

# Mental Health Through the Lens of Law: How and to what extent do law and mental health intersect in society in both historical and contemporary times?

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## ABSTRACT

In 1959, The Mental Health Act became the first parliamentary act on mental health, intertwining the subject of legislation and mental health, resulting in a more serious consideration of mental health in parliament. This article will explore to what current extent legislation either reinforces or discourages the idea of an intersection between mental health and law. Consequently, an extensive review of the existing literature on mental health and human rights violations was conducted. Preliminary research and literature review argue that extensive evidence supports a connection between law and mental health. Contemporary times have elevated the importance and relevance of mental health within the law. This has primarily been caused by a greater understanding of sociological theories and a better understanding of how mental illness is related to our health in general. However, the reverse can be argued through the continuity of mental health as a definition, something that is not bound to the confines of legislation but rather is defined by society's discussion and perception. The following article looks at perspectives of this argument, compiling the current interpretations of the intersection of law and mental health. Ultimately, this article concludes that frequent amendments to existing policies in combination with the introduction of the new legislation are required to adapt to changing perspectives on mental health and human rights in the modern day.

## **Introduction**

"Law is experience developed by reason and applied continually to further experience" (Pound, 1954). The field of law is something that requires continual adaptation. As societal understanding and perception of modern issues evolve, relevant laws also change to reflect the prevailing thought of the times. The topic of mental health, which has become increasingly prominent in recent decades, is an example of how the law has constantly adapted to fit the social climate. As our understanding of mental health expands, the legislation surrounding it will consequently see changes as well.

Mental health is a broad term that includes our psychological, emotional, and social well-being. This facet of health affects how we think, feel, and act. It is an indicator of one's stress, interpersonal relationships, and life decisions. Mental health subsequently has a bidirectional influence on our lives, where our poor mental health can lead to poor social relationships and vice versa. Mental health encompasses many things; for this reason, it is often interpreted as a topic that is constantly shifting with the changing social interpretation. Mental health will forever be on a continuum and is dependent on the way it is depicted and understood at the time. An example of this is Schizophrenia, a severe mental disorder in which people interpret reality abnormally. The term relating to mental illness only came about in the past century, despite schizophrenia symptoms being around for much longer (Patel, 2014).

The continuous shift in mental health has led to significant controversy surrounding its connection to the law. There is a natural inclination to make presumptions about laws based on current understandings of mental health. Though some connections may exist, there are evolving aspects of mental health that cannot be captured in legislation written decades prior. Moreover, mental health's dynamic and developing nature contradicts and challenges existing constructions and legislation. For this reason, this paper argues the necessity for mental health law to change continuously to adapt to changes in social opinion and construction.

## Definitions & Literature Review

### What are Laws and Legislation?

Law is a profession and discipline that focuses on the binding practices, customs, and rules of conduct recognized and set forward by our community (Britannica, 2020). These binding practices are recognized by society and are enforced by a governing body. However, the law can also be introduced through a non-legal context instead of social understanding and stigma. Likewise, legislation is the preparation and enactment of laws by local, state, or national legislatures (Britannica, 2018), where laws or sets of laws are implemented and brought up by the government—subsequently, made official by a governing body, such as parliament.

### What is Mental Health?

Mental health takes many forms, varies in severity, and is the foundation for individuals' thinking, communication, learning, resilience, emotions, and self-esteem. Mental health is quintessential to interpersonal relationships, emotional well-being, and contribution to the community or society. Health is defined by the World Health Organization as: “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” (WHO, 2018). Good Mental health is a state in which one can successfully cope with the everyday stresses of life and is productive in contributing to his or her community. Mental health is a fundamental aspect of our ability to interact, think and enjoy our daily lives. Therefore, the importance of protecting and restoring an individual’s mental health should be of the utmost concern to both the individual and larger governments.

### What is Defined as “Mentally Ill”?

Mental illness is as much of a medical condition as the likes of heart disease or diabetes (Prince, 2007). Mental illness is defined as “any condition characterized by cognitive and emotional disturbances, abnormal behaviors, impaired functioning, or any combination of these. Such disorders cannot be accounted for solely by environmental circumstances and may involve physiological, genetic, chemical, social, and other factors” (APA, 2022). Mental illness is not discriminate; it disregards factors like gender, age, income, social status, race/ethnicity, sexual orientation, background, and other aspects of an individual’s cultural identity. While mental illness can occur at any age, three-fourths of all mental illness begins by age 24 (APA, 2022).

## Historical Context

The inherent connections between law and mental health can be traced back centuries. Likewise, the changes and adaptations in law can be seen in our societies’ ever-developing knowledge and perception of Mental health through the different legislation created during each period.

