Constitution of the Islamic Republic of Pakistan 1973 has resulted in provincial mental health laws that reflect the limitations of the Mental Health Ordinance and do not fully comply with international standards set by organisations like the WHO and the United Nations (UN).

2. INTERNATIONAL STANDARDS FOR MENTAL HEALTH LEGISLATION

2.1. Overview of the International Framework

The right to health is a basic human right encompassing physical, mental, and social well-being. It is essential for the realisation of other human rights and applies universally, irrespective of race, religion, political beliefs, or socioeconomic status. Mental health is 'an integral and essential component of the right to health.'[11] The United Nations has established critical frameworks for the protection of mental health, particularly through key instruments such as the Universal of Human Rights (UDHR),[12] the

[8] Faraaz Mahomed et al., 'Mental Health, Human Rights, and Legal Capacity' (2022) 9(5) The Lancet Psychiatry Issue 341, 341-342.
[9] AI Gilani, UI Gilani, PM Kasi and MM Khan, 'Psychiatric Health Laws in Pakistan: From Lunacy to Mental Health' (2005) 2 PLoS Medicine e317, https://journals.plos.org/plosmedicine/article/file?type=printable&id=10.1371/journal.pmed.0020317 accessed 17 March 2024 ('AI Gilani et al.').
[10] Mental Health Ordinance 2001.
[11] World Health Organisation, 'Constitution of the World Health Organisation' (1946) https://www.who.int/about/accountability/governance/constitution accessed 3 April 2024.
[12] UN General Assembly, Universal Declaration of Human Rights, (10 December 1948) 217 A (III).

(ICESCR),[13] and the Convention on the Rights of Persons with Disabilities (CRPD).[14]

Under Article 12 of the ICESCR,[15] every person has a right to enjoy the highest attainable standard for physical as well as mental health.[16] This includes providing comprehensive healthcare services that address not only severe mental illnesses but also common conditions such as anxiety and depression. In addition to Article 12, the ICESCR requires States to take progressive steps towards the full realisation of its rights, ensuring that all individuals can access necessary health services. Article 11 further underscores the importance of adequate nutrition and housing as determinants of health, linking social well-being directly to mental health outcomes.[17]

The CRPD complements these rights by explicitly affirming that individuals with disabilities, including those experiencing mental health issues, must enjoy the Convention's rights on an equal basis with others, including persons without disabilities. Article 3 highlights principles such as 'respect for inherent dignity, individual autonomy, and independence,'[18] while Article 5 focuses on non-discrimination.[19] These articles collectively emphasise the necessity of reasonable accommodations—modifications or adjustments that ensure individuals can fully exercise their rights without facing barriers.

To effectively fulfil these obligations under both the ICESCR and CRPD, countries must adopt a holistic approach to mental health legislation. This includes integrating mental health care into primary health services, promoting community-based care models, and ensuring that mental health

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[13] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 ('ICESCR').
[14] UN General Assembly, Convention on the Rights of Persons with Disabilities A/RES/61/106 (24 January 2007) ('CRPD').
[15] ICESCR (n 13) art 12.
[16] Paul Hunt, 'Interpreting the International Right to Health in a Human Rights-Based Approach to Health' (2016) 18(2) Health and Human Rights Journal 109–130 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5394996/ accessed 13 April 2024.
[17] ICESCR (n 13) art 11.
[18] CRPD.
[19] ibid.

policies are inclusive and non-discriminatory. Moreover, accountability mechanisms are essential for monitoring compliance with these international standards and providing remedies when rights are violated.[20]

The emergence of modern public health approaches in the twentieth century has highlighted the significance of mental health as an integral part of overall health. However, the stigma surrounding mental health care often stems from the historical division between mental and physical health, which is reflected in global policies.[21] Addressing this stigma is essential for creating an effective framework that promotes mental well-being and ensures that individuals with mental health conditions receive the care and support they need. Thus, international frameworks have emerged to establish a foundation for countries to develop mental health legislation that guarantees the rights of individuals with mental health conditions.

2.2. International Rules for Mental Health Legislation

By adhering to the rules and standards outlined in various international legal frameworks, countries can establish a comprehensive approach to mental health legislation. These rules provide a roadmap for implementing basic measures.

2.2.1. Equality and Non-Discrimination

International human rights law seeks to ensure non-discrimination in both access to and provision of mental health care services, as well as in addressing the underlying determinants of health.[22] Additionally, domestic legislation is

[20] E Riedel, 'The Right to Health under the ICESCR: Existing Scope, New Challenges and How to Deal with It' in A von Arnauld, K von der Decken and M Susi (eds), The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric (Cambridge University Press 2020) 107-123 https://doi.org/10.1017/9781108676106.009 accessed 24 April 2024.
[21] United Nations, Human Rights Council, Dainius Pūras, 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health' (A/HRC/35/21, 28 March 2017) [6] https://undocs.org/A/HRC/35/21 accessed 24 April 2024 ('Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health').
[22] United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 20 (2009) on Non-Discrimination in Economic, Social and Cultural Rights' (E/C.12/GC/20)

necessary to frame attitudes and behaviours towards those who are suffering distress, have been diagnosed with a mental illness, or have a psychosocial disability.[23] According to the CRPD, 'States Parties shall prohibit discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.'[24] This legal framework is essential for shaping societal attitudes towards individuals with psychosocial disabilities. However, psychiatric diagnostic biases are common, and research demonstrates that racial and gender-based prejudices result in incorrect diagnoses.[25] The law itself can perpetuate prejudice and stereotypes. For instance, several laws now in effect use terminology that is highly symbolic, such as 'idiot' or 'lunatic', and thus have a detrimental effect on the stigma attached to mental health issues.[26]

The biomedical model of mental health, which emphasises the biological explanations for distress while minimising the role of environmental and social factors, characterises mental illness as an individual issue and promotes 'a fatalistic view of recovery.'[27] This approach in law and policy can perpetuate public stigma and self-stigma surrounding mental health. Moreover, mental health diagnoses have been abused to pathologise identities and members of diverse communities, as highlighted by the UN Special Rapporteur on the Right to Everyone to the Highest Achievable Standard of Physical and Mental Health.[28]

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https://documents.un.org/doc/undoc/gen/g09/434/05/pdf/g0943405.pdf?token=JPuM6XjXE3GKbEW1y5&fe=true accessed 24 April 2024 ('CESCR General Comment No. 20').

