DRAFT OF POSSIBLE AMENDMENTS:

The object of this draft is to jot down the possible amendments that may make the Act less prone to arbitrariness and human rights violations.

(I) Section 8: Emergency Psychiatric Treatment

Section 8 allows for the immediate hospitalization of individuals without formal admission procedures if their mental state poses a danger to themselves or others. This is often a point where human rights abuses can occur.

Suggested Changes:

1. Clear Criteria for Emergency Treatment:

The law should specify clear criteria and thresholds that justify emergency treatment to prevent arbitrary decisions This includes a detailed risk assessment and approval from at least two mental health professionals before emergency intervention, ensuring decisions are not made lightly.

2. Duration of Emergency Detention:

Limit the duration of emergency detention. Patients must not be kept in emergency treatment beyond a certain period (e.g., 48 to 72 hours) without a formal assessment and review by an *independent mental health tribunal.*

3. Addressing Ambiguity in Terminology

The term "relatives" in the Punjab Mental Health Act 2014 is indeed open to misuse, especially in decisions regarding involuntary admission, treatment consent, and guardianship. Given the cultural and familial dynamics in Pakistan, reliance on relatives can sometimes lead to abuse, neglect, or conflict of interest. To address this, the following changes are suggested:

(II) *Narrow and Clarify the Definition of "Relatives"*

Current Issue: The Act may use the term "relatives" without clearly specifying who qualifies as a relative, which can lead to misuse by distant or uninvolved family members. In some cases, family members may act out of self-interest rather than in the best interest of the patient.

Suggested Change: Introduce a clear and limited definition of "relative" within the Act. For example:

Define relatives as immediate family members: spouse, adult children, parents, and siblings.

In the absence of immediate family, a guardian or trusted person chosen by the patient, if previously specified (such as in an advance directive), should be considered.

Rationale: This restricts decision-making authority to those who are more likely to have the patient's best interests in mind, preventing distant or estranged family members from making critical decisions.

(IV). Preventing Conflict of Interest

Current Issue: A relative might have a conflict of interest, such as financial or property concerns, that could influence decisions about a patient's care or detention, especially in cases where the patient has significant assets or inheritance issues.

Suggested Change:

Mandate that any relative with a financial or legal interest in the patient's estate or property be excluded from decision-making about the patient's mental health treatment.

Introduce a clause requiring that if a relative stands to benefit from decisions made about the patient's property, a neutral third party (e.g., a court-appointed guardian or independent authority) must be involved in treatment or admission decisions.

Adoptable Procedure for the implementation:
Issuance of Conflict of Interest Certificate elaborating any previous or possible conflict of interest in the future with the patient that may lead to biases against that. patient. This certificate can be issued by Advocate General/ Designated Police Officer after probing into the previous record of conduct among the relative and the patient.

Illustration: The relative has never:
- Any complaint made against each other
- Lodged any FIR against the patient and vice versa.
- Entered into a feud.
- Any situation leading to biases.

Rationale: This ensures that relatives do not abuse their position for personal gain and that decisions about care are made objectively in the patient's best interest.

V. Introduce a "Trusted Person" Mechanism

Current Issue: The reliance on relatives in decision-making can be problematic in cases where family relationships are strained, or the patient has no supportive relatives.

Suggested Change: Amend the Act to allow patients to designate a "trusted person" of their choice (not necessarily a relative) to make decisions on their behalf if they are unable to do so. This could be a close friend, legal guardian, or another individual who the patient trusts.

Rationale: This would provide patients with more autonomy and control over who represents their interests, reducing the potential for misuse by unsupportive or indifferent relatives.

VI. Establish a Monitoring Mechanism for Family Involvement

Current Issue: The Act assumes that relatives will always act in the patient's best interest, but this is not always the case. There is no oversight mechanism to ensure that relatives are acting responsibly.

Suggested Change:

Introduce a mandatory monitoring system that requires relatives involved in decision-making (especially in involuntary admissions and property management cases) to be overseen by a mental health tribunal or social services body.

Require regular reports from such relatives on the patient's condition and the decisions made on their behalf, to be reviewed by an independent authority.

Rationale: This would deter the misuse of the relative's role and ensure continuous oversight to prevent neglect or abuse of the patient's rights.

VII. Protections for Patients Without Relatives

Current Issue: Patients without supportive relatives (e.g., orphans, elderly individuals without children) may lack representation, leading to prolonged institutionalization or neglect in the system.

Suggested Change:

Ensure that patients without relatives are assigned a state-appointed guardian or representative who is trained in mental health law and patients' rights.

Allow patients to select a legal guardian or advocate if they are able to express a preference.

Rationale: This ensures that vulnerable patients without family support are still protected and have their interests represented by an impartial authority.

VIII. Advance Directives Regarding Relatives' Role

Current Issue: Patients do not have a mechanism to express in advance whether they want a specific relative involved in their mental health care decisions, which can lead to forced involvement of unsupportive family members.

