

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Date	Order with signature of Judge
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BEFORE: **MR. JUSTICE SALAHUDDIN PANHWAR.**

M.A. No. 65 of 2018

1. For orders on CMA No. 2865 of 2020 (Contempt of Court).
2. For hearing of CMA No. 8451 of 2018 (151 CPC).
3. For hearing of main case.

CP.No.S-661 of 2019

1. For orders on office objections No. 1, 14 and 18 as at "A".
2. For hearing of main case.

09th September 2020

Mr. Pervez Ahmed Mastoi, Asst. A.G. Sindh alongwith Dr. Irshad Ahmed Memon, Director General Health.

Director General Health, Services Sindh @ Hyderabad present
contends that on the last hearing he submitted report, such report is that:-

“ I have the honour to submit that with compliance to order dated 22-05-2019, Director General Health Service Sindh Office had taken following steps to provide/improve Mental Health Facilities to the public at large.

01. Provide the list Sanctioned filled vacancy position of Psychiatrist to the Government for appointment of Psychiatrist (Annexure-I)
02. Submit list of Private/Public Hospitals to treat Mental Health facilities to the Government. (Annexure-I).
03. District Focal Persons had been nominated to provide detail reports with regard to the Mentally ill patient in the District (Annexure-III).
04. Prepared plan to trained (train) the Medics to treat the Mentally ill patients in this regard nomination from the Districts had been received but it could not finalizes due to COVID-19 Emergency however in collaboration with UNICEF Support trained 150 Health Care providers on Psycho-social support during COVID-19 (Annexure-IV).

05. It is submitted before the Honourable Court that 01 residential Bungalow is occupied by the Lady Health Workers Program Sindh for office use. As well as office of the College of Physician and Surgeon Pakistan regional office is Built in 2004 on the land of institute, during meeting held on 12-12-2019, under the Worthy Chief Secretary Sindh it was decided to vacate the Bungalow occupied by the Lady Health Workers Program Sindh and alternate arrangement be made to shift the CPSP office to other place but **matter is yet to be decided.** (Annexure-V)”

as well that report includes list of hospitals wherein separate wards have been designated for mentally ill patients/lunatics. The above report only shows *paper work* which (*paper work*) can never serve the purpose and objectives. What else the *irony* may be that a structure, meant for *specific purpose*, can *easily* be occupied by other department. Such affairs show that things are never taken up *seriously* else a *specifically* built structure must serve the purpose for which it was built. The report can't be appreciated particularly when it is being submitted in compliance of a *specific* order. Report, showing no *decision* so far, is itself an admission of failure of quarter concerned. The quarter concerned, accordingly, must take the required steps without any further delay.

2. In addition to above, I would add that to take care of the *mentally disturbed/ill* person(s) is also the responsibility of the government which (taking care) not only requires proper treatment facility but also includes measures for preventing anything which could be one of the reasons for bringing an *individual* under mental disturbance. The government can't take an exception to its obligation towards protection which one (being citizen) must enjoy within meaning of Article 9 of the Constitution. Mental illness can't be an excuse to deny or withhold such guarantee to a *mentally* disordered person. This obligation allows the government to take control of *body* of an individual for safety of others but when it comes to a *mentally* *disturbed* person, the government must ensure placing of *mentally* *disturbed*

person at safe place first, so is insisted in Sindh Mental Health Act, 2013.

Regardless of obligation of establishing such *place of safety* there has come only paper work. This is also not worth appreciating.

3. Besides, it is also material to add here that the 'Act' itself demands establishing of 'Authority' to do certain acts i.e:-

(7) The Authority established under sub-section (1) shall carry out the following functions:-

- (a) to advise Government on all matters relating to promotion of mental health and prevention of mental disorder;
- (b) to develop and establish new standards for care and treatment of patients;
- (c) to recommend measures to improve existing mental health services and setting up of child and adolescence, psychogeriatric, forensic, learning disability and community based services;
- (d) to prescribe procedures with respect to setting up and functioning of the mental health services and facilities;
- (e) to prescribe a code of practice to be implemented for achieving the purposes and objects of this Act as well as to be followed by all the mental health personnel involved with the care of patients under this Act;
- (f) to provide for regular review by the Board to ensure that the provisions of this Act for assessment and treatment are being properly carried out, whether or not requested by any individual, patient or his relative;
- (g) to prescribe for care, aftercare or rehabilitation, under supervision or otherwise;
- (h) to provide for and regulate the setting up of help lines and crisis centres for the general public with regard to mental health;
- (i) to provide for, organize and regulate public awareness programs and promote research, publish journals, bulletins, magazines, and other educational material on mental health issues;
- (j) to discharge such other functions with respect to matters relating to mental health as Government may require;
- (k) to register psychiatrists for the purposes of this Act, in such manner as may be prescribed; and
- (l) to arrange and organize such courses and training programs as may be necessary for carrying out the purposes and objects of this Act.