Insanity and the prospect of mental health are defined primarily through social constructs and social perception during each period. Before the 18th and 19th centuries, mental health law was scarce. Statute de praerogratia Regis (Noble, 1981) was one of the earliest acts that attempted to intertwine mental health with mainstream legislation. It attempted to separate mental retardation from mental illness and, to an extent, tried to use these distinctions to empower and benefit the government. The act allowed the government to cease the estates of these individuals and manage them until their death. Aside from such legislation during the Middle Ages, the interconnection between mental health and legislation was essentially non-existent. Although understandings of the “mentally ill” or “mentally insane” were not developed during this time, social pressure and consensus resulted in many people who were classified as “mentally insane” or “ill” seeking help. These patients would often be admitted to “madhouses” (Jones, 1845).

Without overarching legislation, “madhouses” became private ventures for many. Patients who could afford to pay would seek out smaller, private madhouses. An example of this is in London during the 1650s to 1700s, when several madhouses were established, particularly in the Hoxton and Clerkenwell areas. This would eventually develop into the ‘trade-in lunacy,’ where the lack of Mental Health law would become a fixture of the free economy of the Victorian Period (Higgs, 2020).

During the early 19th century, early involvement of law in mental health can be seen through the 1808 County Asylums Act, which was the first act that permitted English Counties to build asylums; the primary purpose of which was “to remove lunatics from goals and workhouses to buildings where they would be easier to manage” (Roberts, 1981). This initial connection between mental health in law would spark the creation of a society that gradually put more effort into learning the aspects of mental health. This would develop the legislative landscape of mental health, introducing laws such as the 1845 County Asylums Act, which introduced a commission that monitored the erection of a network of publicly-owned county asylums. This commission had national authority and ultimately resulted in the development of “Mental Health treatment and laws going from ‘asylums’ to ‘mental hospitals’” (Jones, 1845). Ultimately, these early legislative changes during this period suggest the changing perception and normality of mental health: becoming seen as more treatable and dealt with more compassion.

These changes would be encapsulated in the 20th century, when, during this period, mental health and law had already become significantly intertwined. Changes in the 19th century were ultimately encapsulated in the “Mental Treatment Act of 1930.” by law, “Asylums” became “Mental Health hospitals,” and the terminology and understanding of mental health became recognized to be almost equally as important as physical health. The Mental Health Act also stipulated that those doctors had to be approved and required specific training. This requirement became a key component of future Mental Health Laws and treatments in the contemporary era (Hilton, 2020)

Mental Health through Legislation culminated in 1959 when the 1959 Mental Health Act was introduced. The catalyst for such changes was the creation of the Percy Commission. The commission’s clear vision to remove stigmatizing procedures and terminology, paired with a general climate of medical optimism and advancement during the period allowed for a positive, revolutionary step in combining mental health with law. Firstly, it “abolish[ed] the distinction of psychiatric hospitals from other types of hospitals.” Secondly, it attempted to “deinstitutionalize mental health patients and see them treated more by community care” (BBC News, 1999). Lastly, it was the first official law that defined mental disorders as a “mental illness; arrest or incomplete development of mind; psychopathic disorder; and any other disorder or disability of mind” (Mental Health Act, 1959).

The evolution of the understanding of mental health has led to various laws and amendments being formed throughout history. From the earliest Lunacy Acts to the 1959 Mental Health act, they have helped define contemporary mental health laws. Although these laws are primarily formed in the UK, it has been a quintessential aspect of Mental Health’s history with legislation. Many countries have taken inspiration and have developed their own interpretations of Mental Health and their inherent connection to the law. Laws such as the 2008 UN Convention on the Rights of Persons with Disabilities have directly resulted from previous links between mental health and law. In 2022, The WHO’s inclusion of mental health in their most current and complete definition of health is proof that society is building a more in-depth understanding of mental health as a topic. However, these inherent links and understandings are again being challenged. In the face of social change, especially during the Covid-19 Pandemic, society is once again rethinking the legislation regarding mental health.

## Bias

However, it should be noted that much of the examined data and analysis throughout, especially in the historical context section, has origins in the United Kingdom. When researching international mental health legislation, there is a negligible amount of information that explores the mentally ill in law before the early 20th century. For this reason, when analyzing the history of mental health’s interconnection with law, the majority of research on early mental health legislation is from the UK. World mental health legislation is relatively new, with many countries, such as China, only

now beginning to pay attention to the issue of mental illness. Ultimately, this results in a bias or lack of information being present within section 1 of the analysis, which is acknowledged due to a lack of information regarding the world landscape on mental health at the time.

## **Evidence of Change in Legislation According to Mental Health**

In contemporary times traditional mental health laws have been subject to debate, primarily due to the changing definitions and climate of the period. Preexisting mental health laws have been reviewed during this period, while new laws have been introduced. This is especially evident in light of the recent Covid-19 pandemic, where various countries are once again re-examining the legitimacy and relevance of their mental health laws. During this period of time, there has been a large-scale recording of change within mental health legislation, unlike in the 19th and 20th centuries, when changes in mental health laws were predominantly recorded in the United Kingdom.