Suggested Change:

Add provisions for advance directives in the Act, allowing patients to specify:

Which relatives (if any) should be involved in their care.

Whether they wish to exclude any relatives from decision-making roles.

Rationale: This gives patients control over their future care and ensures that only trusted individuals are involved in critical decisions.

(IX) Some other terms in the current Act are also vague or subject to varying interpretations. Legal precision is necessary to avoid misuse.

a. Define "Danger to Self or Others" (Section 8: Emergency Psychiatric Treatment)

Current Ambiguity: The phrase "danger to self or others" can be broadly interpreted, leading to unnecessary or arbitrary emergency interventions.

Suggested Change: Introduce a more precise and measurable definition of what constitutes "danger to self or others." For example:

"Danger to self" may be defined as actions or threats of self-harm with a significant likelihood of causing physical injury within the foreseeable future.

"Danger to others" should be restricted to instances where there is a reasonable and immediate risk of serious violence or harm to others.

Rationale: This change ensures that emergency detentions are only invoked when genuinely necessary, safeguarding individuals from arbitrary detention.

b. Replace "Involuntary Admission" with "Compulsory Treatment" (Section 7)

Current Ambiguity: The term "involuntary admission" is stigmatizing and fails to differentiate between treatment for medical purposes and custodial detention.

Suggested Change: Use the term "compulsory treatment" instead of "involuntary admission." Focus on treatment rather than confinement to change the legal perspective from detention to healthcare.

Rationale: This makes the process patient-centric rather than system-centric, reducing the stigma associated with mental health care.

c. Clarify "Fit for Discharge" (Section 7)

Current Ambiguity: There is no clear legal standard for what constitutes "fit for discharge."

Suggested Change: Establish a clear medical and legal criterion for discharge, including:

Mental stability assessment by two independent psychiatrists.

A patient's ability to understand their treatment plan and make informed decisions about their health.

Rationale: This provides safeguards against premature or overly delayed discharges.

(X). Procedural Changes

Procedural improvements are crucial for the Act's effectiveness, particularly in ensuring checks and balances and fair treatment.

a. Mandatory Representation of Patients

Current Gap: The Act does not provide mandatory legal representation for patients, especially in involuntary detention cases.

Suggested Change: Amend the Act to ensure that any patient detained under Section 7 or subjected to emergency treatment under Section 8 is automatically provided with legal representation.

Rationale: This ensures that patients are not left vulnerable and without recourse to legal channels. It also upholds their right to challenge decisions that may affect their liberty.

b. Establish Procedural Safeguards for Involuntary Admission (Section 7)

Current Gap: The process of involuntary admission lacks sufficient checks, particularly with regard to judicial oversight.

Suggested Change:

i. Require court approval within 72 hours of any involuntary detention for more than 48 hours.

ii. Establish a procedure for automatic review by an independent mental health tribunal at regular intervals (every 3 months) for long-term patients.

iii. Incorporate a system for annual independent audits of all mental health facilities, focusing on cases of involuntary admission.

iv.17 (b): " every application for admission shall be addressed to the hospital management to which admission is sought" The hospital management has the tendency to be biases so the officer of concerned police station should also be included as an addressee to avoid the detention of patient for any interest.

c. Strengthen Informed Consent:

Emphasize the necessity of informed consent in all stages of admission and treatment, even for involuntary patients, wherever possible.

Patients should be given information about their condition, treatment plan, and potential side effects in a language they understand. They should be given a chance to express their views on the treatment.

d. Periodic Judicial Review:

Introduce mandatory judicial review at periodic intervals (e.g., every 3 or 6 months) for involuntary detentions. This ensures that no one is indefinitely detained without a proper legal review of their condition.

Review boards or independent mental health tribunals should include a lawyer, a mental health professional, and a human rights advocate to ensure comprehensive oversight.

e. Right to Legal Representation and Appeal:

Clearly state the right of a patient or their family to legal representation and the right to challenge their detention in court.

Ensure the patient and family are informed about their right to appeal against involuntary admission or extended detention.

Provide for state-funded legal aid to patients who cannot afford representation.

e. Voluntary Admission Pathways:

Encourage voluntary admission wherever possible. The law should promote voluntary treatment as the preferred option over involuntary detention, providing incentives and support to ensure patients opt for treatment willingly.

OTHER MEASURES FOR THE SAFEGUARD OF HUMAN RIGHTS

a. Right to a Second Opinion:

Allow patients or their families the right to seek a second opinion from another mental health professional before any long-term treatment decisions are made. This prevents unnecessary or inappropriate treatment.

b. Humane Treatment and Monitoring:

Strengthen provisions ensuring that patients admitted for emergency treatment are handled humanely, and their rights are not violated. Regular monitoring of emergency wards by independent human rights observers should be mandated to prevent abuse or mistreatment.

c. Post-emergency Counseling and Support:

Mandate post-emergency counseling and support services for both the patient and their families. This can help in reintegrating the patient back into society or transitioning them to voluntary care, addressing the trauma of emergency interventions.