

Document

Prepared on behalf of Beneficiaries
regarding Draft "Bill enacted
for the provision to provide
treatment and protection of
Mental Health, 2068"



कोशीस
राष्ट्रिय मानसिक स्वास्थ्य
स्वावलम्बन संगठन



HimalPartner



२०१५

Document Prepared on behalf of Beneficiaries regarding Draft "Bill enacted for the provision to provide treatment and protection of Mental Health, 2068"



KOSHISH

National Mental Health Self-Help Organization

Khumal Height, Lalitpur, Nepal

Document Prepared on behalf of Beneficiaries regarding Draft "Bill enacted for the provision to provide treatment and protection of Mental Health, 2068"

Published by:

KOSHISH, National Mental Health Self-Help Organization

Khumal Height, Lalitpur

Tel: +977 1 5201830, 2221146

Email: info@koshishnepal.org Website: www.koshishnepal.org

Publication No. : 109

Edition : First, 2015

No. of Copies : 700 pcs

Advisor:

Matrika Prasad Devkota

Prepared by:

Advocate Sharmila Parajuli

Assisted by:

Deepa Lama

Layout / Setting:

Yubraj Chand

Chapter 1

1.1 Background:

It is a fundamental human right of each individual to live physically and mentally healthy life and is associated with individual's life, freedom, equality, and dignity. These rights of people are inborn, universal, indivisible, and interdependent which is connected with human value and dignity. It shall be respected, protected and fulfilled by any nation in any situation. Accepting the fact, National Mental Health Policy, 2053 (1997) was adopted by meeting of psychiatrists, psychologists, representatives of National Planning Commission and Ministry of Health and Population, held on Aswin 5, 2052 (September 21, 1995) at Director General of Health's Office at Teku to ensure the right of Nepalese citizens to live physically and mentally healthy life.

Among four policies adopted in 2053, third policy talks about the protection of fundamental human rights of the mentally ill in Nepal¹. The development and implementation of mental health

act suitable for the rights of the mentally ill and the wider community has been mentioned in the strategy of concerned policy, but nothing much is done in this field till 2062 B.S. Meanwhile, the Draft Bill for the Treatment and Protection of Mental Health was prepared in 2063 B.S. for the first time. For the reason to make timely amendment and modification on the basis of draft bill, "bill enacted for the provision to provide treatment and protection of mental health, 2068" was prepared in coordination with Mental Hospital, Lagankhel.

In this context, on 30th Aswin, 2065, the directive order has been issued in the name of the Nepal Government to make a law that protects the rights of the persons with mental health disabilities including their treatment and all other necessary issues related to them. Also, the directive order issued in the name of the Government of Nepal to carry out a study and submit a factual report to the court within 9 months from the date of receipt of the decision incorporating the population of mentally ill persons in

1, 2., Some of the disability related terms used in this document are quoted as it is used in law and policy of Nepal. KOSHISH owe an apology to the affects that may have on any person and organization relating to such terms.

Nepal, the number of hospitals, doctors, health workers and hospital beds available in Nepal for the treatment of these mentally ill persons, and the plan of actions of the Government for the insane persons.

In September 2014, government of Nepal adopted Mental Health Strategic Approach under National Action Plan for Prevention and Control of Non-Communicable Disease 2014-2020 after 18 years of approval of National Mental Health Policy, 2053. The action areas, key milestones, target completion date, implementing agency and coordinating agency from 2014 -2020 have been mentioned in the approach. Furthermore, it is also mentioned that ratification of Mental Health Legislation, 2068 should be done in line with the provision of Convention of Rights of Person with Disabilities (CRPD) 2006, International Covenant on Civil and Political Rights (ICCPR) 1966, International Covenant on Economic, Social and Cultural Rights, Convention on Child Rights 1989 by 2017.

Formulating legislation is a matter of public concern. Article 19 and 25 of International Covenant on Civil and Political Rights 1966, clearly states that it is the state's responsibility to ensure an opportunity for a meaningful participation of each individual in it. But, the beneficiaries were not included while formulating "draft bill for the provision to provide treatment and protection of mental health". Hence, concerned committee failed to fulfill the international obligation even after being a party country of Convention on Rights of Person with Disabilities, 2006 and International Covenant on Civil and Political Rights.

In this In this context, KOSHISH, an organization advocating for the beneficiaries of mental health for the first time organized an extensive discussion among mental health self-advocates upon the draft bill on 29th Bhadra, 2071 (14th September, 2014). During meeting, the discussion was carried from the preamble to the last clauses through the perspective of beneficiaries

1, 2., Some of the disability related terms used in this document are quoted as it is used in law and policy of Nepal. KOSHISH owe an apology to the affects that may have on any person and organization relating to such terms.

either which of them are beneficial or those which are not. As a result, KOSHISH has prepared three chapter form based on the comments and recommendations collected from the discussion and KOSHISH has forwarded an advocacy letter to the concerned government bodies to provide an opportunity to conduct an extensive discussion among target population and other stakeholders before providing a finalized format to the concerned draft bill. (See appendix -1)

1.2 Objectives:

- To enhance wide range of awareness regarding draft bill enacted for the provision to provide treatment and protection of mental health, 2068.
- To provide information to stakeholders formulating and implementing legislation on the clauses which are beneficial and which are not for the beneficiary groups.

1.3 Expected results:

- Enhanced awareness regarding draft bill enacted for the provision to provide treatment and protection of mental

health, 2068.

- Stakeholders formulating and implementing legislation are informed on clauses which are beneficial to the beneficiaries and those which are not.

1.4 Stakeholders:

- Members of Constituent Assembly and Members of Legislature Parliament
- Office of Prime Minister and Council of Ministers
- Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs
- Ministry of Home Affairs
- Ministry of Women, Children and Social Welfare
- Ministry of Federal Affairs and Local Development
- Ministry of Health and Population
- Nepal Law Commission
- Mental Hospital
- People with mental health problems/ psychosocial disabilities

Chapter 2

"Draft bill enacted for the provision to provide treatment and protection of mental health, 2068" was prepared in coordination with Mental Hospital, Lagankhel to timely amendment and modification on the basis of the draft bill.

