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# Rights of Disable Persons: Law and Practice in Bangladesh

Hasan, Md. Emdadul

University of Rajshahi

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# **Rights of Disable Persons: Law and Practice in Bangladesh**



**Ph.D Dissertation**

**Researcher**

**Md. Emdadul Hasan**

**Department of Law  
University of Rajshahi**

**June 2018**

# **Rights of Disable Persons: Law and Practice in Bangladesh**



## **Ph.D Dissertation**

A Dissertation

Submitted to the Department of Law, University of Rajshahi in  
Fulfillment of the Requirements for the Degree of  
*Doctor of Philosophy*

### **Researcher**

**Md. Emdadul Hasan**

Ph.D Fellow

Session: 2012-2013

Roll No: 12105

### **Supervisor**

**Dr. M Anisur Rahman**

Professor

Department of Law  
University of Rajshahi

### **Co-Supervisor**

**Dr. M. Ahsan Kabir**

Professor

Department of Law  
University of Rajshahi

**Department of Law  
University of Rajshahi**

**June 2018**

*Dedicated*  
*To*  
*My Parents*

## **Declaration**

I hereby declare that this thesis entitled- "*Rights of Disable Persons: Law and Practice in Bangladesh*" is my original work rusting from the investigation for the degree of doctorate of philosophy (Ph.D) Department of Law, University of Rajshahi. The entire research was carried out by me under the guidance and supervision of Dr. M Anisur Rahman, Professor, Department of Law, University of Rajshahi & Co-Supervisor Dr. M. Ahsan Kabir, Professor, Department of Law, University of Rajshahi.

I further declare that this thesis or any part of this thesis has not been previously submitted in partial or in full.

**Md. Emdadul Hasan**  
Researcher  
Department of Law  
University of Rajshahi

Department of Law,  
University of Rajshahi,  
Rajshahi-6205.



আইন বিভাগ,  
রাজশাহী বিশ্ববিদ্যালয়,  
রাজশাহী -৬২০৫

## Certificate

This is to certify that the thesis entitled- "*Rights of Disable Persons: Law and Practice in Bangladesh*" submitted by Md. Emdadul Hasan for the degree of Doctor of Philosophy (Ph.D) is an original research done by him under our guidance and supervision and that this thesis has not been submitted either in part or in full by the candidate of any degree, diploma, associate ship, fellowship or other similar title.

It is also certified that this thesis represents an independent work on the part of the candidate.

**Dr. M Anisur Rahman**  
Principal Supervisor  
&  
Professor  
Department of Law  
University of Rajshahi

**Dr. M. Ahsan Kabir**  
Co-Supervisor  
&  
Professor  
Department of Law  
University of Rajshahi

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June, 2018

Md. Emdadul Hasan



## **Abstract**

That the issue of disables is not a well-known issue in the world and specially in a developing country like Bangladesh. Regarding disables legal rights there are a few researches in African and European countries but almost no research has been done in our country. Our state and some NGOs are trying to shout about the rights of disabled persons. And there are a few works done by filing some writ petitions to enforce the disables legal rights in our country. Some new laws and initiatives taken by the state and some international instruments and treaties, conventions are there by United Nations and other international organizations. Different countries including Bangladesh ratified the United Nation conventions. But the problem lies with the enforcing of rights of persons with disabilities through judicial machineries in international and national aspect is narrow. Actually before some decades the issues of disables' rights were addressed as charity. That time a handicapped disabled person used to think they have only rights to get a charity by receiving a wheel chair, otherwise they have no other rights. But now nationally and internationally the themes of the world have changed. At present along with the theme of charity other rights as economical, social and political rights of the disabled persons are included.

That present thesis focus on the problems and solutions of the legal rights of disable it may give some valuable inputs in covering up the deficiencies in the study field of Bangladesh and other researchers. It also focuses on human rights of disables' and its laws, other international instruments, disables' rights under multiple legal provisions. This thesis discusses about national and international initiatives to afford the rights of persons with disabilities, different types of disabilities and their legal rights and its practice in Bangladesh. It includes the problems to establish the rights of disable and by analysing the problems we can come to findings how the disable persons can establish their rights in our country and abroad.

## **Abbreviations**

AAB	: Action Aid Bangladesh
ADA	: Americans with Disabilities Act
ADD	: Action on Disability and Development
ADDP	: African Decade of Disabled People
ASP	: Assistant Superintendent of Police.
BPKS	: Bangladesh Protibondhi Kallyan Shomity
BSAF	: Bangladesh Shishu Adhikar Forum
BUET	: Bangladesh University of Engineering and Technology
BVIPS	: Bangladesh Visually Impaired Peoples' Society
CAMPE	: The Campaign for Popular Education
CDC	: Community Development Committee.
CDD	: Center for Disability in Development
CPD	: Center for Policy Dialogue
CRC	: Convention on the Rights of the Child
CRP	: Rehabilitation of the Paralyzed
CRPC	: Criminal Code of procedure
CRPD	: UN Convention on the Rights of Persons with Disabilities
CSID	: Center for Services & Information on Disability
DDA	: The Disability Discrimination Act
DDWC	: The District Disability Welfare Committees

DF	: The Disaster Forum
DPOs	: Organizations of Persons with Disabilities
DR	: Disable's Right
DRMRP	: Declaration on the Rights of mentally Retarded persons
DRWGB	: Disability Rights Watch Group Bangladesh
DSS	: Department of Social Services
ECLAC	: Economic Commission for Latin America and the Caribbean
GI	: Gender Identity
GOB	: Government of Bangladesh
HI	: Handicap International
HR	: Human Right
IBR	: International Bill of Rights
IDA	: International Disability Alliance
IDPD	: International Day of Persons with Disabilities
IGP	: Inspector General of the police
ICESCR	: International Covenant on Economic, Social and Cultural Rights
ILO	: International Labour Organization
JICA	: Japan International Co-operation Agency
LCL	: Local Government
MSW	: Ministry of Social Welfare
NCC	: The National Coordination Committee
NCDW	: National Council of Disabled Women

NEC	: <i>The National Executive Committee</i>
NFDDP	: National Foundation for Development of the Disabled Persons
NFOWD	: National Forum of Organizations Working with the Disabled
NGDO	: National Grassroots Disability Organization
NGO	: Non-Government Organization
PEDP	: Primary Education Development Program
PIL	: Public Interest Litigation
PKSF	: The Polli Karma Shohayak Foundation
PRSP	: Poverty Reduction Strategy Paper
PWD	: Persons With Disabilities
SAARC	: South Asian Association for Regional Co-Operation
SADF	: South-African Development Fund
SC	: Supreme Court of Bangladesh
SHOs	: Self-Help Organizations
SOS	: Sex Orientation Scale
SW ID	: Society for the Welfare of the Intellectually Disabled
SWID	: Society for the Welfare of the Intellectually Disabled, Bangladesh
UDHR	: Universal Declaration of Human Rights
UNC	: <i>Charter</i>
UN	: United Nation
UNICEF	: UN Children's Fund

