

DISABILITY RIGHTS: CHALLENGES AND OPPORTUNITIES IN BANGLADESH

Md. Zahidul Islam,¹ Asma Jahan*²

¹ Ph.D, Ahmad Ibrahim Kuliyah (Faculty) of Laws (AIKOL), International Islamic Malaysia (IIUM), P.O. Box 10, 50728 Kuala Lumpur, Malaysia.

² Asma Jahan, (Corresponding Author) Lecturer, Faculty of Laws, International Islamic University Chittagong (IIUC), 154/A, College road, Chittagong-4203, Bangladesh.

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ABSTRACT

Disability is a contested concept, with different meanings in different communities. The term *disability* may be used to refer to physical or mental attributes that some institutions, particularly medicine, view as needing to be fixed (the medical model); it may also refer to limitations imposed on people by the constraints of an ableist society; or the term may serve to refer to the identity of disabled people. The aim of this paper is to discuss the existing Laws of Bangladesh regarding disability rights. The researcher mainly adopted qualitative methods. The information has taken from many readings, articles, books, newspapers and statutes.

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INTRODUCTION

To find a universal definition of privacy is not an easy task. According to Gillian To understand persons with disability firstly we should understand the meaning of disability. A disability is a condition or function significantly impaired relating to the usual standard of an individual or group. The term is used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment, mental illness and various types of chronic diseases. According to Oxford Dictionary disability means a physical or mental condition that means you cannot use a part of your body completely or easily or you cannot learn easily or a physical or mental or

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permanent disability. Bangladesh faces a huge challenge in ensuring the rights of persons with disabilities, who make up a significant proportion of the population. There are an estimated 16 million people with disabilities in Bangladesh, or 10% of the country's population. In 2004, the prevalence of disability was about 6% among those below the age of 18 and about 14% among those above that age. People in Bangladesh living with disabilities are entitled to government support, but programs have been limited in scope and restricted to urban areas, and the question of disability has not been integrated into general development programs. In response, NGOs such as the Centre for Disability in Development have moved to provide assistance to people with disabilities (Kibria, 2005). Perceptions of disability among most Bangladeshis remain largely negative. Especially in rural areas, disability is often viewed as a curse brought on by the misdeeds of parents, and is often believed to be contagious. Children with and without disabilities seldom become friends, creating a separation which continues in adult life.

DISABILITY RIGHTS UNDER CONSTITUTION OF BANGLADESH

The Constitution of the People's Republic of Bangladesh guarantees basic human rights of every citizen of the country irrespective of colour, sex, religion, races etc. It also prohibits any form of discrimination between various social groups including the disabled. In the light of the constitutional provisions and commitments made by the Government at the international arena by adopting the United Nations Standard Rule on the Equalization of Opportunities for Persons with Disabilities, the National Policy for Persons with Disabilities, 1995 was formulated. The Constitution of the People's Republic of Bangladesh guarantees human rights and equality in all respect, for example political, social, religious, education, employment irrespective of race, caste, sex, ethnicity and disability. It has numerous provisions that obligate the government to protect the rights and dignity of all citizens of the country equally without any bias (Articles. 10, 11, 15, 17, 19, 20, 21, 27, 29, 31, 32, 36, 38 and 39). It also allows additional and supplementary provisions that will ensure that citizens who do not have access to all the public amenities are able to obtain such services (Foley, 2007) In spite of the constitutional obligations, it was seen that the citizens with disabilities in Bangladesh were subject to discrimination in various spheres of life. Therefore persons with disabilities and human rights promoters together with the civil society realize and demand the need for a specific law for the interest of the citizens with disabilities in Bangladesh.

BANGLADESH AND CRPD RATIFICATION

On 13 December 2006, the United Nations General Assembly formally adopted the Convention on the Rights of Persons with Disabilities

(CRPD), the first human rights treaty advocating for the rights of disabled persons. Bangladesh became a signatory and ratifying state party to the CRPD on 9 May, 2007 and 30 November, 2007 respectively¹. Bangladesh is required to submit an initial report describing the state of implementation of the rights of persons with disabilities within two years, on or before May 2010 (Article 35, CRPD) but has not done so to date (Groce, 2014).