The response to the COVID-19 pandemic has important ramifications for mental health systems and the patients they serve. Significant changes in mental health policy have been prompted across five major areas: regulation, financing, legislation, workforce development, and accountability. The numerous advancements present an unprecedented opportunity to evaluate how much mental health policy has been adapted in the post-COVID-19 period. An example of this would be in the United States, where mental health law has become the subject of debate in the past two years. The COVID-19 crisis has become the catalyst for an exponential boost in legislative activity. In 2020, The US Congress passed three major economic relief packages, reportedly with the possibility of more on the horizon. All case studies of introduced legislation help judge changes made to mental health policy. (Goldman, 2020). Among these, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) is a law passed by the United States in an attempt to adapt to a rapidly changing mental health terrain. The \$2 trillion stimulus package attempted to combat the increasing mental illness diagnoses. It stated that \$425 million of appropriations to the Substance Abuse and Mental Health Services Administration to respond to the pandemic, \$250 million went to new funding for Certified Community Behavioral Health Clinic Expansion grants, and \$100 million was given to emergency response activities. Finally, \$50 million was given to aid suicide prevention (One Hundred Sixteenth Congress of the United States of America, 2021). As mental health becomes a more prevalent issue due to the pandemic, the United States of America has been at the forefront of changing mental health laws.

New Zealand presents a unique case with the indigenous culture’s emphasis on mental well-being. The Māori culture highlights the belief that mental well-being is an integral aspect of health. The four interacting dimensions: *taha wairua* (spiritual health), *taha hinengaro* (emotional/mental health), *taha tinana* (physical health), and *taha whanau* (family health) show this (Durie, 1997). As a result of this cultural belief, New Zealand has always been considered progressive when considering mental health laws. This has not changed during the pandemic era, where New Zealand has continued to make amendments to its preexisting “Mental Health Act,” with the Amendment Bill passing after the third reading. The New Zealand government performed an investigation and inquiry into the state of mental health within the country, recognizing that the 1992 Mental Health Act (Compulsory Assessment and Treatment Act, 1992) is no longer relevant or useful in contemporary times. As society shifts toward a well-being and recovery approach to mental health treatment instead of interpreting mental illness as untreatable, New Zealand’s mental health act has not been able to keep pace (Ministry of Health – Manatū Hauora, 2022). Therefore, the government made a choice to repeal and replace the Mental Health Act so that it is more reflective of a modern, human rights-based approach. New Zealand ultimately wants to promote a modern approach to dealing with mental illness, promoting the well-being model, and eliminating involuntary treatment options.

However, despite the pandemic heavily influencing the landscape of mental health law, it has already seen significant changes in the past decade. Furthermore, as the concept of mental health has become more mainstream in society, it has consequently impacted the social perception of mental health. This change in perspective has led to the introduction of laws and legislation in many countries. For example, Qatar, a country that is comparatively behind on its mental health laws compared to the west, has doubled down on its national mental health strategy by underlining

a strong state desire to reform its health services, specifically its mental health services. In 2016, Qatar introduced its first mental health laws by royal decree (Osman, 2016). The introduction of the Mental Health Law aligned itself with the newfound strategy held by the Qatari government to reform its health and mental health treatment services (Abou-Saleh & Ibrahim, 2013). Middle Eastern countries have long held prevalent issues regarding the stigmatization of mental health. These countries' comparatively less open nature toward mental health can be attributed to reliance on Islamic cultural stereotypes and the stigmatization of the mentally ill (Sewilam, 2014). Muslim practices may interpret mental health symptoms as a curse or punishment from God while consequently believing that seeking psychiatric treatment or receiving a diagnosis shows spiritual weakness (Abbasi, 2019). Due to this preexisting stigmatization in Middle Eastern countries, Qatar was the first country in the region to have laws specifically dedicated to mental health. Despite many issues regarding the Middle East's alignment with the WHO rights of patients, the Qatari government has purposely attempted to introduce legislation that aligns with the WHO documents (Alabdulla, 2021).