UNESCAP : United Nations Economic and Social Commission for Asia  
and the Pacific

UP : Union Parishad

US : United States

VGD : Vulnerable Group Development

VGF : Vulnerable Group Feeding

WHO : World Health Organization

WP : World Programme

WPA : World Programme of Action Concerning Disabled Persons

YPSA : Young Power in Social Action

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# Chapter One

## Introduction

### 1.1 Introduction

Bangladesh is a developing country. According to the World Health Organization, about ten percent of populations of our country are disabled.<sup>1</sup> Disabled people are the most oppressed and excluded members of the society. One of the main problems faced by disabled people is the negative attitude of the society over them. Negative attitudes, environmental and institutional barriers have put them among the vulnerable and neglected class of the society. From family to state everywhere disabled children and adults are excluded from their social, political, and economical rights. Furthermore disabled adults and children are also excluded from any development functions. Our Society has seen their problem primarily from the medical or welfare perspectives. Actually their needs and priorities are not addressed same as those of the other members of their communities.<sup>2</sup> That even literature and languages also do not give them the words which sounds good. In Bengali there are so many local language used for them like physically disabled called as “Langra”, “Kana” “Lula” etc. which sounds vulnerable and mostly insulting.

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<sup>1</sup> [www.who.int/disabilities/world\\_report/2011/report/en/](http://www.who.int/disabilities/world_report/2011/report/en/) [Last visited on 5.3.16]

<sup>2</sup> Disability, Economic Globalization and Privatization: A Case Study of India-by-Vanmala Hiranandani

## **1.2 Justification of the Study**

The present study is expected to identify the problems regarding the disabled's rights, law and practice in Bangladesh. It also focuses on the solution of those problems. Its findings will be helpful to establish political, social and legal rights of disabled and ultimately to develop the country. The research may give some valuable inputs in covering up the deficiencies in the study of Bangladeshi or any other researchers, in existing laws. Moreover, the findings of the study will contribute to the arrangement of structural and procedural safeguards for protecting disabled's rights in Bangladesh.

## **1.3 Objectives of the Study**

There had been some objectives set forward in doing this research so that the task I have to perform in this research can be determined. The principal objective of the study is to identify and show the methods and modes in theory and practice of the municipal legal provision of the disabled's rights in Bangladesh, keeping pace with international legal instruments. Other objectives of the study are as follows:

1. To study on the general concept of the human rights of disabled and its law.
2. To identify the types of disability in view of legal and normal aspect.
3. To identify the national and international instruments and initiatives to uphold the rights of persons with disabilities.

4. To encourage the most marginalized disabled people.
5. To make a comparison between the standard protections of disabled's rights by international instruments and the domestic laws of Bangladesh.
6. To make a framework of protecting disabled's rights in Bangladesh.
7. To stand by the organizations and NGOs in campaigning for legal protection against discrimination and to enable disabled people to realize their rights and exercise their responsibilities as cover.
8. To discuss about the existing laws and practices on the disabled's right in Bangladesh.
9. To forward some recommendations for the better protection of disabled's rights by our society and the Government of Bangladesh.

#### **1.4 Rationale of the Study**

Disabled's rights, law and practice is one of the most talked about and interesting topics of present time. The disabled people are looking forward for newer something in our existing society and talking about their rights to people. Disabled's right is undoubtedly an important area for them. The government is also talking about the disabled's right and standardizing the lifestyle of the disabled and in no way they can achieve their goal without being helped by the Government. So the topic of this study is very interesting to me.

## **1.5 Review of Relevant Literature**

No in-depth research on disable rights: its law and practice in Bangladesh has been conducted before. Though different researches on different NGOs have previously been conducted by this type of research on disable's rights in another way but this type of research is completely new. So, in this area, virtually no mentionable investigative research work has been found; only a few books, regular yearly reports, some occasional paper, brochures and different reports.

Apart from these, some writers, through their books and articles, have shortly discussed about this matter. There are some books published in home and abroad regarding the disables' rights.

## **1.6 Sources and Materials**

### **Sources of data**

There are two sources of data which have been used and most of the data are collected from the secondary sources. The sources are described below-

### **1.6.1 Primary Sources**

I took the opinion of different types of disabled people along with the officials of various government bodies of the state and the NGOs. Information also gathered from practical experience, different case studies of disables' functions for protecting their rights, cases conducted by different

NGOs alone or jointly, annual reports of different NGOs, different publications and occasional papers published by NGOs. The constitution of the People's Republic of Bangladesh, Labor Act-2006, The child Act-1974, Penal code-1860, United Nations Convention on the rights of the person with disabilities, different reports published by united Nations different wings, Disable persons Right And Protection Act-2013 introduced by the Government of Bangladesh which came enforce on 9<sup>th</sup> October 2013<sup>3</sup>, Bangladesh Disable Welfare Act-2001(2001 Act No-12) Repeal and other laws related to these from home and abroad.

### **1.6.2 Secondary Sources**

The major sources of information are the published research reports and papers, unpublished reports from reputable organizations, cases, books, articles, websites and press reports published in different dailies.

## **1.7 Research Methodology**

In the research the method of documentary analysis has been mostly used. Moreover the case study method has been used to give the work a complete shape. The data has been processed and analyzed by computer both qualitatively and quantitatively. Statistical methods consisting of percentage correlation have been used; the analysis of qualitative data has been made through systematic and analytical description of the collected facts.

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<sup>3</sup> Bangladesh Gadget, Additional, October-9, 2013.

## **1.8 Scope of the Study**

The study would focus on the following areas:

- The current state of disable's rights in Bangladesh, its law and practice
- Various performances of different Government bodies and NGOs
- Each of the above areas would be critically analyzed in order to determine the Performance of the functions of these Institutions.

## **1.9 Limitation of the Research**

Actually, the truth is that, the limitations of this report are well concrete.

They are stated below–

### **➤ Data Insufficiency**

The report would have been very informative if I got the opportunity to have adequate data.

### **➤ Lack of knowledge and experience**

Honestly, I agree that making a compliance study on this topic requires a great deal of experience and current knowledge. As a researcher, sometimes I faced the deficiency of that kind of knowledge and experience but I tried my level best for better research.

## **1.10 Chapter Outline**

This thesis has been classified into six chapters.

### **Chapter One: Introduction**

Chapter one is actually an introductory chapter. Here, it is discussed about justification and object of this study. It includes sources and materials, research, methodologies and analysis procedure regarding the study of disables' rights in Bangladesh.

### **Chapter Two: Disable and Types of Disability**

In chapter two of this thesis it is described about the historical background and development of rights of disable persons in Bangladesh, types of disables. It further describes about the disability and autism.