Based on this regard, KOSHISH conducted an extensive discussion upon the bill by gathering self-advocates of mental health for the first time on 29th Bhadra, 2071 (14th September, 2014). The discussion was carried on which of the provisions among the entire preamble to last clauses mentioned in the bill are appropriate and which are not. Following is the comments and recommendations collected from discussion presented in three chapter form:

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
	<p>Name of the bill: Bill enacted for the provision to provide treatment and protection of mental health, 2068</p>	√	
	<p>Preamble: It is expedient to promote mental health, prevent mental illness, ensure access of all the citizens to quality basic mental health services and to rehabilitate the persons with mental health illness in the society by making contextual timely arrangements of the protection and care of the rights and interests of the persons with mental illness the Constituent Assembly, acting as the Legislature Parliament, has enacted this Act.</p>	×	It is discriminatory. Have no provisions for diagnosis. Amendments should be done in a timely manner.
Chapter-1			
<p>Clause 1 (1)</p>	<p>Short title and commencement: Mental Health Treatment and Protection Act, 2068</p>	×	Definition is not able to give a positive message. Mental health is viewed only through the medical approach. Does not include promotion of mental health.
<p>Clause 2 (a)</p>	<p>Definition: "Mental Illness" means the status where there is a change in the mental activities such as speech and thinking, feeling, memory power perception of outer worlds and behavior to cause him/her and/or to others suffering and distress which causes impairment of functioning. This term denotes both severe mental illnesses called psychotic and non-severe mental illnesses called non-psychotic where one's own situation and problem can be felt and known.</p>	×	It has been briefly defined and is not clear. For example: society is also a reason for mental illness. It has been defined only from the curative approach. Psychosocial problem has not been mentioned. Further, it has not mentioned either it is a mental illness or mental health problem.

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(b)	"Severe mental illness (Psychotic)" means the situation when the mentally ill person does not have knowledge of his/her own situation, shows unnatural or abnormal activities and lacks knowledge of the outcome and impact of the work, activities performed by him/her. This term also denotes the situation of permanent and serious type of impairment caused by severe mental illness or that remained uncured even after treatment of the illness by concerned psychiatrist.	×	No indicator to differentiate between severe and mild. DSM 5 has been already introduced. ICD – 10 mechanisms has been used for two mental illnesses.
(c)	"Mental health service" means the acts including promotion of mental health, prevention of mental illness and identification, diagnosis and assessment, treatment, care and rehabilitation of the person who has become ill due to mental illness.	×	Mental health service has been defined only from curative approach.
(d)	"Psychiatrist" means a person registered as physician in the Nepal Medical Council and having specialized academic qualification on mental health related subject after completion of higher study from an academic institution recognized by Nepal Medical Council.	√	
(e)	"Mental health practitioner" means a person having obtained academic qualification designated by the prevailing law for a mental health practitioner (clinical psychologist, psychiatric social worker, psychiatric nurse, occupational therapist, psychosocial counselor, person having obtained other mental health related trainings).	√	
(f)	"Person with mental illness" means a person inflicted by mental illness or a person receiving mental health services from a health practitioner, and this term also denotes patients admitted in a mental health institution.	×	Person with mental illness has been defined only from curative approach. Nothing has been mentioned about psychosocial problem.

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(g)	"Center" means the National Mental Health Center established and operated in accordance with this Act, and this term also denotes a branch, unit of the hospital of the government of Nepal or teaching hospital that provides mental health services.	×	Division or unit should be used instead of centre. Definition should be redefined. It has been defined only from curative approach.
(h)	"Rehabilitation centre" means an institution established with the objective of rehabilitation in the society of a person inflicted by mental illness respecting his/her human rights and dignity.	√	Rehabilitation should be in accordance to CBR.
(i)	"Mental Health Investigation Committee" means the Committee formed in accordance with Section 37.	×	It should be removed because the provision is contrary to CRPD.
(j)	"Patron" means the person designated or nominated by local District Administration Office in accordance with this Act for protection and management of rights, interest, care and property of the person suffering from severe mental illness.	×	The provision is contrary to CRPD. Such provisions highly control them. Thus, a supportive mechanism shall be formed.
(k)	"Local body" means District Development Committee, Metropolitan City, Sub-Metropolitan City or Municipality or Village Development Committee or including the wards within them.	√	
(l)	"Prescribed" or "as prescribed" means prescribed or as prescribed in this Act or the Rules framed under this Act.	√	

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons	
Chapter-2 : Establishment and operation of center				
Clause 3: Establishment and operation of Centre				
(1)	One National Mental Health Centre shall be established to provide advanced level, holistic service in the mental health sector.	×	It should be in accordance to the National Mental Health Policy, 2053.	
(2)	The center shall be situated in Lalitpur district.	×		
(3)	Nepal Government may establish branch or unit of the Centre also at other locations by publishing notice in the Nepal Gazette.	×	Should define holistic service.	
(4)	The mental hospital being operated during the commencement of his Act shall be operated with the name of National Mental Health Centre established under this Act.	×		
Clause 4: Objectives of the Centre				
(a)	Objectives of the Centre are as follows: To avail easily advanced comprehensive health services for investigation, diagnosis, treatment, psychosocial counseling and rehabilitation of the person with mental illness to make them capable for livelihood suitable for a human.	×	Objectives of the centre should be changed as role has been changed.	
	(b)	To develop and expand specialized expert service in the field of mental health.		×
	(c)	To conduct study and teaching and provide training to fulfill the lack of skilled manpower and health workers necessary in the field of mental health.		×
	(d)	To conduct research related works in the field of mental health.		×
	(e)	To develop and expand community based integrated mental health service adopting modern technology in the mental health service sector.		×
(f)	To provide suggestions to Nepal Government to formulate policies and plans in the mental health sector.	√		
(g)	To conduct public health related activities for promotion of mental health and prevention of mental illness.	√		