[23] United Nations, Human Rights Council; Report of the Office of the United Nations High Commissioner for Human Rights, 'Awareness-Raising under Article 8 of the Convention on the Rights of Persons with Disabilities' (A/HRC/43/27, 17 December 2019) para. 55 https://undocs.org/en/A/HRC/43/27 accessed 24 April 2024.

[24] CRPD, art 5.

[25] Suite DH, La Bril R, Primm A and Harrison-Ross P, 'Beyond Misdiagnosis, Misunderstanding and Mistrust: Relevance of the Historical Perspective in the Medical and Mental Health Treatment of People of Color' (2007) 99(8) Journal of the National Medical Association 79–85 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2574307/ accessed 24 April 2024.

[26] World Health Organisation and United Nations, Mental Health, Human Rights and Legislation: Guidance and Practice (2023) https://iris.who.int/bitstream/handle/10665/373126/9789240080737-eng.pdf?sequence=1 accessed 24 April 2024.

[27] ibid.

[28] Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (n 21) [6].

To uphold the right to health effectively, States must actively facilitate preventive, curative, and palliative mental health care for all individuals on an equitable basis. This involves implementing policies that not only address direct healthcare needs but also consider the social determinants affecting mental well-being, such as socioeconomic status, education, and community support.[29] The Committee on Economic, Social and Cultural Rights (CESCR) has emphasised that mental health is a critical component of the right to health, as articulated in its General Comment No. 14.[30] The CESCR underscores the importance of non-discrimination and equal access to mental health care, advocating for reasonable accommodations to support individuals with mental health conditions.[31] By adopting a comprehensive approach that aligns with the CESCR's guidelines, States can create a legal framework that fosters equality and non-discrimination in mental health care delivery, ultimately enhancing the overall well-being of their citizens.

2.2.2. Reasonable Accommodation

According to Article 5 of the CRPD, a 'reasonable accommodation' is any modification or change that is suitable and required to guarantee that individuals may exercise their rights equally.[32] However, it does not include placing an unfair or disproportionate burden on the State or a private entity when providing accommodation for persons with disabilities (PWDs).[33] 'Reasonable' relates to the accommodation's applicability, efficacy, and relevance without 'imposing a disproportionate or undue burden' on service providers.[34] The focus is on ensuring that these accommodations effectively

[29] World Health Organisation (WHO), Mental Health Action Plan 2013-2020 https://iris.who.int/bitstream/handle/10665/89966/9789241506021_eng.pdf?sequence=1 3 June 2024 ('Mental Health Action Plan 2013-2020').
[30] Committee on Economic, Social and Cultural Rights, International Covenant on Economic, Social and Cultural Rights: General Comment No.14: The Right to the Highest Attainable Standard of Health (art. 12) (E/C.12/2000/4), [34] https://digitallibrary.un.org/record/425041?ln=en accessed 3 June 2024 ('CESCR, General Comment No. 14').
[31] CESCR General Comment No. 20 (n 22).
[32] CPRD.
[33] Committee on the Rights of Persons with Disabilities, General Comment No.6 on Equality and Nondiscrimination (CRPD/C/GC/6) [23–27] (2018) https://undocs.org/CRPD/C/GC/6 accessed 10 June 2024 ('CRPD, General Comment No. 6').
[34] CRPD, art 2.

enable individuals to participate fully in society and access services, thereby fulfilling the intended purpose of promoting equality and inclusion.[35]

The rejection of a reasonable accommodation must be recognised as discrimination and should be explicitly addressed in legislation.[36] Considering the significance of legal capacity, States Parties are obligated to formally recognise and grant adequate accommodations to ensure that individuals can exercise their legal rights effectively. This obligation is not optional; rather, it is a fundamental obligation under international law to promote equality and non-discrimination for PWDs.[37]

It is important to emphasise that the requirement for accommodation and social assistance does not entail measures that involve deprivation of liberty. Protective actions should, whenever possible, reflect the wishes of individuals capable of expressing their preferences. Failing to do so can result in abuse and hinder the exercise of the rights of vulnerable individuals. Consequently, any action taken without prior consultation with the affected person must undergo thorough scrutiny.[38]

2.2.3. Accountability

Accountability in the right to mental health includes three elements: (a) monitoring; (b) independent and non-independent review, including by political, administrative, quasi-judicial, and judicial bodies; and (c) remedies and redress.[39] Accountability gives rights holders the chance to comprehend how responsibility bearers have care out their responsibilities and to seek compensation when rights are infringed.[40] As a body of experts, the CESCR plays a crucial role in establishing authoritative standards and interpretations regarding the right to health. Their guidance underscores the importance of

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[35] United Nations, Human Rights Council, 'Mental Health and Human Rights' (A/HRC/34/32), [9] (7 June 2017) https://undocs.org/A/HRC/34/32 accessed 10 June 2024.
[36] Mental Health Act. Republic Act No. 11036, art 4 (e). Manila: Republic of the Philippines (2017) https://lawphil.net/statutes/repacts/ra2018/ra_11036_2018.html accessed 10 June 2024.
[37] CRPD General Comment No. 6 (n 33) [48].
[38] *Stanev v Bulgaria* [GC], no. 36760/06, §153 (ECHR, 9 February 2011).
[39] UN HRC (n 35).
[40] Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (n 21).

accountability mechanisms that allow individuals to hold States accountable for their commitments under international law.[41] By ensuring transparency and responsiveness, States can foster an environment where rights holders are empowered to seek remedies and where violations are addressed effectively.