### **Chapter Three: International Instruments and Initiatives to Uphold the Rights of the Persons with Disabilities**

Chapter three mentions about the International instruments and conventions to protect the rights of disables and the rights which disables acquire from the international treaties, conversions and resolutions of different international organizations and foreign countries.

### **Chapter Four: Organization and Our State Initiatives to Uphold the Rights of the Persons with Disability**

Chapter four narrates about the organizations and our state initiatives to uphold the rights of the persons with disabilities. And it further describes about the government and ministerial actions to protect disables' rights. It

also contains and describes about the NGOs (Non-Govt. Organizations) who work for disables in Bangladesh.

### **Chapter Five: Different Laws for Protecting Disables' Rights and Establish their Organizations and its Practice in Bangladesh**

In Chapter five of this thesis it is stated about the different laws of protecting the disables' rights and further the laws by which the disable can establish their own organization. It also describes about the supreme law of Bangladesh i.e. constitutional law of Bangladesh work for disable and the other related laws and its practice existing in Bangladesh.

### **Chapter Six: General Conclusion**

Chapter six is a general conclusion of this study. Here, after analysing the native and international laws, conversions, treaties selected the problems of establishing the disables rights and come to the findings regarding this. And further in recommendation is given for solution.

#### **1.11 Conclusion**

Disability is the outcome of an impairment that may be physical, cognitive, mental, sensory, emotional, developmental, or some combination of these. A disability may be present from birth, or occur during a person's lifetime by an accident or other ways. But in any case both the society and the country have some responsibilities over them.



## **Chapter Two**

# **Disable and Types of Disability**

### **2.1 Introduction**

Human being wants to live a sound and healthy life but sometimes natural and manmade problems put barrier to their expectations. People are sometimes born disabled or they get disabled in the later stages of life due to accidents or other illnesses and complications that can happen at the time of their birth, after birth, at the womb or at the time of pregnancy. These kinds of obstacles make their life unnatural and difficult. These difficulties could be overcome by the help of their family members, neighborhood, society and the state. Otherwise these hardships will turn out worse and the disabled have to face every kind of deprivation, discrimination and difficulties in different places at different times. As a result they will start thinking it is a curse on them and they will have to suffer till death.<sup>4</sup>

### **2.2 Development of Rights of Disabled in the World**

The work of the United Nations (UN) constitutes the most important actions taken by an international organization in the area of disability. Based on the International Bill of Rights, the UN formulated the first specific document<sup>5</sup>

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<sup>4</sup> Oxford Research Encyclopedias, Encyclopedia of Social Work, National Association of Social Workers Press and Oxford University Press.

<sup>5</sup> Resolution adopted by the General Assembly 217 (III). International Bill of Human Rights, UN Documents, 10 December 1948

regarding disabilities in 1971 in the Declaration on the Rights of Mentally Retarded Persons. Important other documents were being followed but none of them are legally bound. The 1980s mark the main phase of activity regarding the establishment of international norms pertaining to persons with disabilities. In 1981, the General Assembly declared the first International Year of Disabled Persons. It was followed by the World Programme of Action Concerning Disabled Persons in 1982 and the Decade of Disabled Persons 1983-1992. Throughout the 1990s all United Nations (UN) conferences dealt with disability rights and addressed the need for protective instruments<sup>6</sup>. In the year of 2001, United Nations (UN) constituted an Ad hoc committee regarding convention that protects disabled persons on an international level<sup>7</sup>. In the year of 2004, working group produced a draft and on 25<sup>th</sup> August, 2006, the Ad hoc committee took for dialogue on the Convention on Rights of Person with Disabilities (CRPD) a high level of awareness is also demonstrated by the European Union, the year 2003 was declared as the European Year of People with Disabilities. The Asian and Pacific declared 1990 to 2002 as Decade of Disabled Persons. The African and the Arab also declared decade of Disabled persons 2000 to 2009 and 2003 to 2012 respectively in those years they worked much on it<sup>8</sup>.

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<sup>6</sup> World Conference on Human Rights 1993, Fourth World Conference on Women 1995 & Habitat II 1996

<sup>7</sup> Protibondhi Adhiker Ain; Ainjibider Nirdeshika

<sup>8</sup> Disability And International Cooperation And Development: A Review Of Policies And Practices, by-Janet Lord, Aleksandra Posarac, Marco Nicoli, Karen Peffley, Charlotte McClain-Nhlapo And Mary Keogh, May 2010, P-15, 16

The 10<sup>th</sup> South Asian Association for Regional Co-Operation (SAARC) summit which was held on 31<sup>st</sup> July, 1998, in Pakistan where in Islamabad resolution for the first time, took steps for 100 million of disabled people of this region and the head of the governments accepted the proposal of the Prime Minister of Bangladesh for the establishment of the SAARC voluntary fund for disabled people. It was expected that effective steps will be taken after this for the betterment of South-Asian disabled people but till now that proposal is not implemented. South-Asian leadership conference on the person with disability held on 21-22 September, 2011, at British Council Auditorium, Dhaka was organized by Ministry of Social Welfare, associates with South-African Development Fund (Charity) (SADF), United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), Asia-Pacific Development center on Disability, Japan International Co-operation Agency (JICA) and the British Council. At this conference, some recommendation has taken for enforce the rights of the enforcing with disabilities in South-Asia.

### **2.3 Historical Background and Development of Rights of Disable Persons in Bangladesh**

Bangladesh is one of the developing countries of the South Asian region. The population of Bangladesh is near about 160 million.<sup>9</sup> Considering the world

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<sup>9</sup> Daily Ittefaq, 30 May 2017.

declaration and the need of services for the intellectually disabled, programs for the intellectually disabled have been started in Bangladesh from 1977; but the services for them are very limited till today. Disability is a universal element in the human condition from which no one is immune. This problem is not acknowledged as a national problem and proper steps are not taken as a national agenda for the development of the persons with disabilities. Reasons behind this attitude may be low political interest and cost-effective benefit. The comprehension on disability, throughout the history, has rested on make-believe ideas. Before 1977 people of Bangladesh were unaware of intellectual disability. Persons with Intellectual Disability were treated as “Mad”. They had no access in any kind of school and if any unidentified mild intellectually disabled persons were admitted; they were neglected or given inappropriate educational services. They also lacked appropriate vocational support. In 1977 Society for the Welfare of the Intellectually Disabled, Bangladesh (SWID Bangladesh) was established by the parents and professionals who started educational program for the children with intellectual disability in Bangladesh.<sup>10</sup> Regarding this, Bangladesh had taken other steps by ratifying the United Nations Convention on Rights of persons with Disabilities (CRPD) on 9<sup>th</sup> May, 2007.<sup>11</sup>

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<sup>10</sup> COUNTRY REPORT: BANGLADESH, Md. Zulfiker Haider Convenor, Care-taker Body SWID Bangladesh

<sup>11</sup> Convention on the Rights of Persons with Disabilities (CRPD)

Government has taken different steps about the Disabled persons and their disability such as in the 1995, the government has taken policy for prevention, identification, Education, Rehabilitation, research and other facilities and management of national programmes. For the welfare and development of persons with disabilities an action plan was launched in the light of the policy. In the year of 2001, Bangladesh government passed an Act named “Portibandi Kollayan Ain-2001” but that was repealed by an Act named “Rights of Disable Persons and Protection Act-2013”. That our constitution also provides us equal rights, Status, Human Rights and Social dignity. This Act of 2013 may not protect and ensure the disabled person properly but may assist them how to take access to justice, get freedom from violence and complain against violence. This Act also provides to constitute committee in different stages of the government to ensure the rights of the persons with disability.