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(h)	To implement activities relating to rehabilitation, social security and protection of rights and interest of the Persons with mental illness.	√	
(i)	To conduct other creative works in the mental health sector.	√	
Clause 5: Centre shall be an autonomous institution			
(1)	The center shall be an autonomous and organized institution with continuous succession.	×	Should be in accordance to National Mental Health Policy, 2053.
(2)	The center shall have a separate stamp of its own.	×	
(3)	The center may, like an individual, acquire, utilize, sell or manage in other ways fixed or current assets by its name	×	
(4)	The center may sue or defend any case by its name and also be sued by it also be sued by its name.	×	
Clause 6: Functions, duties and powers of the Centre			
(1)	The functions, duties and powers of the Centre shall be as follows:		
(a)	To formulate policies, plans and programs necessary to achieve objectives of the Center and to implement and cause to implement them.	×	Should be in accordance to the National Mental Health Policy, 2053.
(b)	To organize and conduct higher study, research, survey, workshop, assembly, conference, seminar etc. on the subject of mental health to achieve the objectives of the Centre and to participate in national and international assembly, conference, workshop, seminar etc. related to it.	×	Should be in accordance to the National Mental Health Policy, 2053.
(c)	To maintain coordination and collaboration with the native and international, governmental and non-governmental organizations to enhance the level of activities for quality treatment of mental illness and rehabilitation as well as protection and safeguard of the rights and interest of the Person with mental illness.	√	

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(d)	To receive in kind, financial, technical and other assistance necessary for the Centre from Nepal government or foreign government or native or international organization, institution, agency or individuals to run the Centre and to manage them.	×	Should be in accordance to the National Mental Health Policy, 2053.
(e)	To develop, expand and diversify scientific instruments, laboratory, library and other facilities necessary for the Centre.	×	Should be in accordance to the National Mental Health Policy, 2053.
(f)	To exchange expert services related to mental illness in the national and international sector.	√	
(g)	To recognize and award organizations, institutions or individuals making outstanding performance in the mental health sector.	√	
(h)	To collaborate or partner with individual, private sector or organization, institution working effectively in the mental health sector.	√	
(i)	To provide technical assistance to the agencies working for prevention, diagnosis, treatment, rehabilitation and protection of rights and interest in the field of mental illness.	√	
(j)	To conduct periodical review and evaluation of the projects and programs implemented by the Centre.	×	Should be in accordance to the National Mental Health Policy, 2053.
(k)	To perform and cause to be perform other functions as prescribed.	√	
Clause 7: Management committee of the center			
(1)	A Management Committee comprising the following Members shall be formed to determine policies, management, protection, development and expansion of the Centre:	×	Should be in accordance to the National Mental Health Policy, 2053.
(a)	A psychiatrist nominated by Nepal Government from among the senior psychiatrists who have worked in the mental health sector at least 20 years- Chairman	×	Not only psychiatrist but others as well should be included.

Clauses / Sub clause	Provisions	Right (✓) Not right(×)	Reasons
(b)	Two persons including one woman nominated by Nepal Government from among renowned individuals working in the social sector and who have passed at least bachelors level-Member	✓	
(c)	Representative, gazetted first class or eleventh class, Ministry of Health and Population-Member	×	Should include other Ministries as well.
(d)	Two persons including one women nominated by Government of Nepal with recommendation of the Center from among the consultant physicians/doctors- Member	×	Should not have physicians only.
(e)	Senior clinical psychologist of the Centre-Member	×	Individuals working in the field of mental health sector should also include- psychosocial counselors, social workers, human rights activist etc.
(f)	Matron of the Centre-Member	×	
(g)	Executive Director of the Centre- Member Secretary	×	

Clause 8: Functions, duties and powers of Management Committee: The functions, duties and powers of Management Committee shall be as follows:

(a)	To formulate short term and long term plan for development and expansion of the Centre,	×	The word center should be removed.
(b)	To make arrangements of the resources and means necessary to manage and operate the Centre,	×	
(c)	To endorse the budget of the Centre,	×	
(d)	To determine service charge of the Center,	×	
(e)	To protect and care physical property of the Centre,	×	
(f)	To submit annual report of the Centre to Nepal Government,	×	
(g)	To perform other functions necessary for fulfillment of the objectives of the Centre.	×	

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
Clause 9	Functions, duties and powers of Chairman: Functions, duties and powers of Chairman shall be as prescribed.	×	Needs study. Functions, duties and powers should be well defined.
Clause 10: Executive Director of the Centre			
(1)	Nepal Government shall nominate an executive Director from among senior psychiatrists to manage daily administration of the Centre as administrative chief.	×	Should remove center. Should study management of other countries.
(2)	Term of office of the Executive Director nominated in accordance with sub section (1) shall be four years and s/he may be re-nominated.	×	
(3)	Functions, duties and powers of Director shall be as prescribed.	×	It should be division instead of center Should study other countries.
Clause 11: Technical Committee, Sub-committee or Task Force may be set up			
(1)	The center may set up Technical Committee, Sub-committee or Task Force as required to run its activities,	×	Should be division instead of center.
(2)	The facility, function, duties and powers of the Technical Committee, Sub-committee or Task Force according to sub-section (1) shall be as prescribed by the center.	×	
Clause 12: Meeting and decision of the Management Committee:			
(1)	Meeting of the Committee shall be as prescribed by the Chairman of the Committee.	√	
(2)	Member Secretary of the Committee shall call a meeting by informing the Chairman if one third Members of the Committee demand in writing for a meeting.	√	
(3)	If the post of the Committee Chairman falls vacant or in the absence of the Chairman, the Committee Member Secretary may call the Committee meeting as per the need.	√	
(4)	Presence of the fifty percent of the total Members of the Committee shall be deemed as quorum for the Committee meeting.	√	