States Parties should take the necessary actions to guarantee 'that the private business sector and civil society are aware of,'[42] and take into consideration the right to health when conducting their activities in order to foster an environment that is conducive for the realisation of the right.[43] Accountability requires individuals in positions of authority to accept responsibility for their conduct, to be open and honest with those in question, and to see that the proper corrective and restorative measures are implemented.[44]

To support, safeguard, and oversee the application of the mental health regulations under the CRPD, States should monitor the implementation of national or sub-national mental health legal and policy frameworks.[45] States can track progress through various indicators at the population, service, and individual levels. The WHO Guidance on Community Mental Health Services: Promoting Person-Centered and Rights-Based Approaches provides examples of such indicators within and beyond the health system.[46] Additionally, the UN Office of the High Commissioner for Human Rights (OHCHR) has created 'human rights indicators on the CRPD as a tool' to help with the comprehension and application of its provisions.[47] These indicators may be used as a guide to direct activities and measures to be followed while 'implementing a rights-based mental health system.'[48]

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[41] CESCR General Comment No. 14 (n 30).
[42] ibid [55].
[43] ibid.
[44] United Nations, Human Rights Council, Catalina Devandas Aguilar, Report of the Special Rapporteur on the Rights of Persons with Disabilities (A/75/186) [72] (20 July 2020) https://undocs.org/en/A/75/186 accessed 9 July 2024.
[45] CRPD, art 33(2).
[46] World Health Organisation (WHO), Guidance on Community Mental Health Services: Promoting Person-Centered and Rights-Based Approaches (2019).
[47] United Nations Office of the High Commissioner for Human Rights (OHCHR), *Human Rights Indicators: A Guide to Measurement and Implementation* (*OHCHR* 2014).
[48] United Nations High Commissioner for Human Rights, SDG-CRPD Resource Package https://www.ohchr.org/en/disabilities/sdg-crpd-resource-package 9 July 2024.

Furthermore, States should also ensure access to justice and opportunities for compensation and support for survivors and victims of abuses of human rights in mental health care. [49]

2.2.4. Free and Informed Consent

One of the core components of the right to health is the freedom to give informed and voluntary consent.[50] It includes the freedom to accept medical care as prescribed, to reject it, or to select an alternative.[51] The freedoms include the right to control one's health and body and the freedom from 'interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.'[52]

In general, individuals have the freedom to decline any kind of medical care, even if it may save their lives. Individuals with psychosocial impairments and mental health disorders need to have the same access to this right as everyone else.[53] Adolescents should always provide their consent for mental health care and support, regardless of whether parental or guardian consent is also obtained.[54] Article 12 of the Convention on the Rights of the Child (CRC) affirms that children who are capable of forming their own views have the right to freely express those views in matters affecting them, including health care decisions. This provision highlights the importance of respecting adolescents' autonomy and ensuring their participation in decisions regarding their mental health treatment.

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[49] United Nations Committee on the Rights of Persons with Disabilities, Guidelines on Deinstitutionalisation, Including in Emergencies (2022) (CRPD/C/5) https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpdc5-guidelines-deinstitutionalisation-including accessed 9 July 2024.

[50] United Nations General Assembly, International Covenant on Civil and Political Rights, UN Doc A/RES/2200(XXI) (1966) art 7.

[51] United Nations Human Rights Council, Dainius Pūras, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (A/HRC/38/36), [25] (10 April 2018) https://undocs.org/en/A/HRC/38/36 accessed 10 July 2024.

[52] CESCR General Comment No. 14 (n 30) [8].

[53] CRPD, art 25(d).

[54] World Health Organisation, WHO QualityRights Core Training: Mental Health and Social Services: Course Guide 'Freedom from Coercion, Violence and Abuse', 24 (2019) https://apps.who.int/iris/handle/10665/329582 accessed 10 July 2024.

Moreover, 'medical or scientific research' is also prohibited 'without free consent' under Article 7 of the ICCPR.[55] Article 4(2) of the ICCPR emphasises that this provision is non-derogable and cannot be restricted. Article 15 of the CRPD reaffirms this principle. The right to health includes protection from medical treatment and scientific experimentation conducted without one's free and informed consent, as the CESCR has repeatedly emphasised.[56] Similarly, Article 25(d) of the CRPD provides that States Parties guarantee that healthcare for PWDs is delivered based on their free and informed consent.[57] Involuntary treatment is seen as a violation of 'not only the right to health but also legal capacity,'[58] protection from 'torture and ill-treatment,'[59] 'freedom from violence, exploitation, and abuse,'[60] as well as 'the right to personal integrity.'[61]

The CESCR has outlined that States should adopt specific legislation prohibiting discrimination in mental health and develop and implement policies and plans addressing both formal and substantive. Furthermore, human rights education and training programs should be conducted for public officials and integrated into both formal and non-formal education to promote equality, tolerance and understanding of human rights principles.[62]

2.3. WHO's Comprehensive Mental Health Action Plan 2013–2030

The World Health Assembly endorsed the Comprehensive Mental Health Action Plan 2013–2020 in May 2013.[63] In 2019, the Seventy-second World Health Assembly extended this Action Plan until 2030. The main objectives of the Action Plan are to promote mental health, prevent mental illnesses, provide care, support recovery, protect human rights, and reduce the death,

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[55] Human Rights Committee, International Covenant on Civil and Political Rights: General Comment No. 20: Article 7: Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 3 (1992) https://www.refworld.org/legal/general/hrc/1992/en/11086 accessed 10 July 2024.
[56] CESCR, General Comment No. 14 (n 30), [8].
[57] CRPD, art 25(d).
[58] ibid art 12.
[59] ibid art 15.
[60] ibid art 16.
[61] ibid art 17.
[62] ibid.
[63] Mental Health Action Plan 2013-2020 (n 29).

morbidity, and disability rates among individuals affected by mental illnesses.[64] Its four main goals are to 'improve mental health leadership and governance'; to 'offer comprehensive, integrated, and responsive mental health and social care services in community-based settings'; to put 'mental health promotion and prevention strategies' into practice; and to 'improve mental health information systems, evidence, and research.'[65] The Action Plan also suggests important steps that Member States (including Pakistan), the WHO Secretariat, and other national and international partners should take to accomplish each of these goals.[66]

As a signatory to this Action Plan, Pakistan should align its national mental health policies with these objectives. By actively engaging with the WHO's framework, States can strengthen its mental health legislation and improve the quality of care for individuals experiencing mental health challenges.