#### **2.4 Definition of Disability**

Disability is a multidimensional concept that is difficult to readily apply. It is not a static event but a dynamic process that can fluctuate. Disability definitions tend to vary and evolve to suit different purposes. Functional definitions view disability as a lack or restriction of bodily functions. They are often used in surveys and censuses to estimate service needs. According

to relative definitions, disability appears in the relation between a person with impairments and an inaccessible surrounding. These definitions are intended to turn the attention from individuals with impairments to their interaction with the surroundings. According to Administrative definitions of disability, people with disabilities are those categorized by the welfare state as being in need of or eligible for certain support. Finally, according to subjective definitions, people who perceive themselves as disabled have a disability, irrespective of the basis of such perceptions. There have been several attempts to create a model of disability. Two common categories of models are medical and social.<sup>12</sup>

“Disability” means a physical or mental impairment that substantially limits or restricts the condition, manner, or duration under which an average person in the population can perform a major life activity, such as walking, seeing, hearing, speaking, breathing, learning, working, or taking care of oneself.<sup>13</sup>

### **According to convention on the rights of persons with disabilities (CRPD)**

In article to of above mention convention discussed. A social model of disability, defines disability as including: ‘those who have long-term physical, mental, intellectual or sensory Disability impairments which in

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<sup>12</sup> Disability Discourse: Overview and Critiques of the Medical and Social Models by-Justin Anthony Haegele & Samuel Hodge (Pages 193-206 | Published online: 09 Mar 2016)

<sup>13</sup> Definition of Disability Under the ADA: A Practical Overview and Update-published by-Cornell University, ILR School-Employment and Disability Institute.

interaction with various barriers may hinder their full and effective participation in the society on an equal basis with others."<sup>14</sup>

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economical, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

### **According to Section 2(9) of Rights of Disable Person and Protection Act-2013**

“Disability means for any reason a person permanently or for long time physically, mentally, intellectually, cerebrally or vision impaired or inaccessible caused the particular person barred to equal and active participation in the society.”<sup>15</sup>

## **2.5 Identification of Disability**

We can identify the persons with disability when these kind of human being come within the touch of Society. We can also identify them by their reaction and response to the society, situation and individual. Person with disability can be also identified by their physical and mental disorder.

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<sup>14</sup> Convention On the Rights of Person with Disabilities (CRPD)

<sup>15</sup> Section-2 (9) of Persons with disabilities rights and protection Act 2013

Normally “Persons with Disability” can be identified by the followings

**2.5.1 "Disabled" means any person who**

- a) is physically crippled either congenitally or as result of disease or being a victim of accident, or due to improper or maltreatment or for any other reasons became physically incapacitated or mentally imbalanced, and
- b) as a result of such crippled or mental impairedness,-
  - i) has become incapacitated, either partially or fully; and
  - ii) is unable to lead a normal life.

**2.5.2 Any person having disability described hereunder shall be included in the meaning and scope of the identification**

- a. **"Visual impaired"**<sup>16</sup> means any person who has,-
  - i. No vision in any single eye, or
  - ii. in both the eyes, or
  - iii. visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye even with correcting lenses; or
  - iv. Limitation of the 'field of vision' subtending an angle of 20° (degree) or worse;
- b. **Physically handicapped**<sup>17</sup> refers to person who has, -
  - i. lost either one or both the hands, or

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<sup>16</sup> Jack A. Nelson, The Disabled, the Media, and the Information Age, London.

<sup>17</sup> Eugene E. Bleck & Donald A. Nagel (Author), Physically Handicapped Children: A Medical Atlas for Teachers.



- ii. lost sensation, partly or wholly, of either hand, or it is so weaker in normal condition that the situations stated under subsection (i) (a) and (b) are applicable to his case; or
  - iii. lost either one or both the feet, or
  - iv. lost sensation, partly or wholly, of either or both the feet, or it is so weaker in normal condition that the situations stated under subsection I (a) and (b) are applicable to his case; or
  - v. has physical deformity and abnormality, or
- c. has "**hearing impairment**" meaning one's loss of hearing capacity in better ear in the conversation range of frequencies at 40 decibels (hearing unit) or more, or damaged or ineffective otherwise; or
- d. has "**speech impairment**" meaning loss of one's capacity to utter/pronounce meaningful vocabulary sounds, or damaged, partly or wholly, or dysfunctional; or
- e. has "**mental disability**" meaning,-
- i. one whose mental development is not at par with his chronological age or whose IQ (Intelligent Quotient) is far below the normal range, or
  - ii. has lost mental balance or is damaged, partly or wholly; or
- f. has *multiple disabilities*, that is one who suffers from more than one type of above stated impairments;

## 2.6 Types of Disability

We can also identify the person with disability by their ability to function, caused by changes in various part of the body or to mental health and the degree of the disability may range from middle to moderate, severe or profound a person may also have multiple disability.<sup>18</sup>

**Legally “Persons with Disability” can be identified by the followings**

### 2.6.1 Physical Disability

Any impairment which limits the physical function of limbs, fine bones, or gross motor ability is a physical disability.<sup>19</sup> Other physical disabilities include impairments which limit other facets of daily living, such as severe sleep apnea. In Rights of Disable Person and Protection Act-2013 also discussed regarding physical disability where section- 5 (Ka to Ga) elaborately discussed about the physical disability.<sup>20</sup>

#### 2.6.1.1 Sensory Disability

Sensory disability is impairment of one of the senses. The term is used primarily to refer to **vision** and **hearing** impairment, but other senses may also be impaired.

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<sup>18</sup> Disability: Definition, Types and Models, published by-Disabled World

<sup>19</sup> <http://www.ada.gov/pubs/adastatute08.pdf>. [Last visited on: 15.06.2016]

<sup>20</sup> Persons with disabilities rights and protection Act 2013, Section-5.