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(5)	Meeting of the Committee shall be chaired by the Committee Chairman and in his/her absence by the person selected by the Committee Members form among themselves.	√	
(6)	The opinion of the majority shall prevail in the Committee Meeting and if there is equal vote the person chairing the Meeting shall cast the decisive vote.	√	
(7)	Decision of the Committee shall be verified by the Member Secretary of the Committee.	√	
(8)	The Committee Meeting should be held at least once in every four months every year.	√	
(9)	If deemed necessary by the Committee, it may invite any officer of Nepal Government or any other expert to the Committee Meeting as observer.	√	
(10)	The Committee itself may determine procedure relating to the Committee Meeting.	√	
Clause 13: Fund of the Centre			
(1)	The center shall have a separate fund of its own and following types of amounts shall contain in the fund:	×	Should be division instead of center.
(a)	Grant amount receive from Nepal Government,	√	
(b)	Amount received by the Centre for the services provided by it,	×	Should be division instead of center.
(c)	Amount received from any foreign organization or government or international organization or other donor organization,	√	
(d)	Amount received as grant from various institutions, organizations or individuals,	√	
(e)	Amount received from other sources.	√	
(2)	All the expenditures of the Centre shall be borne from the fund in accordance with sub-section (1).	×	
(3)	The amount to be received in the fund of the Centre shall be deposited by opening account in any commercial bank of Nepal.	×	

Clauses / Sub clause	Provisions	Right (✓) Not right(×)	Reasons
(4)	The fund of the Centre shall be operated by joint signature of the Executive Director and Accountant Chief of the Centre.	×	
(5)	The Centre should obtain consent from Nepal Government prior to receiving amount in accordance with the clause (c) of sub-section (1) and it must be spent for the same purpose as received for	×	
(6)	Other provisions relating to management of the fund of Centre shall be prescribed.	×	
Clause 14: Accounts and Auditing			
(1)	The auditing of the income and expenditure of the Centre shall be maintained according to the system adopted by Nepal Government.		Should be division instead of centre.
(2)	Management relating to the financial administration of the Centre shall be as prescribed.	×	
(3)	Auditing of the Centre shall be in accordance with the prevailing Nepal law.	×	Should be division instead of centre.
Clause 15	Provision relating to staff: Centre may appoint technical and administrative staff as required and their service, condition and facilities shall be as prescribed.		Should be division instead of centre.
Chapter-3 : Examination and treatment of mental health			
Clause 16: Examination of Mental health			
(1)	Examination of mental health status of a person should be conducted with the consent of the same person and if s/he is unable to give consent, with the consent of his/her patron.	×	Guardian only is not sufficient. Development of a supportive mechanism is necessary.

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(2)	While seeking consent according to sub-section (1), prior information regarding the nature of treatment being provided to such person, tentative duration of treatment, possible effect of the proposed treatment service in the physical and mental health of the patient and the facilities that can be made available by the Centers should be provided in manner that is clearly understood by the patient or to his/her patron if the patient is not conscious.	×	Guardian only is not sufficient. Development of a supportive mechanism is necessary. Should remove the word center.
(3)	Notwithstanding anything contained in sub-section (2), if two physicians including one psychiatrist recommend him/her to treat by admitting in the Centre after examination of mental health of a person voluntarily present in the Centre for mental health examination, this will not prohibit to treat him/her by admitting in the Centre even if such person does not want to be admitted voluntarily.	×	Should remove the word center. Should develop a supportive mechanism. Develop the right to treatment but should not be forcefully admitted for treatment. Should have provision to provide treatment wherever s/he wants to be treated.
Clause 17 :Treatment of a Person with mental illness			
(1)	Every person with Mental Illness will have legal right to obtain treatment through latest technological means like any other general citizen.	×	Should describe the meaning of latest technology. Not allowed to use human body in the name of latest technology.
(2)	Every Person with Mental Illness shall be protected from the misuse of mental treatment and s/he shall be entitled to any type of legal service.	√	

Clauses / Sub clause	Provisions	Right (✓) Not right(×)	Reasons
(3)	In the following circumstances, any person who is mentally ill shall be provided with treatment by admitting in the Centre:	×	
(a)	When a physician verifies after examination in accordance with Section 16 that s/he should be treated by keeping in the Centre for a certain period.	×	
(b)	If recommendations from the local body, police or other health institution to provide treatment by keeping him/her in the Centre is verified while examining his/her mental status/situation.	×	
(c)	In case examination of mental status of a detainee or prisoner kept in a prison verified him/her as requiring treatment by keeping in the Centre.	×	All should be removed. Not permitted to enroll forcibly for treatment. Other rights should not be violated in protecting the right to treatment. Should develop a supportive mechanism. Should include all the aspects while establishing mechanism.
(4)	A Person with Mental Illness admitted to the Centre according to sub-section (3) shall not be kept at the Centre normally for more than a duration of three months. It will however not prevent a patient undergoing treatment with admission in the center to provide treatment service in the Centre for more than three months in accordance with the recommendation regarding mental health of the patient by the Committee formed under Section 37 of the Act.	×	Law shall be formed regarding legal capacity.

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
Clause 18: Patient may be discharged or allowed a leave			
(1)	The patient admitted and receiving treatment in the Centre in accordance with this Act may be discharged at any time with the recommendation of at least a consultant psychiatrist or at least Asst. Professor level psychiatrist.	×	Should be completely removed. Should not allow forceful treatment. Other rights should not be violated in protecting the right to treatment. Should develop a supportive mechanism for the protection of human right. Should include all the aspects while establishing mechanism. Should protect human rights.
(2)	If the spouse or patron of the patient, expect detainee or prisoner, being treated with admission requests with the Centre to allow to take him/her on leave for a certain period, the Centre, if consultant psychiatrist/Asst. Professor level psychiatrist becomes convinced on the following matters, may allow to take on leave for a certain duration by determining certain conditions:	×	
(a)	If it is found that the applicant is capable to care and protect the Person with Mental Illness,	×	
(b)	If it is found that the applicant is capable to prevent harm to the patient himself/herself or any other person, and	×	
(c)	If it is seen convincing at the time of granting consent that the applicant shall arrange presence of the patient after completion if the designated duration.	×	
(3)	The person taken away in accordance with sub-section (2) should be made present in the Center after completion of the designated duration.	×	
Clause 19: Record of the patient			
(1)	The Centre shall maintain registration record of the mentally ill person who is getting treatment by being admitted to the Centre with the following details:	×	Should remove the word Centre. Maintain confidentiality while recording.
(a)	Name, surname, age, gender, occupation and address of the patient and his/her patron or guardian,	√	
(b)	Detail of disorder,	√	