2.4. The World Health Organisation's QualityRights Initiative

The WHO launched the global QualityRights initiative as a capacity-building initiative aimed at advancing the rights of those with psychosocial, intellectual, and cognitive disabilities. This initiative seeks to enhance the quality of mental health services and care worldwide by providing a framework for best practices and supporting countries in developing and implementing mental health policies that adhere to international human rights standards. The WHO QualityRights initiative includes resources such as the module titled 'Transforming Services and Promoting Rights'.[67] This offers valuable information and resources to States for assessing and improving human rights and quality standards in mental health and social care institutions in conjunction with the WHO QualityRights assessment tools.[68] Patients who have received QualityRights training reported feeling more

[64] Mental Health Action Plan 2013-2020 (n 29), 7.
[65] ibid 36-37.
[66] ibid 12.
[67] World Health Organisation, WHO QualityRights Training and Guidance: Mental Health and Social Services: Course Guide: Transforming Services and Promoting Human Rights (2019) https://apps.who.int/iris/handle/10665/329611 accessed 19 July 2024.
[68] World Health Organisation, WHO QualityRights Tool Kit to Assess and Improve Quality and Human Rights in Mental Health and Social Care Facilities (2012) https://apps.who.int/iris/handle/10665/70927 accessed 19 July 2024.

empowered to support their own recovery in mental facilities.[69] The initiative has also influenced broader policy frameworks, such as the creation of a European Declaration and Action Plan for 'the health of children and young people with intellectual disabilities and their families in 2011.'[70]

3. PAKISTAN'S LEGAL ARCHITECTURE IN RELATION TO MENTAL HEALTH LEGISLATION

3.1. The Evolution of Pakistan's Mental Health Legislation

The Lunacy Act 1912, which originated in British India, was inherited by Pakistan following the Partition in 1947. This Act remained the primary legal framework for mental health until it was replaced by the Mental Health Ordinance (MHO) in 2001. The Pakistani Government proposed new mental health laws in 1992 and circulated a draft for feedback from psychiatrists; however, significant reform did not occur until 2001.[71]

The Lunacy Act holds historical significance as it defined key terms such as 'asylum', 'lunatic' and 'medical officer'[72] and outlined procedures for admitting mentally ill individuals to asylums.[73] It provided for the care of wandering or dangerous individuals and detailed medical examination processes, including the issuance of medical certificates. Notably, Sections 13-16 allowed for the detention of those suspected to be 'lunatics' for up to ten days, extendable to thirty days with magistrate approval, before an inquiry into their mental status.[74] This provision was susceptible to exploitation due to widespread corruption in the legal system.[75]

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[69] Akwasi O Osei et al., 'Implementation of the World Health Organisation's QualityRights Initiative in Ghana: An Overview' (2024) 10 BJPsych Open https://doi.org/10.1192/bjo.2024.11 accessed 19 July 2024.
[70] World Health Organisation, WHO European Declaration and Action Plan on the Health of Children and Young People with Intellectual Disabilities and their Families (EUR/RC61/R5).
[71] A Tareen and KI Tareen, 'Mental Health Law in Pakistan' (2016) 13 BJPsych International 67 https://europepmc.org/backend/ptpmcrender.fcgi?accid=PMC5618880&blobtype=pdf accessed 25 July 2024 ('A Tareen and KI Tareen').
[72] Lunacy Act 1912, s 3.
[73] ibid s 22.
[74] ibid s 13-16.
[75] AI Gilani et al. (n 9).

The term 'lunacy' itself perpetuated stigma, with the Act defining a lunatic as 'an idiot or person of unsound mind.'[76] Despite criticism from mental health professionals regarding its harshness and inaccuracy, this terminology remained until the enactment of the MHO in 2001.[77]

On 20 February 2001, the MHO came into force, repealing the Lunacy Act.[78] The MHO represented a major advancement in modernising Pakistan's mental health regulations by replacing the outdated terminology of the Lunacy Act and providing comprehensive descriptions of mental illnesses.[79] However, after the 18th Amendment to the Constitution in 2010, Pakistan underwent a significant political transformation that granted provinces complete legislative authority over various subjects, including healthcare.[80] Consequently, health became a provincial subject, leading each province to promulgate its own mental health laws.[81]

3.2. Federal Legal Framework

3.2.1. The Constitution of the Islamic Republic of Pakistan 1973

Under the Constitution of Pakistan, the dignity, security, and health of all citizens are inviolable rights.[82] Key provisions of the Constitution relevant to this discussion are Articles 9, 14, 25 and 38. Article 9 addresses the right to life and security of a person, ensuring that all individuals, including those with mental disabilities, are entitled to protection under this right. The Supreme Court also recognised that the right to life under Article 9 encompasses not only a person's physical existence but also their right to live with dignity,

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[76] Dyer AR and Bloom JD, 'Forensic Psychiatry in India and Pakistan' (2020) 48(1) Journal of the American Academy of Psychiatry and the Law https://pmc.ncbi.nlm.nih.gov/articles/PMC7026664/ accessed 23 July 2024.
[77] AI Gilani et al. (n 9).
[78] A Tareen and KI Tareen (n 71).
[79] RQ Khan and AM Khan, 'Crime and Punishment: Pakistan's Legal Failure to Account for Mental Illness' (2021) 18 BJPsych International 94 https://www.cambridge.org/core/journals/bjpsych-international/article/crime-and-punishment-pakistans-legal-failure-to-account-for-mental-illness/E2F24EE61A186CF42562425CF72A1A19 accessed 23 July 2024 ('RQ Khan and AM Khan').
[80] Tahir Maqsood Chheena, 'The Significance of the 18th Amendment for the Federalism and Devolution' Republic Policy (24 October 2023) https://republicpolicy.com/the-significance-of-the-18th-amendment-for-the-federalism-and-devolution/ accessed 23 July 2024.
[81] *Mst. Safia Bano v Home Department Govt. of Punjab through its Secretary and others* (PLD 2021 SC 488).
[82] Constitution of the Islamic Republic of Pakistan, 1973 ('Constitution').

emphasising the State's obligation to provide necessary medical facilities to ensure the well-being of its citizens.[83] Similarly, Article 14 upholds the right to dignity and states that the dignity of man and the privacy of home shall be inviolable subject to the law. Article 25 of the Constitution specifies that all people residing in the State are equal in the eyes of the law. According to Article 38(d) of the Constitution, the State must strive towards providing essentials to those who are unable to make a living due to illness or other circumstances.[84]

A landmark judgment by the Supreme Court, *Safia Bano v. Home Department, Government of Punjab*,[85] prohibited the execution of individuals suffering from recognised mental disorders. The Court stated that 'the execution of a person who is unable to comprehend the rationale behind their punishment is a violation of their right to life and dignity' under Articles 9 and 14. Thus, it is the State's responsibility to ensure that mentally ill offenders do not receive the death penalty as a sentence for a crime.