DISABILITY RIGHTS UNDER NATIONAL LAWS

Disability Welfare Act (DWA):

The Parliament of Bangladesh enacted Disability Welfare Act (DWA) 2001), which is also known as Bangladesh Protibondhi Kollyan Ain (BPKA) on 4th April 2001 whereby rights of persons with disabilities received statutory recognition for the first time in the history of country. This Act is primarily welfare based and emphasis is given on the impairment of the individual not on the social and environmental barriers. This Act does not address the dignity of persons with disabilities and is inadequate for protecting interest of the citizens with disabilities. Thus the Act does not satisfy aspiration and desire of the citizens with disabilities of Bangladesh (Jalil, 2012).

Disability Rights Act:

The 2013 Disability Rights Act provides the following:

- A disabled person is entitled to have access to justice³³ and is entitled to equal protection under the law.³⁴
- All discriminatory behaviours or actions on the part of any individual, organization or government authority against a disabled person are prohibited.³⁵
- Preventing a PWD from accessing justice is punishable by law.³⁶
- Police, prison and court officials require training on disability rights and issues.³⁷
- The State is obligated to take all steps (including the appointment of an interpreter) to ensure access to justice for disabled victims of violence.³⁸

The Legal Aid and Services Act:

The Legal Aid and Services Act, 2000 expressly secures the right to access to legal aid and services for persons who are “poor, insolvent, destitute, and otherwise incapacitated for socio economic reasons”. The Legal Aid Service Rules 2014 makes particular mention of PWDs in its list of eligibility.

The Penal Code 1860:

The Penal Code 1860 provides protection to persons with intellectual disabilities by recognising that a person who is not capable of understanding the illegality or the nature of an act cannot be held responsible for committing an offence, on the basis of unsoundness of mind.

The Evidence Act:

The Evidence Act 1872 states that all persons, including PWDs, are competent to testify, unless prevented by a mental incapacity related to understanding the questions put to him/her and giving rational answers to them. Any witness who is unable to speak may give his/her evidence in any other manner, i.e. writing or by signs.

The Code of Criminal Procedure:

The Code of Criminal Procedure 1898 and in particular Sections 199, 199A and 468- 475, provide special procedure for any accused who is identified as a “lunatic”, including for release of the “lunatic” pending investigation or trial, and custody of the “lunatic”. Under the Code of Civil Procedure, 1908 consent or agreement for any person with disabilities may be given on their behalf by their next friend or guardian of such person in any proceeding with the permission of court (Section 147 CPC). Further, Order XXXII of the CPC sets out special provisions for suits by or against persons of unsound mind and Order XXXIII allows for pauper suits.

The Labour Act:

The Labour Act 2006 provides⁴⁴ for compensation in the event of a workplace injury or death and depending on the nature of injury (permanent or temporary) the amount is listed in Schedule of the Act.

Fatal Accidents Act:

Section 1 of the Fatal Accidents Act 1855 states that whenever the death of a person is caused by a wrongful act/neglect/default, the executor, administrator or representative of the deceased may sue for compensation to the family of the deceased for loss occasioned due to the death of that person. Under this Act, the Court may give such damages as it may think proportionate for such loss.

The Motor Vehicles Ordinance:

The Motor Vehicles Ordinance 1983 allows for a claim of compensation to be made in the event of a personal injury arising from the use of a motor vehicle in a public place. It also sets out the duty of a driver in case of an accident/injury to a person and the insurance policy requirements and procedures for making a claim.

The National Human Rights Commission Act:

The National Human Rights Commission Act, 2009 enables aggrieved persons facing human rights violations to bring complaints to the

Commission to inquire into whether any public servant was responsible and to provide remedies.

GAPS IN LAWS AND POLICIES

The Disability Act addresses the issue of access to transport, but the lack of Rules or detailed guidelines prevents effective implementation. For example, while 5% of seats are reserved for PWDs by law, the lack of any rule or practice for allowing additional time for PWDs to board, or for ramps or wheel-chair access, means that access is denied for physically disabled people. Regarding access to buildings, while Rules are in place, and do provide detailed measures to ensure disabled friendly access, they are not implemented. The Building Code Authority is yet to be established (Mitchell, 2014).

The RTI Act does not specify how authorities must publish/publicize information in an accessible manner for PWDs. Also since the Act only extends to government bodies, and NGOs meaning for profit organisations, and does not cover privately owned organizations/institutions, it cannot be used by a PWD seeking information from any such establishment. Government and NGO websites are not yet accessible for people with visual impairments. The ICT Policy does address many accessibility issues for PWDs but these provisions are rarely put into practice. As a result, barrier free access to information is still a challenge for PWDs.