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(c)	Duration of admission and treatment in the Centre,	×	Should remove the word Centre
(d)	Description of the treatment provided to the patient,	√	
(e)	In case the patient has died, date, time and cause of death,	√	
(f)	Name, surname and post of the psychiatrist and health practitioner involved in the treatment if the patient,	√	
(g)	Other details as prescribed.	√	
(2)	The details in accordance with sub-section (1) should be maintained till the duration designated by the Centre.	√	

Chapter 4 : Welfare and protection of Person with Mental Illness

Clause 20: Person with mental illness shall not be prohibited from enjoying the rights

(1)	No one shall be prohibited from enjoyment and practice of any of the rights enjoyed by general citizen on the basis of being inflicted with mental illness.	√	
(2)	The provision of the sub-section (1) will not be applicable if the Committee formed under section (37) recommends of being inflicted by severe mental illness.	×	Because the provision is kind of depriving the legal capacity. Should form law regarding legal capacity.

Clause 21: Social security to be provided to the Person with Mental Illness

(1)	The government shall provide Disability allowance as well as other social security facilities in respect to those who become disabled being inflicted by severe mental illness and remain uncured by treatment.	√	
-----	---	---	--

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(2)	Nepal Government shall make necessary policy and structural arrangements for treatment, care and rehabilitation of the Person with Mental Illness by developing and expanding community based integrated mental health services.	√	
Clause 22	<p>Abortion can be allowed:</p> <p>Notwithstanding anything contained in prevailing Nepal laws, abortion, in consultation of doctor, of unwanted pregnancy by a woman verified as being inflicted of severe mental illness by the Committee formed under section (37) shall not be prevented.</p>	×	Because the provision 37 is kind of depriving a legal capacity. It is to be considered and Muluki ain (General code) related to abortion should be studied.
Clause 23: Patronage to be provided			
(1)	Any person inflicted with severe mental illness should be provided with patronage by the patron designated by the local district administration office as requested by his/her family.	×	Should mention legal capacity. Should develop supportive mechanism.
(2)	The local body should provide patronage to an unattended person who is unhealthy due to severe mental illness.	×	Should develop supportive mechanism to prevent abuse.
(3)	The local body should provide to the Centre details of the persons provided with patronage in accordance with sub-section (2).	×	Should remove the word center.
(4)	The local body may hand over the unattended person who is ill due to severe mental illness to be kept under the patronage of any benevolent person or organization, institution.	×	Should develop supportive mechanism to prevent abuse.

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
Clause 24: Protection and use of property			
(1)	The spouse or patron of the person inflicted with severe mental illness can submit application at the local administration office for search, protection and management of any of his/her fixed or current assets.	×	Should develop supportive mechanism to prevent abuse.
(2)	If application is received in accordance with sub-section (1), the local administration office may order the patient to be present or cause to be presented in the designated date, time and place.	×	
(3)	For the purpose of this section, the local administration office may cause to conduct search and investigation of the property of the mentally ill person by setting up a committee comprised of two or more than two persons including psychiatrist of the Centre and after the completion of the investigation, the local administration office shall keep record of the following:	×	Should remove the word center. Should clearly mention who shall be the individuals (two / more than two) comprised in committee.
(a)	Whether the person said to be mentally ill is really being inflicted with severe mental illness or not.	√	
(b)	Whether the person said to be mentally is capable to take care of himself or herself and protect and manage his/her own property or not.	√	
(4)	In case the local administration office, pursuant to sub-section (3), mention in its record that the person is found to be ill due being inflicted severe mental illness is unable to look after himself or herself and protect and manage his/her own property, it can designate or nominate an appropriate person from among his/her family or relatives as his/her patron for care of the person and protection and management of his/her property.	×	Should develop a supportive mechanism to protect human rights of the person, to prevent any kind of abuse and to protect his/her property.
(5)	While acting in accordance with this section, if the local administration becomes convicted that the person is not ill due to severe mental illness or is capable to look after him/her and for protection and management of own property it can nullify action related to this at any time.	×	

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
Clause 25: Responsibility and benefits of the patron			
(1)	The person designated or nominated in accordance with section 23 should perform appropriate care of the ill person inflicted with severe mental illness and protect and manage his/her property.	×	Should develop a supportive mechanism to protect human rights of the person, to prevent any kind of abuse and to protect his/her property.
(2)	The patron may use the property of the person ill with severe mental illness for his/her benefit and welfare. But, the patron shall not mortgage, sell, transfer rights, give away as gift exchange or destroy in any way without receiving consent of the relevant local administration office.	×	
(3)	The patron designated or nominated in accordance with this Act may receive monthly remuneration from the property of the patient for caring the patient and protection and management of his/her property as determined by the local administration office.	√	
(4)	The patron should submit description of property of the concerned patient to the local administration office every four months.	√	
Clause 26: Not to be discriminated or misbehaved			
(1)	No one should perform any type of discriminatory behavior or stigmatize a person who is mentally ill.	√	
(2)	No one should do any activities imparting negative impact to the physical or mental health of the mentally ill patient by using force or hooliganism or beating or in any other way.	√	
(3)	Notwithstanding anything contained in sub-section (2), if the person who is mentally ill acts to harm anyone or disturbs law and order situation or if there is a reliable ground to believe that there will be harm or loss to even the health of such person if not taken under control, this section shall not be deemed to prevent from taking control of such a person with a human treatment.	×	Should develop a supportive mechanism to prevent abuse.