3.2.2. The Pakistan Penal Code 1860

Under Section 84 of the Pakistan Penal Code (PPC), 'nothing is an offence done by a person who at the time of the commission of the offence, because of unsoundness of the mind, was incapable of knowing the nature of the act or what he was doing was contrary to the law'.[86] Thus, individuals who suffer from mental illness and are unable to comprehend the nature of their actions cannot be tried or convicted.

If the accused can demonstrate sufficient impairment to his mental responsibility as a result of even partial or borderline insanity, as stated in Section 84 of the PPC, he/she is entitled to a favourable finding on the plea of insanity. This does not need to be proven as 'scientifically certain, but can

[83] *Shehla Zia v WAPDA* (PLD 1994 SC 693).
[84] Constitution.
[85] *Safia Bano v Home Department, Government of Punjab* (2018 SCMR 1234).
[86] The Pakistan Penal Code, s 84.

be established on the balance of probabilities' and a 'proper resolution of doubts.' [87]

Not every individual with a mental disorder is automatically exempt from criminal responsibility. For Section 84 of the PPC to apply, a person must demonstrate that, at the time of the offence, they were experiencing such a defect of reason that they could not understand the nature or consequences of their actions.[88] Furthermore, there is a clear distinction between medical and legal insanity, with courts focusing solely on the legal aspect: legal insanity serves as a defence against criminal responsibility, requiring that the accused demonstrate a complete impairment of cognitive faculties due to mental unsoundness. To qualify as legally insane, the individual must be unable to understand the nature of their actions or 'recognise that what they are doing is wrong or against the law.'[89]

3.2.3. The Code of Criminal Procedure 1898

Sections 464-475 of the Code of Criminal Procedure 1898 (CrPC) describe the rights and exemptions for those lacking a 'sound mind'.[90] Section 464 discusses the incompetency to proceed due to lunacy and unsoundness of mind in the Magistrates' Court. Section 465 determines the incompetency to stand trial in a Sessions or High Court. The legal framework established by Sections 464 and 465 requires that a Magistrate must have reasonable grounds to believe that an accused individual is of unsound mind and unable to comprehend the proceedings. Additionally, it must be evident to the Court during the trial that the accused suffers from mental unsoundness, rendering them incapable of making a defence. In both instances, the actions taken depend on the subjective assessment of the Magistrate or Court regarding the situation presented.[91]

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[87] Muhammad Umer Ali Ranjha & Ariba Fatima, 'The Death Penalty and Mental Illness in Pakistan's Courts: A Critical Analysis' LUMS Law Journal https://sahsold7.lums.edu.pk/law-journal/death-penalty-and-mental-illness-pakistan%E2%80%99s-courts-critical-analysis accessed 25 July 2024.
[88] *Khizar Hayat v The State* (2006 SCMR 1755).
[89] *Meharban alias Munna v The State* (PLD 2002 SC 92).
[90] RQ Khan and Am Khan (n 79).
[91] *Fauqual Bashar v The State* (PLD 1997 SC 847).

Other relevant sections in the CrPC outline procedures for the acquittal of individuals due to mental health conditions, the release of individuals pending investigation or trial, custody arrangements, resumption of inquiry or trial, and appearances before a magistrate or court.[92] Section 466 permits the release of 'an accused person found to be of unsound mind' pending investigation or trial, protecting his/her rights while acknowledging their mental health condition.[93] Section 467 ensures that individuals deemed mentally ill are held in appropriate facilities rather than traditional prisons.[94] Section 468 addresses cases where a mentally ill prisoner is capable of making their defence.[95] Lastly, Section 471 addresses the detention of acquitted persons in safe custody.[96]

3.2.4. The Mental Health Ordinance 2001 (MHO)

The MHO addresses and regulates matters related to mental health within Pakistan.[97] According to its Preamble, it has brought about significant changes to the legislation 'relating to mentally disordered persons with respect to their care and treatment and management of their property and other related matters.'[98]

The first major improvement the MHO brings is in the terminology used. Prior to 2001, mental illnesses were classified using antiquated and vague terminology such as 'lunacy' under Pakistani law. These phrases were dropped from the MHO, which replaced them with thorough definitions of mental illnesses, severe personality disorders, and severe mental impairments.[99] According to the MHO, mental illness is defined as "a substantial disorder of thought, mood, perception, orientation, or memory that significantly impairs judgment, behavior, capacity to recognise reality, or ability to meet the

[92] Ali Ajmal and Faiza Rasool, 'Legal Analysis of Competency to Stand Trial' (2023) 4 Pakistan Journal of Development and Social Sciences http://dx.doi.org/10.47205/jdss.2023(4-III)73 accessed 25 July 2024.
[93] Code of Criminal Procedure 1898, s 466.
[94] ibid s 467.
[95] ibid s 468.
[96] ibid 471.
[97] Mental Health Ordinance (n 10).
[98] AI Gilani et al. (n 9).
[99] ibid.

ordinary demands of life."[100] This modern terminology reflects a more accurate understanding of mental health conditions and promotes a more respectful approach to individuals experiencing these challenges.