### **2.6.1.2 Vision Impairment**

Vision impairment ("visual Disability") is vision loss (of a person) to such a degree as to qualify as an additional support need through a significant limitation of visual capability resulting from either disease, trauma, or congenital or degenerative conditions that cannot be corrected by conventional means, such as refractive correction, medication, or surgery. This functional loss of vision is typically defined to manifest with best corrected visual acuity of less than 20/60, or significant central field defect.<sup>21</sup>

### **2.6.1.3 Hearing Impairment**

Hearing impairment or hard of hearing or deafness refers to conditions in which individuals are fully or partially unable to detect or perceive at least some frequencies of sound which can typically be heard by most of the people. Mild hearing loss sometimes may not be considered as a disability.<sup>22</sup>

### **2.6.1.4 Transgender or Transsexual**

Transgender is the state of one's gender identity (self-identification as woman, man, neither or both) not matching one's assigned sex (identification by others as male, female or intersex based on physical/genetic sex). Transgender is independent of sexual orientation; transgender people may be identified as heterosexual, homosexual, bisexual, pansexual, poly sexual, or

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<sup>21</sup> Persons with disabilities rights and protection Act 2013, Section-7.

<sup>22</sup> Ibid, Section- 10 & 11.

asexual; some may consider conventional sexual orientation labels inadequate or inapplicable to them which we may call a sexual disability.

For some people, having transgender can be a type of disability. For example, severe gender dysphoria can meet the legal definition of a disability and similarly so can various intersex conditions. Also, people can be transgender and have a separate disability. The manner of assessment in operation at Gender Identity Clinics often directly and indirectly discriminates against transgender who have separate disabilities.<sup>23</sup>

In this context it may be said that transgender are to be regarded as disabled as their physical impairment limits their sexual functions and abilities.

In America under Americans with Disabilities Act (ADA)-1990, Transgenders are identified and expressed as disabled.<sup>24</sup> In our country and our neighbor country India also passed Act regarding transgender in the year of 2014.

### **2.6.2 Olfactory and Gustatory Impairment<sup>25</sup>**

Impairment of the sense of smell and taste are commonly associated with aging but it can also occur in younger people due to a wide variety of causes.

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<sup>23</sup> Disability & Transgender Group notes

<sup>24</sup> <https://www.ada.gov/pubs/adastatute08.pdf> [Last visited on: 08.06.2016]

<sup>25</sup> [www.doctordisability.com/olfactory\\_and\\_gustatory\\_impairment\\_disability](http://www.doctordisability.com/olfactory_and_gustatory_impairment_disability). [Last visited on: 08.06.2016]

*There are various olfactory disorders:*

- ✓ Anosmia – inability to smell
- ✓ Dysosmia – things smell different than they should
- ✓ Hyperosmia – an abnormally acute sense of smell.
- ✓ Hyposmia – decreased ability to smell
- ✓ Olfactory Reference Syndrome – psychological disorder which causes patients to imagine they have strong body odor
- ✓ Parosmia – things smell worse than they should
- ✓ Phantosmia – "hallucinated smell", often unpleasant in nature

### **Taste # Disorders of taste**

Complete loss of the sense of taste is known as ageusia, while dysgeusia is persistent abnormal sense of taste,

### **2.6.3 Somatosensory Impairment<sup>26</sup>**

Insensitivity to stimuli such as touch, heat, cold, and pain are often an adjunct to a more general physical impairment involving neural pathways and is very commonly associated with paralysis (in which the motor neural circuits are also affected).

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<sup>26</sup> Leeanne M. Carey & others, Relationship between Touch Impairment and Brain Activation After Lesions of Subcortical and Cortical Somatosensory Regions, Australia, March 2011.

#### **2.6.4 Balance Disorder**

A balance disorder is a disturbance that causes an individual to feel unsteady, while standing or walking. It may be accompanied by symptoms of being giddy, woozy, or have a sensation of movement, spinning, or floating. Balance is the result of several body systems working together.

#### **2.6.5 Intellectual Disability**

Intellectual disability is a broad concept that ranges from mental retardation to cognitive deficits too mild or too specific (as in specific learning disability) to qualify as mental retardation. Intellectual disabilities may appear at any age.<sup>27</sup>

#### **2.6.6 Developmental Disability**

Developmental disability is any disability that results in problems with growth and development. Although the term is often used as a synonym or euphemism for intellectual disability.

#### **2.6.7 Invisible or Non-visible Disabilities**

Several chronic disorders, such as diabetes, asthma, inflammatory bowel disease or epilepsy, would be counted as non visible disabilities.

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<sup>27</sup> Persons with disabilities rights and protection Act 2013, Section-9.

### **2.6.8 Mental Illness Leading to Disability**

A mental disorder or mental illness is a psychological or behavioral pattern generally associated with subjective distress or disability that occurs in an individual, and perceived by the majority of society as being outside of normal development or cultural expectations. The recognition and understanding of mental health conditions has changed over time and across cultures, and there are still variations in the definition, assessment, and classification of mental disorders, although standard guideline criteria are widely accepted.<sup>28</sup>

### **2.6.9 Cerebral Palsy<sup>29</sup>**

This kind of disability comes from the trauma. As a result of this person with disability –

- i. impaired ability to move hands and leg
- ii. impaired ability to balance
- iii. suffered from hearing impairment
- iv. speech impairment
- v. vision impairment

### **2.6.10 Down Syndrome**

This type of disability is genetic caused by 21<sup>st</sup> (twenty first) pair of chromosome which carries mental and physical disability.<sup>30</sup>

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<sup>28</sup> Persons with disabilities rights and protection Act 2013, Section-6.

<sup>29</sup> Ibid, Section-12

<sup>30</sup> Ibid, Section-13

### **2.6.11 Multiple Disability**

If any person with disability suffers from more than one disability at the same time it is called multiple disabilities<sup>31</sup>.

### **2.6.12 Autism or Autism Spectrum Disorders**

The symptoms of Autism or Autism Spectrum disorders are followings-

- i. impaired to communication oral or non oral
- ii. impaired to exchange of opinion, behavior, plan in social and cooperation
- iii. repeating the same work or behavior over and over again
- iv. inflexible adherence to specific routine
- v. intellectual disability
- vi. Preoccupation with certain objects or subjects
- vii. not able to eye contract with others<sup>32</sup>

### **2.6.13 Other disabilities**

The disabilities which are not defined by law but time to time through gazette notification take in the preview of law will be defined as other disability. This kind of disability will be declared by the National Coordinating Committee under Rights of Disable Person and Protection Act-2013.

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<sup>31</sup> Persons with disabilities rights and protection Act 2013, Section- 14

<sup>32</sup> Ibid, Section-4



## 2.7 Disability and Autism

Another form of disability is Autism or “Autism Spectrum disorders” is the most common condition in a group of developmental disorders known as the autism spectrum disorders (ASDs).<sup>33</sup> Autism is characterized by impaired social interaction, problems with verbal and nonverbal communication. These behaviors can range in impact from mild to severe. The hallmark feature of autism is impaired social interaction. Parents are usually the first to notice symptoms of autism in their child. As early as infancy, a baby with autism may be unresponsive to people or focus intently on one item to the exclusion of others for long period of time. A child with autism may appear to develop normally and then withdraw and become indifferent to social engagement.