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
Clause 27: Responsibility to be borne			
(1)	If a husband or wife in a couple after marriage becomes inflicted of any mental illness, his/her spouse shall have the responsibility to look after and protect such patient.	√	
(2)	Notwithstanding anything contained in sub-section (1), if it is proved by the committee formed under section 37 that the impairment through severe mental illness remains uncured even after treatment for at least 3 years, there is no prohibition in the second marriage by the spouse of the disabled patient with the consent of himself/herself or his/her patron or guardian in accordance with the prevailing law.	×	It is not be certified by the committee. Should have right to divorce as per others. Should refer chapter on marriage in Muluki ain (General code).
Clause 28	Not to be used in health investigation and research: Except on the following circumstances, no Person with Mental Illness should be used for research:		
(1)	If such research directly benefits diagnosis and treatment of his/her disease,	√	
(2)	If s/he himself/herself has provided consent or by his/her patron if s/he is not in a position to give consent,	×	Should develop supportive mechanism.
(3)	On other situations as prescribed.	×	Should clarify other provisions as well.
Clause 29	Not to be involved in work by force: No Person with Mental Illness should be forcibly involved in any work without his/her wish and without remuneration or wages.	√	
Clause 30: Secrecy should be maintained			
(1)	Details related to mental disorder of a person with mental illness should be kept secret.	√	
(2)	Notwithstanding anything contained in sub-section (1), availing the details of Person with Mental Illness shall not be regarded as breach of secrecy on the following circumstances.	√	
(a)	If the concerned person has consented,	√	

Clauses / Sub clause	Provisions	Right (✓) Not right(×)	Reasons
(b)	If the court asks for the details of his/her health,	✓	
(c)	In a situation when the health of the patient shall be at serious risk if the information about mental health of such person is not provided, and	✓	
(d)	If the psychiatrist involved in treatment believes that there may be public damage of some kind.	×	The provision is against CRPD.
Clause 31: To be supervised			
(1)	When the ill person inflicted with severe mental illness is kept under custody of patron for his/her rights, benefit and protection, the Centre may form a Supervision Committee as follows to monitor and supervise the place where s/he is kept, status of service and protection provided to him/her:	×	Should remove the word centre.
(a)	Psychiatrist nominated by the chief of the Centre- Coordinator.	×	
(b)	Representative, National Human Rights Commission of the district where the Center is located or Nepal Bar Association of the district when the Centre is located-Member	×	
(c)	Representative, local District Administration Office of the district where the Centre is located-Member	×	Should remove the word centre. There should be social workers, human rights activists, counselors etc.
(d)	Representative of local body-Member	✓	
(2)	The committee in accordance with sub-section (1) should monitor and supervise the place where the mental patient is kept every year as deemed necessary.	✓	
(3)	If it is found through monitoring and supervision of the Committee in according with sub-section (2) that the place where mentally ill person is kept, the treatment by his/her family or patron does not comply with the minimum human norms and values, they should be given directive to do so and it should be informed to the Centre.	×	Should remove the word centre.

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
(4)	The report of monitoring and supervision conducted in accordance with the section should be submitted by the Committee to the Chief of the Centre.		
(5)	Other provisions relating to monitoring and supervision shall be prescribed.	×	Provisions should be clearly defined as allocated.
Clause 32: Emancipation from offence			
(1)	The person verified by the Committee formed in accordance with section 37 of the Act as being inflicted by severe mental illness shall not be sued or punished for criminal offences caused during the time of being inflicted by severe mental illness.	×	Because of the chances of misuse of this provision.
(2)	If the Committee formed in accordance with section 37 of the Act recommends that a person staying in a prison being convicted of any criminal offence is inflicted by severe mental illness, Nepal Government may emancipate such person from rest of the sentence.		Should be according to the principle of reasonable accommodation of CRPD.
Chapter-5 : Offence and punishment			
Clause 33. To be regarded as offence: Performance of any of the following activities shall be regarded as offence under this Act.			
(a)	If a physician or health worker verifies false or illusive description that states mentally healthy person as mentally ill or mental health cured after treatment or states that she/he is kept under custody due to mental disorder or refers mentally ill person as healthy person.	√	
(b)	It the patron appointed in accordance with section 25 does not look after or provide patronage to the mentally ill person.	√	
(c)	If the patron appointed in accordance with section 24 does not protect or manage the property appropriately and causes damage and loss.	√	
(d)	If forced to work without remuneration in accordance with section 29.	√	
(e)	If secrecy is breached against section 30.	√	
(f)	If performed or cause to perform any activities prohibited under this Act.	√	

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
Clause 34: Punishment			
(1)	Any person performing offence mentioned in section 33 shall be fined Rupees ten thousand to Rupees one hundred thousand in accordance with the severity of crime.	×	Should increase the quantity of punishment.
(2)	Apart from sub-section (1), if the patron is found to have caused damage or loss to the property of the ill person due o mental illness, the victim shall be provided compensation amounting to double of the property damage or lost.	√	
Clause 35.	Case to be sued: Initial action and decision of the cases of the offences in accordance with this Act shall be conducted by concerned district court.	√	
Clause 36.	Government to be plaintiff: Government will be plaintiff in the cases of the offences in accordance with this Act.	√	
Chapter- 6 : Miscellaneous			
Clause 37: Mental Health Examination Committee			
(1)	For the purpose of this Act, there will be one Mental Health Examination Committee as follows:	×	An extensive discussion should be done regarding the need of mental health examination committee.
(a)	Executive Director of the Centre or a senior psychiatrist designated by him/her-Chairman.		
(b)	Senior clinical psychologist of the Centre- Member		