Secondly, it established the Federal Mental Health Authority (FMHA) under Section 3, which was made up of seven members, most of whom are bureaucrats, and seven 'eminent psychiatrists of at least 10 years standing'.[101] The FMHA was tasked with establishing national standards for care and treatment, monitoring the quality of mental health services offered in the nation, and carrying out a number of other duties.[102] However, with health now being governed at the provincial level, the FMHA was dissolved in 2010.[103]

Thirdly, the MHO enhanced safeguards for involuntary detention, which is one of the four categories of detention it provides for. Section 19(2) of the MHO limits the amount of time that a patient can spend in involuntary detention to no more than 72 hours. A psychiatrist or their designated medical officer must examine the patient within this time frame and make the required arrangements to begin care and therapy. This section attempts to lessen the widespread legal abuses that were typical prior to 2001.[104]

Fourthly, the MHO includes provisions pertaining to guardianship and property management of the victims under Chapter V. It creates a structure outlining the duties of property managers and guardians, as well as their appointment procedures and guidelines for the inventory, investment, and disposal of their ward's property.[105]

[100] Mental Health Ordinance (n 10), s 2(m).
[101] ibid s 3(3)(v).
[102] ibid.
[103] Fawad Kaiser, 'Challenges to Mental Health Law in Pakistan' Asia Times (24 February 2020) https://asiatimes.com/2020/02/challenges-to-mental-health-law-in-pakistan/ accessed 1 August 2024.
[104] Mental Health Ordinance (n 10), s 19.
[105] ibid ss 29-46.

3.3. Provincial Legal Frameworks

3.3.1. Punjab Mental Health (Amendment) Act 2014

The Punjab Mental Health (Amendment) Act 2014 applies the Mental Health Ordinance 2001 (MHO) to Punjab following the 18th Amendment to the Constitution, making it the Punjab Mental Health Ordinance (PMHO).[106] The PMHO aligns with international standards, emphasising patient rights, community care, and rehabilitation.[107] The PMHO defines mental disorders based on significant impairments in mood, thought, perception, memory or orientation that affect an individual's ability to function effectively.[108]

The Punjab Mental Health Authority (PMHA) was established under Section 4 of the PMHO to oversee mental health matters in Punjab. The creation of the PMHA ensures that mental health governance is more localised, allowing for better adaptation to the specific needs and conditions of Punjab.[109] Section 5 outlines its composition, with the Punjab Government nominating a chairperson and up to ten members. The PMHA advises the Government on mental health promotion, prevention, and governance.[110]

Section 7 covers involuntary admission and treatment procedures, incorporating legal safeguards and judicial oversight to protect individual rights.[111] Section 8 requires all mental health facilities to register with the PMHA and comply with care standards, ensuring adequate treatment and services. The PMHO emphasises the protection of individuals with mental disorders under Section 6, ensuring their dignity, privacy, and safeguards against abuse and exploitation. Section 9 promotes rehabilitation and community integration through aftercare services, while Section 10 mandates

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[106] A Tareen and KI Tareen (n 71).
[107] S Dey, G Mellsop, K Diesfeld et al., 'Comparing Legislation for Involuntary Admission and Treatment of Mental Illness in Four South Asian Countries' (2019) 13 International Journal of Mental Health Systems 67 https://ijmhs.biomedcentral.com/articles/10.1186/s13033-019-0322-7 accessed 5 August 2024 ('S Dey, G Mellsop, K Diesfeld et al.').
[108] Punjab Mental Health Ordinance 2001, s 2(m).
[109] ibid, s 4.
[110] Suleman Chaudhry, 'Punjab Mental Health Authority Given Go-Ahead' Daily Times (9 December 2016) https://dailytimes.com.pk/41283/punjab-mental-health-authority-given-go-ahead/ accessed 7 August 2024.
[111] Punjab Mental Health Ordinance 2001 (n 108), s 6.

public awareness programs to reduce stigma and enhance understanding of mental health.[112]

Altogether, the PMHO is a positive step towards more consolidated treatment of mental health issues in Punjab. However, the PMHO's effectiveness is contingent upon proper implementation, adequate resources, and sustained efforts to raise public awareness and reduce stigma associated with mental health issues.

3.3.2. Khyber Pakhtunkhwa Mental Health Act 2017

The Khyber Pakhtunkhwa Mental Health Act 2017 is also based on the MHO.[113] It aims to regulate mental health care, protect patient rights, and provide community support in Khyber Pakhtunkhwa.[114] The Act emphasises the treatment, care, and management of mentally ill individuals and their families, including the management of their properties and affairs, in accordance with contemporary mental health needs.[115]

Sections 3 and 4 establish the Khyber Pakhtunkhwa Mental Health Authority, tasked with overseeing mental health matters in the province. This Authority is responsible for regulating mental health care, ensuring ethical treatment, and addressing peripheral matters related to mental health in the province.[116] While the Act does not explicitly elaborate on detention mechanisms, it emphasises ethical treatment and care for individuals with mental health conditions, ensuring safeguards are in place to protect their rights during treatment and management.

The Act aims to create a comprehensive framework for mental health care in Khyber Pakhtunkhwa, focusing on regulation, patient rights, ethical

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[112] Punjab Mental Health Ordinance 2001 (n 108), s 9.
[113] S Dey, G Mellsop, K Diesfeld et al. (n 107).
[114] Operationalisation of Mental Health Authority, Provincial Assembly Khyber Pakhtunkhwa, Resolution No.244 https://www.pakp.gov.pk/resolution/res-no-244-s7-2018-23/ accessed 9 August 2024.
[115] Khyber Pakhtunkhwa Mental Health Act 2017 (Khyber Pakhtunkhwa Act No XVII of 2017).
[116] Zeenat Khan, 'Mental Health Disorders in Khyber Pakhtunkhwa: Women Suffer More than Men' Hamara Internet (21 October 2019) https://hamarainternet.org/mental-health-disorders-in-khyber-pakhtunkhwa-women-suffer-more-than-men/ accessed 10 August 2024.

treatment, and community support. However, challenges such as resource constraints and infrastructure limitations must be addressed to fully realise its objectives. Without adequate funding and infrastructure, the ambitious provisions of the Act may struggle to achieve their intended impact.