Unusual eating behavior occurs in about 75% of children with Autism Spectrum Disorders (ASD) to the extent that it was formerly a diagnostic indicator. Selectivity is the most common problem, although food refusal also occurs. Among them some of the children with autism also have gastrointestinal symptoms<sup>34</sup>.

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<sup>33</sup> [www.chinastemcell.com.cn/](http://www.chinastemcell.com.cn/) [Last visited on: 16.06.2016]

<sup>34</sup> <https://en.wikipedia.org/wiki/autism> [Last visited on: 16.06.2016]

## **2.8 Conclusion**

Disability is the outcome of the many things. According to Medical community- Human being can inherit it or caused by a mothers infection or other diseases during pregnancy embryonic or fetal developmental irregularities or by injury during or soon after birth or illness, injury or of unknown origin. As such the definition and types of disability are different in perspective of Medical, Social, legal and general aspect and one cannot match with other. A legally disabled person may not be disabled in the perspective of others. In the different society the disability cannot be defined and classified equally. In one society which Act is treated as a behavior of disable person that particular Act may not be treated so in another society. Whatever may be the definitions and types of disability that something different not equal in the perspective of place, time and object. Disable persons are part of the Society and World population. But they are mostly oppressed and excluded members of the society. Every Person, Society, State and lastly the World has some responsibility towards them.

## **Chapter Three**

# **International Instruments and Initiatives to Uphold the Rights of the Persons with Disabilities**

### **3.1 Introduction**

There are many international instruments that are related to safeguarding the rights of persons with disabilities. They mainly focus on protecting disabled persons from discrimination and creating equal opportunities for them to participate in the society. Rights of persons with disabilities, is one of the least understood, or rather, one of the most misunderstood issues in Bangladesh. Therefore it also has historically remained as one of the most neglected & forgotten development agenda both by the State & the non-state factors. People with disabilities have always been considered as recipients of charity & welfare. By the late 90's, almost all donors in the development field initiated changing their support and view from a service-delivery approach to a rights-based approach.<sup>35</sup>

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<sup>35</sup> A Guidance Note for United Nations Country Teams and Implementing Partners-(United Nations Development Group)

## **3.2 International Instruments to Protect the Rights of Disabled**

### **3.2.1 Universal Declaration of Human Rights (UDHR)-1948<sup>36</sup>**

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations in 1948 and it provides human rights standards accepted by all the member states. The UDHR represents the normative basis that led to formulating the standards concerning persons with disabilities that exists today. UDHR is as follows:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

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<sup>36</sup> United Nations Universal Declaration of Human Rights 1948--United Nations (UN)--copy @ lexmercatoria.org, p. 2,5

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore the general assembly proclaims this universal declaration of human rights as a common standard of achievement for all people and all nations, to the end that every individual and every organ of the society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. This is the mother of all declarations. By this document UN

tried to ensure the rights of all human beings. Whatever may his position be by color, caste, religion, mental, physical or even disable.

The rights given through UPHR to the disables disclosed as follows:

### **3.2.1.1 Right for all without any Dissemination**

According to article 1 of UDHR All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.<sup>37</sup> In accordance with article 2 of UDHR Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.<sup>38</sup>

### **3.2.1.2 Right to life and freedom**

Article 3 to 6 disclosed that everyone has the right to life, liberty and security here everyone means included disable persons. In view of article 4 of UDHR no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Everyone

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<sup>37</sup> Universal Declaration of Human Rights (UDHR)-1948, Article 1.

<sup>38</sup> Ibid, Article 2.

has the right to recognition everywhere as a person before the law. Here in this articles like other person the disables will be included.<sup>39</sup>

### **3.2.1.3 Right to equal before law and enjoy fundamental rights**

In view of article 7-10 of UDHR it is clear that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. No one shall be subjected to arbitrary arrest, detention or exile. Everybody including disable is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. These articles give the rights for all human being including the disables.<sup>40</sup>

### **3.2.1.4 Right to take Necessary Defense of Law**

Article 11 of UDHR disclosed that if anyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or

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<sup>39</sup> Universal Declaration of Human Rights (UDHR)-1948, Article 3-6.

<sup>40</sup> Ibid, Article 7-10.

international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.<sup>41</sup>

### **3.2.1.5 Right to Privacy, Family and Correspondence**

Article 12-13 discussed about the privacy, family, home and right to freedom and it is also state that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Everybody including disable has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country. Here by this article the disable also can enjoy those freedoms.<sup>42</sup>

### **3.2.1.6 Right to Political Asylum, Property, Freedom of Thought**

In Article 14-18 of UDHR discussed about the political asylum, nationality and any limitation due to race, nationality or religion, own property and freedom of thought, conscience and religion. Here it is state that everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. Everyone has the right to a

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<sup>41</sup> Universal Declaration of Human Rights (UDHR)-1948, Article 11.

<sup>42</sup> Ibid, Article 12-13.



nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Every person including disable has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>43</sup>

### **3.2.1.7 Right to peaceful assembly and social security**

Universal Declaration of Human Rights article 19-22 given the rights for freedom of opinion, freedom of peaceful assembly, equal access to public and right to social security in scan of those articles it came out that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Everyone has the right to freedom of peaceful assembly and association. No

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<sup>43</sup> Universal Declaration of Human Rights (UDHR)-1948, Article 14-18.

one may be compelled to belong to an association. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures and everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.<sup>44</sup>

### **3.2.1.8 Right to free choice of employment, rest and standard of living**

These articles from 23-28 of UDHR (1948) disclosed rights for everyone here by the word 'everyone' it included all human being whoever he/she is without any discrimination by anything. Like this way it included disables. Here everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everybody who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social

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<sup>44</sup> Universal Declaration of Human Rights (UDHR)-1948, Article 19-22.

protection. Every person including disable has the right to form and to join trade unions for the protection of his interests. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children and everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific

advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.<sup>45</sup>

### **3.2.1.9 Right to development of personality**

In view of article 29 everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.<sup>46</sup>

### **3.2.1.10 Special article for disable**

Above mention all articles are disclosed the rights of all human being in Article 25 (1) the UDHR specifically mentions the socio-economic rights of people with disabilities: the right to an adequate standard of living, including food, clothing, housing and medical care and social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old

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<sup>45</sup> Universal Declaration of Human Rights (UDHR)-1948, Article 23-28.

<sup>46</sup> Ibid, Article 29.

age. Article 7 guarantees equality before the law and equal protection by the law for all people, including against discrimination.<sup>47</sup>

### **3.2.2 International Covenant on Civil and Political Rights (1966)**

This treaty lists several rights that are relevant to disability. Convention runs as follows:

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person.