Clauses / Sub clause	Provisions	Right (✓) Not right(×)	Reasons
(c)	One person nominated by the Chief of the Centre from among the renowned persons in the psychiatric sector- Member.		An extensive discussion should be done regarding the need of mental health examination committee.
(d)	Chairman of Nepal Psychiatrist Association or a representative designated by him/her – Member.		
(e)	One of the psychiatric nurse of the Centre (having at least Bachelors level education qualification in Psychiatric Nursing) or psychiatric social worker (having at least Bachelors level educational qualification in Psychiatric Social Work) by turn- Member.		
(f)	One woman psychiatrist nominated by chief of Centre- Member.		
(2)	Functions, duties and powers of the committee in accordance with sub-section (1) shall be prescribed.		
(3)	Meeting of the Committee in accordance with sub-section (1) shall be held as per necessity.		
(4)	In a district where the Committee in accordance with sub-section (1) does not exist, evidence and recommendations made by a here members committee coordinated by a consultant psychiatrist of Nepal Government's hospital or Assistant Professor level of psychiatrist at government teaching hospital and Chief of the concerned hospital and one expert doctor as members, shall be regarded as the function performed by the Committee in accordance with sub-section (1).		
Clause 38: Functions, duties and powers of the Mental Health Examination Committee			
(1)	In addition to the functions, duties and powers set forth in this Act elsewhere, the functions, duties and powers of the Mental Health Examination Committee shall be as follows:		An extensive discussion should be done regarding the need of mental health examination committee.
(a)	To conduct re-examination and provide certificate if any dispute arises in the evidence provided by psychiatrist regarding mental health status of a mentally ill person.		
(b)	To review and investigate if any complaint lodged regarding recommendation of the Committee in accordance with section (37), sub-section (4) of this Act.		

Clauses / Sub clause	Provisions	Right (✓) Not right(×)	Reasons
(c)	To perform other duties as prescribed.		
Clause 39: Establishment of Rehabilitation Centre			
(1)	Nepal Government shall set up and run Rehabilitation Centre as per necessary for the benefit and welfare of the persons recommended by the Committee in accordance with section 37 to be kept under supervision of psychiatrist or mental health worker or clinical psychologist for a certain duration even if the mentally ill person receives mental health services from mental health institution or Centre.	×	Should use the term "Community based rehabilitation service" instead of Centre.
(2)	Following types of services and facilities shall be availed in the Rehabilitation Centre set up in accordance with sub-article (1) :		
(a)	Sports, physical exercise and various entertainment and refreshment facilities.	✓	
(b)	Arrangements to purchase means for information and communication required on daily basis.	✓	
(c)	Appropriate regular treatment services by doctor, clinical psychologist and trained health workers qualified in relevant subject.	✓	
(d)	Supply of treatment and regular treatment services.	✓	
(e)	Other services and activities prescribed by Nepal Government by publishing notice in the Nepal Gazette time to time.	✓	
(3)	Management of the Rehabilitation Centre set up in accordance with sub-article (1) shall be as prescribed.	×	Should remove the word centre.
Clause 40	Nepal Government to regulate: Nepal Government shall promote and collaborate as well as approve and regulate non-government private, cooperative, organization, institution working in the fields of mental health and alcohol and drugs addiction by setting up necessary guidelines.	✓	
Clause 41	Provision of the Act shall prevail: If any provision relating to mental health and disease in any prevailing law is inconsistent with this Act, the provision of the prevailing law shall not apply to the extent of its inconsistency.	✓	

Clauses / Sub clause	Provisions	Right (√) Not right(×)	Reasons
Clause 42	May pronounce directives: Nepal Government may pronounce directives to the Centre if deemed necessary to implement objectives of this Act, and it shall be the duty of the Centre to comply with such directives.	√	
Clause 43	Powers to frame rules or directives: Nepal Government may frame necessary rules and directives for implementation of the objectives of this Act.	√	
Clause 44	Liaison Ministry: In making contact with the Government of Nepal for implementation of this Act, the Centre shall do so through the Ministry of Health and Population.	√	
Clause 45: Repeal and saving			
(1)	Mental Hospital Development Committee (Formation) Order, 2059 BS and the rules and by-laws framed under it are, hereby repealed.	√	
(2)	All the fixed and current properties, rights and liabilities, biddings and agreements of the Mental Hospital Development Committee formed in accordance with Mental Hospital Development Committee (Formation) Order, 2059 shall be transferred to the National Mental Treatment Centre, Patan.	×	Should remove the word Centre.
(3)	The staff recruited at the Mental Hospital Development Committee shall be transferred in the service of the Center formed in accordance with this Act.	×	
(4)	All the actions performed in accordance with the Mental Hospital Development Committee (Formation) Order, 2059 shall be deemed as carried out in accordance with this Act.	×	

Apart from this, there is no especial provision for children, women, and old age in this bill. Therefore, an extensive discussion regarding this matter is necessary.

Annex



कोशिश

राष्ट्रिय मानसिक स्वास्थ्य स्वावलम्बन संगठन

फोन: ९७७-०१-५२०१८३०, ५२०१८३०
वेब साईट: www.koshishnepal.org ईमेल: info@koshishnepal.org


च.नं. २५३

मिति: २०७२।०३।०९

मा. श्री गंगा चौधरी (सत्वौषा), सभापति, विधान समिति, सिंहदरवार
मा. श्री सुशील कुमार श्रेष्ठ, सभापति, सामाजिक न्याय तथा मानव अधिकार समिति
श्रीमान् सचिवज्यू, प्रधानमन्त्री तथा मन्त्रपरिषद्को कार्यालय, सिंहदरवार
श्रीमान् सचिवज्यू स्वास्थ्य तथा जनसंख्या मन्त्रालय, रामशाहपथ
श्रीमान् सचिवज्यू, महिला, बालबालिका तथा समाजकल्याण मन्त्रालय, सिंहदरवार
श्रीमान् सचिवज्यू, कानून, न्याय, संविधानसभा तथा संसदीय मामिला मन्त्रालय, सिंहदरवार

विषय : सुभाबको साथै अनुमोदन हुन गइरहेको "मानसिक स्वास्थ्य उपचार तथा संरक्षण गर्ने सम्बन्धमा व्यवस्था गर्न बनेको विधेयक" मस्यौदा, २०६८ मा लक्षित वर्गको हैसियतले सहभागिताका साथै अन्य सम्पूर्ण संरोकारवालाहरूलाई सहभागी गराई त्यस विधेयक मस्यौदामा व्यापक छलफल गराई मात्र अन्तिम स्वरूप प्रदान गरी पाउँ ।