Additionally, China's increasing attention toward mental health can be used as another case study for mental health law's ever-expanding scope and prevalence. China's volatile political scene, primarily during the Cultural Revolution (1966-1976), resulted in the ceasing of mental health programs and a lack of development of mental health legislation compared to the development made in the western world at the time. This has, in many ways, carried on into the early 21st century, where China has had more focus on psychosis management, resulting in the field of psychiatry becoming less attractive. Ultimately, this cultural change has resulted in fewer medical graduates and less opportunity to develop its facilities (Liu, 2011). However, the change above can be seen in China's first national mental health law – the Mental Health Law of the People's Republic of China – Which had been discussed and debated on multiple legislative levels for 27 years before its passing on 1 May 2013. (Cheng, Phillips, 2012). In the wake of the ratification of multilateral treaties such as the International Covenant on Social, Economic, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) in the late 20th century, pressure from psychiatric services in China helped them receive awareness. However, a lack of social acceptance or understanding hindered these policies from developing into legislation. Nonetheless, during the 2000s and 2010s, International recognition regarding mental health law became increasingly prevalent. As a result, China began drafting laws to reflect this. Many early documents and legislation from China were primarily influenced by organizations like the World Health Organization, the United Nations, and the General Assembly. Subsequently, documents such as the Mental Health Care Law: Ten Basic Principles would establish universal human rights principles and help China establish its first mental health law (Ma, Xie, Shao, 2019).

Countries such as the United States of America and New Zealand, which have preexisting mental health legislation, have continuously amended and added to their laws. In contrast, countries like China and Qatar have begun introducing their first mental health legislation. This is evidence of change in the relationship between mental health and legislation, especially in recent years, where global events like the Covid-19 pandemic have had an enormous impact on people's mental states. Governments, as a result, have had to adapt, whether through the introduction of new laws or amendments to old ones.

## **Resistance in Change to in Mental Health and Legislation**

Speaking broadly, the mental health law has faced troubles that relate to the definition of mental health itself. The term mental health is one that is ambiguous, one that can be placed on a continuum. This influences the legislative aspect of mental health. As the definition of mental health evolves, it subsequently changes the effectiveness and understanding of laws.

The mental health of an individual has a direct relationship to social construction and stigma formed by community consensus. To some, mental illness is a social construct that does not exist materially but only as an abstraction formed on the basis of arbitrary standards. These standards, in turn, can be found only in societies with worldviews that include the concept of mental illness. Here, we speak of clinical definitions of mental illness, such as the diagnostic categories used by psychiatrists and psychologists or the universal definitions pushed by organizations

such as the WHO. Additionally, these definitions also include a basic social understanding of mental illness, interpretations of those diagnosed with mental illnesses being “crazy” or “insane,” “having a nervous breakdown,” or going “berserk” or “postal.” The existence of these different methods of diagnosing and categorizing those who experience mental illness is a quintessential aspect of classifying any particular person as being in this condition. The incorporation of being mentally ill into one’s identity contributes to one’s interpretation of their social role, whether that being an official diagnosis from a psychiatrist or an unofficial label given through your social environment.

A study done by Jennifer Crocker in 1999 found that “self-stigma” is a prominent aspect of mental health stigma. As individuals’ situation differs from others around them, their response to internalizing stigma will vary (Ahmedani, 2011). This can ultimately have a negative impact on a “person’s self-esteem and self-efficacy, which may lead to altered behavioral presentation” (Corrigan, 2007). Additionally, social stigma has a profound impact on individuals struggling with mental health. In a contemporary context, athletes such as Naomi Osaka and Ben Simmons have been ostracized by society for their bouts with mental health, frequently being criticized by the media. After skipping a press conference, Naomi Osaka faced \$15,000 in fines (Bowen, 2021). NBA star Ben Simmons has faced \$19 million in fines since October 2021. The media has downplayed Simmons’ mental state, and his professional team has continued fining him despite not seeing mental illness as a legitimate reason to skip games (Botkin, 2022). Social stigma influences an individual’s mental health, whether through social media or immediate communities. Individuals in our society constantly face the pressure of conforming to society, downplaying trauma, or putting themselves into social roles. The stigmatization that many receive in society today is indicative of the perspectives held by the public. The case studies provided by such professional athletes show that much of society is still ignorant about mental health as a legitimate injury or health condition.

Overall, the controversy about mental health as a state of well-being directly influences how some people see mental health laws in society. Social influence directly affects the value of law, the controversy created, and the differing perspectives regarding mental health law.

## Conclusion

Mental health conditions are quickly gaining a more significant presence within mainstream society, with the importance of mental health laws gaining greater recognition as a result. These attitudes towards mental health are ever-changing. The perception of mental health has undoubtedly changed, from the earliest lunacy acts to contemporary universal definitions from the World Health Organization. However, we as a society must accept and understand the mental health laws while attempting to destigmatize mental health within society. Otherwise, an inability to empathize and understand mental health legislation would dismiss a large section of the subject of health. Consequently, resulting in society not being able to deal with mental disorders and stigmatizing a large number of people. The laws that we amend and introduce will be most effective when society deems these laws respectable. While stigma remains evident in society, individuals, and health professionals, the ethical problem of health professional stigma places an additional barrier on clients who seek needed mental health services. Future legislation should ensure adaptations that can combat increasing stigma in society. As we gain more knowledge in the field of mental health, the connection with the law will most definitely become more prevalent.

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