Courts are not disabled-friendly. Non-compliance with Schedule 12 of the 2013 Disability Act means PWDs have to deal with police, prison and court officials who are not trained on disability rights and issues.⁵¹ While Schedule 12 also requires arrangements (including the appointment of an interpreter) by police, prison and court officials to ensure access to justice for disabled victims of violence, both the Act and Schedule are silent on the procedures required for disabled offenders (Perlin, 2012).

Giving evidence in courts is difficult for women who are intellectually disabled. Section 118 of the Evidence Act, 1872 prevents evidence to be accepted from those who are incompetent to testify due to their being unable to comprehend the questions asked during the trial process. This contravenes Articles 5 (2), 12 (2) and 16 (5) of the CRPD which requires the State to provide equal protection of law to all persons.

Persons with visual, hearing, and speech impairments face barriers while communicating with police officers at thanas and while giving evidence in court. Where the court permits the use of Bengali sign language interpreters, they are provided by DPOs specialized in Bengali sign language interpretation such as the Society for the Deaf and Sign Language Users (SDSL) who also provide interpreters to disabled women and children in Victim Support Centers. However state funded remuneration for such interpreters is inadequate leading to a dearth in the availability of interpreters for PWDs seeking justice.

Although the Disability Rights Act gives PWDs the right to inherit, the Act does not supersede personal laws discriminating against PWDs with

mental/intellectual disabilities. The Hindu Inheritance (Removal of Disabilities) Act, 1928, for example, excludes persons with intellectual disabilities and psycho-social disabilities from inheritance or any right or share in joint family property. The 2013 Act entrusts the Upazilla and Shohor Committee with the duty to appoint a guardian for overseeing a PWD's property on application from the PWD's parents/legal guardians/DPO. Such a guardian must inform the committee from time to time about any income or interest generated from the PWD's property. The 'Survey Findings' below discuss how lack of implementation of these provisions leads to disabled people (especially women) from being able to exercise their inheritance rights.

Lack of awareness or knowledge of laws on the part of both duty bearers and rights holders is a major barrier to justice. For instance, women with disabilities are not aware that the general laws on violence against women also apply to them. The National Legal Aid Rules 2014 expressly refers to PWDs as a priority group for receiving state legal aid and services.

CHALLENGES

The Government of Bangladesh have centralized structure, limiting local officials' authority and flexibility to adapt services to local capacities and demands. Government level planning often results in inadequate resources and insufficient reference to local circumstances. While the accountability and coordination structure may appear to be quite detailed, the various Committees' have not been established yet. Moreover, the lack of cooperation between the government and civil society and lack of representation of and collaboration with persons with disabilities means that the structure while detailed on paper, has limited application or effect in practice.

Discriminatory laws affecting disabled peoples' rights in the family community and state remain in force. Initiatives for persons with disabilities are mostly dealt with separately, an approach that automatically excludes them from mainstream government programmes and services. Social attitudes largely do not recognize the development of 'potential' and 'capability' of persons, but instead focuses on the disability or 'inability' of disabled people. In the absence of national population data disaggregated by disability, ethnicity and gender, there is little information on among others, the actual numbers of persons with disabilities in rural, hilly or urban areas. This renders 'invisible' certain types of disabilities and persons with such disabilities making it harder to address their issues and concerns (Sultana, 2010).

CONCLUSION

To make real progress in this sector in a developing country like Bangladesh, an all-out effort from all quarters is mandatory. The persons with disabilities themselves, their organizations, other organizations working in this field, and all the advocacy platforms need to increase their awareness campaigns for the prevention of disability and for the

recognition of the rights and privileges of persons with disabilities as equal citizens of the country. It is noted that the CRPD sets out the human rights of persons with disabilities and the obligations on States to promote, protect and ensure those rights as well as mechanisms to support implementation and monitoring. Thus Bangladesh is under an obligation to provide proper mechanisms to support implementation and monitoring the rights of the persons with disabilities. The process of amendment of Disability Welfare Act 2001 should be carried out as far as possible following the preamble, purpose, general principles, obligations and rights of persons with disabilities of UNCRPD to make it human rights based amended law and upholding the spirit of the constitution of the Peoples' Republic of Bangladesh.

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