3.3.3. Sindh Mental Health Act 2013

While the Punjab and Khyber Pakhtunkhwa Acts are largely similar to the MHO, the Sindh Act has made significant improvements. The Sindh Mental Health Act 2013 was the first provincial mental health law enacted after the 18th Amendment to the Constitution, which placed health under provincial jurisdiction.[117] Built on the foundation of the MHO, the Act aligns with contemporary understandings of mental health. It defines mental illness as substantial disorders of thought, mood, perception, orientation, or memory that significantly impair an individual's ability to function.[118]

The Sindh Mental Health Authority, established in August 2017 under the Act,[119] is tasked with implementing mental health policies and ensuring compliance with legal standards. Sections 3 and 4 outline the composition of the Mental Health Authority and the Board of Visitors, which includes a retired High Court judge from Sindh.[120] Sections 7 and 8 of the Act detail voluntary and involuntary admissions procedures, aiming for a balanced approach that respects patients' autonomy while providing mechanisms for care when individuals cannot make informed decisions.[121]

Section 54 empowers the Inspector-General of Prisons to visit mentally disordered individuals in custody and mandates provisions for diverting offenders with mental illnesses from the criminal justice system to mental health services.[122] The Act recognises two primary types of detention: civil detention for individuals requiring treatment due to severe mental illness and

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[117] 'New Law: Sindh Finalises Mental Health Ordinance' The Express Tribune (9 May 2013) https://tribune.com.pk/story/546246/new-law-sindh-finalises-mental-health-ordinance accessed 11 August 2024.
[118] Sindh Mental Health Act 2013, s 2(n).
[119] Sindh Mental Health Authority, 'Background' https://smha.sindh.gov.pk/background/ accessed 11 August 2024.
[120] A Tareen and KI Tareen (n 71).
[121] Sindh Mental Health Act 2013 (n 118).
[122] ibid s 54.

forensic detention for offenders with mental disorders who pose a risk to public safety.[123] Section 53(3) mandates the evaluation of individuals detained for offences affecting "public health, safety, convenience, decency, or morals" to determine their mental state. These evaluations help differentiate between offenders who require medical intervention and those subject to penal measures.[124] The Act further emphasises the importance of forensic mental health services to ensure appropriate treatment for offenders, facilitating their rehabilitation and reducing the risk of recidivism.

In recent years, the Sindh Government launched its first Mental Health Policy, developed with input from local and international stakeholders.[125] This policy addresses the province's growing mental health challenges by proposing measures such as integrating mental health education into medical curricula, allocating budgets, and translating legislation into local languages.[126]

The Sindh Act and its accompanying policy signify a progressive shift towards comprehensive and rights-based mental health care in Sindh. However, their success depends on effective implementation, sufficient resources, and sustained public awareness to combat the stigma surrounding mental health issues.

3.3.4. Balochistan Mental Health Act 2019

The Balochistan Mental Health Act 2019 is a progressive Act aimed at regulating mental health care, safeguarding the rights of patients, and promoting accessible and ethical mental health services in Balochistan. The Act defines mental illness and mental disorders similarly to the MHO 2001.[127] However, it highlights the need for expanded definitions that reflect advancements in medical science and align with WHO-recognised mental and

[123] S Dey, G Mellsop, K Diesfeld et al. (n 107).
[124] M Husain, 'Blasphemy Laws and Mental Illness in Pakistan' (2014) Psychiatric Bulletin 38:40–44 https://www.cambridge.org/core/journals/the-psychiatric-bulletin/article/blasphemy-laws-and-mental-illness-in-pakistan/60CB4CFE7BF4F665C4D4E8720E467509 accessed 17 August 2024.
[125] 'Mental Health Wave' The Nation (28 January 2024) https://www.nation.com.pk/28-Jan-2024/mental-health-wave accessed 24 August 2024.
[126] 'Sindh Leads the Way: Introduces First-Ever Comprehensive Mental Health Policy' SOHRIS (28 January 2024) https://sohris.com/sindh-leads-the-way-introduces-first-ever-comprehensive-mental-health-policy accessed 24 August 2024.
[127] Balochistan Mental Health Act 2019 (Act No IX of 2019).

behavioural disorders.[128] This would ensure a broader and more contemporary understanding of mental health issues.

Section 3 establishes the Balochistan Mental Health Authority, which is tasked with regulating mental health services in the province.[129] The Authority oversees hospital management, indoor treatment, and the roles of approved psychiatrists, ensuring compliance with ethical and legal standards. It further establishes clear protocols for voluntary and involuntary admissions under Section 8, requiring oversight by professionals and judicial review to safeguard patient autonomy. While similar to MHO, the Act aims to establish a comprehensive framework for mental health care in Balochistan, addressing both individual needs and systemic challenges.

However, the full implementation of the Act is contingent on the formulation of rules, which have yet to be developed. Additionally, the Act would benefit from updates to the definitions of mental and behavioural disorders to align with international medical standards.

4. THE WAY FORWARD: RECOMMENDATIONS FOR PAKISTAN

Pakistan grapples with intricate legal challenges in maintaining coherence across its mental health legislation. Although the provinces have made great efforts since the 18th Amendment, there has not been much notable federal advancement to improve policy beyond the Mental Health Ordinance of 2001.[130] Additionally, there is a pressing need for the provinces to establish further measures to augment mental health legislation and policies. The following recommendations could assist Pakistan in paving the way for future improvements in mental health legislation:

4.1. Establishment of Mental Health Authorities

Currently, only the Sindh Mental Health Authority (SMHA), established in 2017, is operational. However, it remains only partially functional despite its

[128] World Health Organisation, *International Classification of Diseases (ICD-11)* (*WHO*, 2019) https://www.who.int/standards/classifications/classification-of-diseases accessed 23 December 2024.
[129] Balochistan Mental Health Act 2019 (n 127), s 3.
[130] A Tareen and KI Tareen (n 71).

mandate.[131] Punjab is underway in establishing the PMHA. Meanwhile, the other two provinces are also in the process, but concrete legislative measures for operational mental health authorities are yet to be observed.[132]

At present, there is no specific authority or independent body responsible for evaluating the alignment of mental health legislation with international human rights standards.[133] To ensure compliance with international standards such as the CRPD, it is essential to establish a dedicated body that can monitor, assess, and guide legislative frameworks, ensuring they uphold the rights of PWDs and align with global human rights norms.