महोदय,
उपरोक्त सम्बन्धमा यही मिति २०७१ साल भाद्र १७ (१६-१७ सेप्टेम्बर, २०१४) मा स्वास्थ्य तथा जनसंख्या मन्त्रालयले राष्ट्रिय मानसिक स्वास्थ्य नीति, २०५३ लाई अनुमोदन गरेको १८ वर्षपछि नसने रोगहरूको रोकथाम तथा नियन्त्रणका लागि राष्ट्रिय कार्ययोजना, २०१४-२०२० अन्तर्गत मानसिक स्वास्थ्यको रणनीतिक त्रीका पनि समावेश भएको व्यहोरा यहाँलाई अवगत गराउन चाहान्छौ ।
यस मानसिक स्वास्थ्यको रणनीतिक त्रीका अन्तर्गत सम्पन्न गरिने विभिन्न मुख्य कार्यहरू मध्ये सन् २०१७ सम्ममा मानसिक स्वास्थ्य विधेयक-२०६८ लाई अगाडि ल्याएका व्यक्तिको अधिकारसम्बन्धी महासन्धि-२००९, नागरिक तथा राजनीतिक अधिकारसम्बन्धी अन्तर्राष्ट्रिय प्रतिज्ञापत्र-१९६६, आर्थिक, सामाजिक तथा सांस्कृतिक अधिकारसम्बन्धी अन्तर्राष्ट्रिय प्रतिज्ञापत्र-१९६६ र बालअधिकारसम्बन्धी महासन्धि-१९८९ को प्रावधान अनुरूप अनुमोदन गर्ने भन्ने उल्लेख गरिएको बारेमा यहाँलाई ध्यानाकर्षण गराउन चाहान्छौ ।
सर्वप्रथम "मानसिक स्वास्थ्य उपचार तथा संरक्षण ऐन, २०६३" प्रथम पटक २०६३ सालमा नै मस्यौदा भएको र त्यसमा पटक-पटक संशोधन तथा परिमार्जन भएको व्यहोरा यहाँलाई जानकारी गराउन चाहान्छौ । यसै मस्यौदा विधेयकलाई आधार बनाएर पटक-पटक समय सापेक्ष संशोधन तथा परिमार्जन गर्न मानसिक अस्पताल लगनखेलको संयोजनमा "मानसिक स्वास्थ्य उपचार तथा संरक्षण गर्ने सम्बन्धमा व्यवस्था गर्न बनेको विधेयक मस्यौदा, २०६८" तयार गरिएको थियो ।
यसै सन्दर्भलाई आधार बनाएर कोशिशले मिति २०७१।०५।२९ (१४ सेप्टेम्बर, २०१४) मा स्व-वैरवीकर्ताहरूलाई प्रथम पटक भेला गराई त्यस विधेयकमाथि दफावार छलफल गराएको थियो । विधेयकको प्रस्तावनादेखि अन्तिम दफाहरूसम्म कुन व्यवस्था ठीक छ, कुन व्यवस्था ठीक छैन भन्ने सम्बन्धमा छलफल भएको थियो । छलफलको क्रममा आएका टिकाटिप्पणी र सुभाबहरूलाई तीनमहले खाकामा तयार पारिएको व्यहोरा जानकारी गराउन चाहन्छौ ।



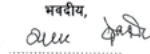
कोशिश

राष्ट्रिय मानसिक स्वास्थ्य स्वावलम्बन संगठन

फोन: ९७७-०१-५२०१८३०, ५२०१८३०
वेब साईट: www.koshishnepal.org ईमेल: info@koshishnepal.org

च.नं.

तसर्थ उक्त "मानसिक स्वास्थ्य उपचार तथा संरक्षण विधेयक मस्यौदा, २०६८" लाई त्यस मन्त्रालयबाट अन्तिम स्वरूप प्रदान गर्नुपूर्व हामी लक्षित वर्गका साथसाथै विभिन्न संरोकारवालाहरू समेतलाई समावेश गरी त्यस दस्तावेजमा व्यापक छलफल गराई पाउनका लागि पेश गरिएको यस सुभाबलाई त्यस विधेयकमा समावेश गरिदिनुहुन यस संगठन हार्दिक अनुरोध गर्दछ ।
सहयोगको लागि धन्यवाद ।

भवदीय,

(मातृका देवकोटा)
अध्यक्ष

सोधार्थ:

- श्री प्रमुखज्यू,
नीति तर्जुमा तथा अन्तर्राष्ट्रिय सहयोग महावाक्ता
स्वास्थ्य तथा जनसंख्या मन्त्रालय, रामशाहपथ ।
- श्री प्रमुखज्यू,
मानसिक अस्पताल, लगनखेल ।
- श्री प्रमुखज्यू,
नेपाल स्वास्थ्य अनुसन्धान परिषद ।
- श्री सचिवज्यू,
राष्ट्रिय मानवअधिकार आयोग, हरिहरभवन पुल्चोक ।
- श्री प्रमुखज्यू,
नेपाल मेडिकल काउन्सिल ।
- डा. गुणराज लोहनी
प्रमुख अस्पताल प्रशासक,
स्वास्थ्य तथा जनसंख्या मन्त्रालय, रामशाहपथ
- स्वमानन्द भुसाल
उपसचिव(कानून)
स्वास्थ्य तथा जनसंख्या मन्त्रालय, रामशाहपथ

संलग्न कागजातहरू:

- मिति २०७१।०५।२९ गते स्व-वैरवीकर्ताहरूद्वारा छलफल गरी तयार पारिएको तीन महले सुभाबहरूको प्रतिनिधि.....१
- मिति २०७०।०५।२९ गते कार्यक्रममा उपस्थित स्व-वैरवीकर्ताहरूको हाजिरीको प्रतिनिधि.....१