The above *obligations* do include *researches, measurements, developing standards for care and treatment* as well to advising Government on all matters relating to **promotion of mental health** and **prevention of mental disorder**. Thus, there must have been researches so as to know the cause (s) of increase in *mental disturbance* as well *advices* to government to take measures for prevention of those causes which are found influencing *mental health* of people. The record, however, is silent that there had ever been any such researches and in absence thereof question of any *measures* to develop *mental health facility* does not arise, at all.

4. Before going any further, here, I feel it quite relevant and necessary to say that *mental health* can't be hoped unless it (*mind*) enjoys the life (gathering circumstances). The *mental* stress results into *depression* which even some time compels one to take harmful acts, including '**suicide**'. The '*suicide*' numbers are increasing *abnormally* particularly in rural areas though we are claiming to have entered into **21st Century**. The *increase* in cases of *mental illness* was / is always required to be studied; not only to be studied but with step (s) to prevent such '*causes*' or reasons thereof which, I shall insist, was / is the *absolute* and *exclusive* responsibility of the government as the guarantee regarding *fundamental rights*, was / is to be ensured by the government and government *alone*. I would add that none, *normally*, shall resort to such act (suicide) unless his mind succeed in convincing him that this *act* (suicide) would be a better idea than to face *existing* circumstances. I have no hesitation in saying that act of private lending of money on interest is one of the elements because the interests keeps on doubling while man (borrower) continues bogging down. The giver, being not run under any lawful legislation, takes liberty to effect recovery of interest by any illegal means which, undeniably, harms the 'mental health'. Needless to add that lending money on *interest* is '**haram** (prohibited)' in Islam hence *least* such practice needs to be curbed which can't be hoped in absence of the legislation. I may add that in other Provinces legislators have enacted law against private

interest like Khyber Pakhtunkhwa Prohibition of Interest on Private Loans

Act 2016. The *preamble* whereof reads as:-

“to prohibit the business and practices of private money-lending and advancing loans and transactions based on interest”.

WHEREAS the injunctions of Islam as laid down in the Holy Quran and Sunnah have explicitly and unequivocally prohibited charging interest on loans and have declared war against those who do not abandon interest;

AND WHEREAS the Constitution of the Islamic Republic of Pakistan obliges the State to take steps to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah;

AND WHEREAS it is expedient to make a comprehensive Legislation on the subject for covering all the aspects of the mischief of private money lending and matters akin thereto

The above *preamble* leaves me with no doubt that such legislation not only serves the commandment of *Allah* almighty but also shall be well in line with obligation(s) of the '**Act**', therefore, I have no hesitation in directing/advising to the Secretary Law Department, Government of Sindh, to process for such *legislation* without any delay, if not passed.

5. In addition to above, the Secretary Law Department, Government of Sindh, is also directed to submit report whether the '**Authority**', required to be established within meaning of the '**Act**' or otherwise?. If stood functional then the '**Authority**' shall furnish the report as to what researches have, *so far*, been made for knowing and preventing the causes of *mental illness*.

6. Under these circumstances judicial propriety demands a commission to conduct thorough probe/research with regard to increase of suicidal trend, causes and measures, hence, Chief Secretary Sindh is hereby directed to constitute a commission comprising of seven members and out of seven members Ms. Sara Malkani advocate, Mr. Salahuddin Chandio, advocate and

Mr. Muhammad Suleman Dahri advocate (Hyderabad) and in addition a psychiatrist, shall be nominated from the civil society, such notification shall be issued within a week. *This commission shall be provided every-assistance. The commission shall visit the areas where suicides ratio is high and also compare the number of suicides with other provinces and submit report to the concerned quarters with recommendations,* also to this Court within three months. Needless to mention that Secretary Health shall act as Secretary of the Commission and Secretary General Administration as well as Secretary Finance shall provide every assistance including finance and logistic.

To come up on 19th October 2020. Attendance of D.G. Health is dispensed with. Office shall communicate this order to all concerned as well as A.G. Sindh.

JUDGE

SAJID