4.2. Amendments and Updates in the Existing Legislation

The existing provincial mental health legislation closely resembles the MHO, with minimal updates or adaptations to reflect changing times. Neither the provincial nor federal Acts have undergone significant modifications to address evolving needs and challenges in mental health care, such as the integration of mental health into primary care, the need for specific provisions addressing common disorders like anxiety and depression, and the establishment of crisis intervention services. Additionally, there is a lack of clear guidelines for forensic mental health services, insufficient emphasis on patient rights and autonomy, and a need for culturally competent care that considers Pakistan's diverse population. Furthermore, legislation should include provisions for public awareness campaigns to reduce the stigma associated with mental illness, encouraging individuals to seek help without fear of discrimination.

As per the Mental Health and Human Rights Report by the UN High Commissioner for Human Rights, [134] it is imperative to revise and refresh the

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[131] Sindh Mental Health Authority, 'Background' (n 119).
[132] K Dayani, M Zia, O Qureshi et al., 'Evaluating Pakistan's Mental Healthcare System Using World Health Organisation's Assessment Instrument for Mental Health System (WHO-AIMS)' (2024) 18 International Journal of Mental Health Systems 32 https://doi.org/10.1186/s13033-024-00646-6 accessed 13 September 2024.
[133] World Health Organisation, 'Mental Health Atlas, 2020: Member State Profile [Pakistan]' (*WHO*) https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/pak.pdf?sfvrsn=62378896_6&download=true accessed 13 September 2024.
[134] Office of the United Nations High Commissioner for Human Rights and United Nations General Assembly, 'Mental Health and Human Rights: Report of the United Nations High Commissioner for

provincial mental health legislation and integrate feedback from mental health professionals such as psychiatrists, psychologists, psychotherapists, and individuals who have personally experienced mental health issues. Such amendments would ensure that the legislation aligns with international human rights standards and addresses the current needs of mental health care in Pakistan.

4.3. Formulation of Rules and Regulations

The Mental Health Acts of Punjab, Sindh, and Balochistan require the government to enact rules and regulations to enforce the intended objectives of the Acts. Specifically, the Sindh Mental Health Rules 2014[135] were formulated by the Sindh Mental Health Authority (SMHA), making Sindh the only province with such a governing body. These Rules complement the Act by providing detailed procedures for implementation, including guidelines for patient admission, treatment protocols, and mechanisms for protecting patient rights. All provinces should establish similar rules regarding involuntary admission processes to ensure that individuals' rights are uniformly protected across jurisdictions.

Furthermore, it is imperative to develop Rules and Regulations for the Mental Health Acts of Balochistan, Punjab and Khyber Pakhtunkhwa and to align them with international standards. Additionally, reviewing and updating the Rules for the Sindh Mental Health Authority will help ensure consistency and effectiveness across all provinces, promoting a cohesive approach to mental health care in Pakistan.

4.4. Establishment of Board of Visitors

The mental health legislation in Sindh, Punjab, and Balochistan still empowers the formation of a Board of Visitors to oversee mental health institutions. This Board, consisting of seven members from Sindh and Punjab and nine from Balochistan, serves to ensure that patients receive proper

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Human Rights' A/HRC/39/36 (24 July 2018) https://www.ohchr.org/en/documents/reports/mental-health-and-human-rights-report-united-nations-high-commissioner-human accessed 15 September 2024.

[135] Sindh Mental Health Rules 2014, Chapter III: License.

treatment and that facilities operate ethically. Despite the establishment of a Board of Visitors in Sindh, there has been limited substantive scrutiny.[136] Notably, the Khyber Pakhtunkhwa Mental Health Act does not mention such a board, and neither Punjab nor Balochistan has appointed one yet.

Establishing a Board of Visitors in every province aligns with international standards outlined in the WHO QualityRights Initiative, which emphasises the importance of independent monitoring bodies in safeguarding the rights of individuals with mental health conditions. By implementing these boards, Pakistan can enhance accountability and promote a culture of ethical treatment in mental health care.

4.5 Free Consent and Involuntary Detention

The MHO and provincial legislation outline four categories of involuntary patient detention: admission for treatment (up to six months, renewable), admission for evaluation (up to 28 days), urgent admission (up to 72 hours), and emergency holding in a hospital (up to 24 hours). Applications for detention must be submitted by a medical official or the patient's parent, spouse, or guardian. These provisions are intended for situations where the patient poses a risk to their own or others' health and safety due to mental disorder. However, there are concerns about ambiguity in the criteria, leading to patients being detained against their will inappropriately.

The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, adopted by the UN in 1991, emphasise that involuntary treatment should be a last resort, applied only when a person poses a danger to themselves or others and is incapable of giving informed consent.[137] By incorporating these principles into mental health legislation, we can promote a more ethical and humane approach to mental health care that prioritises the rights and well-being of individuals.

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[136] Sindh Mental Health Authority, 'Board of Visitors' https://smha.sindh.gov.pk/board-of-visitors/ accessed 14 September 2024.

[137] United Nations General Assembly, 'The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care', Resolution 46/119 (17 December 1991) https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-protection-persons-mental-illness-and-improvement accessed 14 September 2024.

5. CONCLUSION

This article examines international standards for mental health legislation and evaluates Pakistan's legal framework and recent advancements in mental health law. While there have been improvements, significant gaps remain, including vague definitions, inadequate provisions for involuntary detention, insufficient regulation of mental health professionals, and weak malpractice mechanisms.

Key recommendations to enhance Pakistan's mental health legislation include establishing independent mental health authorities in all provinces, formulating comprehensive rules and regulations, creating Boards of Visitors for oversight, and prioritising informed consent in treatment. Addressing these gaps and implementing these recommendations will strengthen mental health legislation, ensuring quality, ethical, and rights-based mental health services for all citizens.