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby all may enjoy his civil and political rights, as well as his economical, social and cultural rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

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<sup>47</sup> Universal Declaration of Human Rights (UDHR)-1948, Article 25(1).

This convention is an international instrument where the states are parties to the convention undertakes to respect and to enforce the articles by making laws in their states to all the citizens within its territory. And in this convention in Part-II article 2(1) by using the word "other status" disabilities are also included.

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present covenant.

Agree upon articles no 1-53 and it is also divided VI parts here in part I-III discussed about the civil political rights.

## **Rights given through International Convention on Civil and Political Rights (1966)**

### **3.2.2.1 Rights of self-determination**

In Part-I Article-1 disclosed the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. The States Parties to the

present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.<sup>48</sup>

### **3.2.2.2 Undertaking of the Covenants**

In view of Part II, Article 2-5 it is clear that the state as a party have to undertake that state will protect right of all individuals to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. Each State Party to the present Covenant further undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. To ensure that any person claiming such a

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<sup>48</sup> Part I, Article 1, International Covenant on Civil and Political Rights (1966).

remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy. To ensure that the competent authorities shall enforce such remedies when granted. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the



destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.<sup>49</sup>

### **3.2.2.3 Right to life and seek pardon against death sentence**

Part III, Article 6-9 of International Covenant on Civil and Political Rights (1966) stated about the following right every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the

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<sup>49</sup> Part II, Article 2-5, International Covenant on Civil and Political Rights (1966).

Prevention and Punishment of the Crime of Genocide. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. Article 8(a) disclosed that no one shall be required to perform forced or compulsory labour. Article 8 Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court. (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include. Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention. Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law

of conscientious objectors. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community. Any work or service which forms part of normal civil obligations.

Every person including disable has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. A person of a disable who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. If a person or disable arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. If a person or disable who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.<sup>50</sup>

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<sup>50</sup> Part III, Article 6-9, International Covenant on Civil and Political Rights (1966).

#### **3.2.2.4 Right to movement, resident and equal before law**

Right to movement, resident disclosed in article 10-13 of above mentioned convention which presented bellow that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. None shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. No one shall be arbitrarily deprived of the right to enter his own country.

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.<sup>51</sup>

### **3.2.2.5 Right to take defence before court**

In the articles 14-15 of above mentioned convention describes as follows, all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

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<sup>51</sup> Part III, Article 10-13, International Covenant on Civil and Political Rights (1966).

If a person or disable charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law as per Article 14(3). In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. If a person or disable convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. When a

person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Nobody shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.<sup>52</sup>

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<sup>52</sup> Part III, Article 14-15, International Covenant on Civil and Political Rights (1966).

### **3.2.2.6 Right to Freedom of Thought Religion, Opinions and peaceful assembly**

In view of article 16-21 of the International Covenant on Civil and political Rights (1966) where it is clear that everyone shall have the right to recognition everywhere as a person before the law. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.



Everybody including disable shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals. Any propaganda for war shall be prohibited by law. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. These articles is give the rights to all human being as well as disable persons.<sup>53</sup>

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<sup>53</sup> Part III, Article 16-21, International Covenant on Civil and Political Rights (1966).

### **3.2.2.7 Right to association national security, equality, to public service and religion**

That like other articles of Part-III of International Covenant on Civil and Political Rights (1966) in the article 22-27 gave rights to all human being of the convents including the disables are as follows, everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. The right of men and women of marriageable age to marry and to found a family shall be recognized. No marriage shall be entered into without the free and full consent of the

intending spouses. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Every child shall be registered immediately after birth and shall have a name. Every child has the right to acquire a nationality.

Every citizen including disable shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

All persons including disable are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal

and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.<sup>54</sup>

In the above mentioned parts from Part I-III of the ICCPR disclose about the human rights for all human beings including disables. And the part IV-VI is regarding the formation of committees, enforce the rights, and discussed the jurisdiction & duties of the committee towards the disable which are given in this convection and those are not necessary to analyse and understand this thesis.

### **3.2.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)-1966**

The Covenant does not explicit refer to disability. However, disability can be included under "other status" in article 2 (2), which call for non-discrimination on any grounds such as race and color, and "other status".<sup>55</sup>

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<sup>54</sup> Part III, Article 22-27, International Covenant on Civil and Political Rights (1966).

<sup>55</sup> Human Rights For All International Covenant On Economic, Social And Cultural Rights-A Handbook-First Published: August 2015, ©PWESCR. All rights reserved, Published by: PWESCR (Programme on Women's Economic, Social and Cultural Rights), p. 11.

To fully elaborate on the strategies for implementation of the rights set forth in the International Covenant on Economic Social and Cultural Rights (ICESCR), formulates obligations of states to eliminate discrimination of persons with disabilities in the areas of equal rights with other men and women article 3 of the ICESCR, work ICESCR articles 6-8, social security article 9, protection of the family article 10, adequate standard of living article 11, right to physical and mental health article 12, right to education articles 13 and 14 and the right to take part in cultural life and enjoy the benefits of scientific progress article 15 are the same for disable persons.

#### **3.2.4 Declaration on the Rights of Mentally Retarded Persons (1971)**

This declaration was proclaimed by the UN General Assembly and states that: "The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings."<sup>56</sup> Mindful of the pledge of the States Members of the United Nations under the Charter to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

Reaffirming faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human and of social justice proclaimed in the Charter,

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<sup>56</sup> UN Declaration on the Rights of Mentally Retarded Persons-adopted by General Assembly resolution 2856 (XXVI) of 20 December 1971.

Recalling the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life,

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

Proclaims this Declaration on the Rights of Mentally Retarded Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights that:

The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings. The mentally retarded person has a right

to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility and whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded

person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

### **3.2.5 Declaration on the Rights of Disabled Persons (1975)**

This declaration adopted by the UN General Assembly is the first international document that tried to define the term "disability." The Declaration includes a number of social and economic rights as well as civil and political rights.<sup>57</sup>

Mindful of the pledge made by Member States, under the Charter of the United Nations to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

Reaffirming its faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

Recalling the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the Declaration on the Rights of Mentally Retarded Persons, as well as the standards already set for social progress in the constitutions,

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<sup>57</sup> UN Declaration on the Rights of Disabled Persons-adopted by General Assembly resolution 2856 (XXVI) of 9 December 1975.



conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

Recalling also Economic and Social Council resolution 1921 (LVIII) of 6 May 1975 on the prevention of disability and the rehabilitation of disabled persons,

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of preventing physical and mental disabilities and of assisting disabled persons to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life,

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

Proclaims this Declaration on the Rights of Disabled Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights that: The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as

a result of deficiency, either congenital or not, in his or her physical or mental capabilities. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible. Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.

Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social

integration or reintegration. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account. Organizations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons. Disabled persons, their

families and communities shall be fully informed, by all appropriate means, of the rights contained in this Declaration.

### **3.2.6 Declaration on the Rights of Deaf-Blind Persons (1979)<sup>58</sup>**

Delegates from 30 countries around the world assembled for the first International conference on service to deaf-blind youths and adults, welcoming the United Nations Declaration of Human Rights and the Declaration of the Rights of Disabled Persons, have agreed upon and have adopted the following Declaration specifically concerning the needs and rights of deaf-blind persons and commend it to the attention of the world community.

The special rights given through Declaration on the Rights of Deaf-Blind Persons (1979) discussed below:

#### **3.2.6.1 Right to lead normal, independent life get medical treatment and economic security**

Here in article 1-5 of Declaration on the Rights of Deaf-Blind Persons (1979) disclosed the rights which stated as follows, every deaf-blind person is entitled to enjoy the universal rights that are guaranteed to all people by the United Nations Declaration of Human Rights and the rights provided for all disabled persons by the Declaration on Rights of Disabled Persons. Deaf-blind persons have the right to expect that their capabilities and their

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<sup>58</sup> A Declaration of Rights of Deaf-Blind Persons, in Conference of Hope: Proceedings of the First Historic Helen Keller World Conference on Services to Deaf-Blind Youths and Adults 91-92 (1977).

aspirations to lead a normal life within the community and their ability to do so shall be recognized and respected by all governments, administrators, educational and rehabilitation personnel and the general public.

Deaf-blind persons have the right to receive the best possible medical treatment and care for the restoration of sight and hearing and the services required to utilize remaining sight and hearing, including the provisions of the most effective optical and hearing aids, speech training when appropriate, and other forms of rehabilitation intended to secure maximum independence. Deaf-blind persons have the right to economic security to ensure a satisfactory standard of living and the right to secure work commensurate with their capabilities and abilities or to engage in other meaningful tasks, for which the requisite education and training shall be provided.

Deaf-blind persons shall have the right to lead an independent life as an integrated member of the family and community, including the right to live on their own or to marry and raise a family. Where a deaf-blind person lives within a family, greatest possible support shall be provided to the whole family unit by the appropriate authorities. If institutional care is advisable, it shall be provided in a surrounding and under such conditions that it resembles normal life as closely as possible.<sup>59</sup>

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<sup>59</sup> Declaration on the Rights of Deaf-Blind Persons (1979), Article 1-5.

### **3.2.6.2 Right to maintain contact, information, organize their own and get legal advice**

That deaf-blind persons have rights maintain article 6-9 discussed as follows, deaf-blind persons shall have the right, and at no cost, to the services of an interpreter with whom they can communicate effectively to maintain contact with others and with the environment. Deaf-blind persons shall have the right to current news, information, reading matter and educational material in a medium and form which they can assimilate. Technical devices that could serve to this end shall be provided and research in this area shall be encouraged. Deaf-blind persons shall have the right to engage in leisure time recreational activities, which shall be provided for their benefit, and the right and opportunity to organize their own clubs or associations for self-improvement and social betterment. Deaf-blind persons shall have the right to be consulted on all matters of direct concern to them and to legal advice and protection against improper abridgement of their rights due to their disabilities.<sup>60</sup>

### **Addendum**

For purposes of implementation of the declaration of rights of deaf-blind persons, the definition of deaf-blind persons adopted by the Helen Keller World Conference on Services to Deaf-Blind Youths and Adults is as follows:

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<sup>60</sup> Declaration on the Rights of Deaf-Blind Persons (1979), Article 6-9.

“Persons who have substantial visual and hearing losses such that the combination of the two causes extreme difficulty in pursuit of educational, vocational, avocational, or social goals.”

### **3.2.7 Convention on the Elimination of Discrimination against Women (CEDAW)-1979<sup>61</sup>**

The Convention on the Elimination of Discrimination Against Women, usually abbreviated as CEDAW, does not include any specific article on disability rights, but aims to protect the rights of all women, whether disabled or not. Disabled women face double discrimination based on their gender and secondly, on their disability. In General Recommendation 18 the Committee on the Elimination of Discrimination against Women, the monitoring body of the CEDAW convention, stresses that disabled women suffer from double discrimination and are a particularly vulnerable group. It recommends that governments provide information on disabled women in their period reports and on special measures that governments have taken to ensure that women with disabilities "have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life."

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<sup>61</sup> Convention on the Elimination of All Forms of Discrimination against Women-- Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979. p. 2.

A major outcome of the International Year of Disabled Persons (1981) was the formulation of the World Programme of Action Concerning Disabled Persons (WPA) (1982). The WPA is a global strategy to enhance disability prevention, rehabilitation and equalization of opportunities, which pertains to full participation of persons with disabilities in social life and national development. The WPA also emphasizes the need to approach disability from a human rights perspective.<sup>62</sup>

### **3.2.8 Convention No. 159 concerning Vocational Rehabilitation and Employment Disabled Persons (1983)**

This treaty of the International Labour Organization (ILO), a UN specialized agency, obligates states to "formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons" (article 2). This treaty also emphasizes the principle of equal opportunity: "positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discrimination against other workers" (article 4).<sup>63</sup>

### **3.2.9 Convention on the Rights of the Child (1989)**

This treaty lists disability as one of the grounds in which discrimination is prohibited on article 2. In addition, article 23 directly addresses the rights of

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<sup>62</sup> World Programme of Action concerning Disabled Persons-Adopted by The General Assembly-UN-A/RES/37/52 on 3/12/1982.

<sup>63</sup> Ilo Convention 159-Vocational Rehabilitation And Employment of Disabled Persons.



children with disabilities stating that disabled children are entitled to a "full and decent life" of dignity and participation in the community.<sup>64</sup>

### **3.2.10 Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care (1991)**

This document adopted by the UN General Assembly sets detailed standards for the protection of persons with mental disabilities.<sup>65</sup> It emphasizes that all persons have the right to the best available mental health care and that persons with a mental illness shall be treated with humanity and respect for the inherent dignity of the human person. Individuals with mental disabilities also have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment. The Principles stipulate that there shall be no discrimination on the grounds of mental illness and that persons with a mental illness shall have the right to exercise all civil, political activities. In case a person lacks legal capacity due to his or her mental illness any decisions related to the well-being of this person shall be made only after a fair hearing by an independent and impartial tribunal established by domestic law.

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<sup>64</sup> Fact Sheet: A summary of the rights under the Convention on the Rights of the Child-by UNICEF.

<sup>65</sup> The Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care-Adopted by General Assembly UN- A/RES/46/119, 75th plenary meeting, 17 December 1991.

### **3.2.11 Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)**

Adopted by the General Assembly in 1993<sup>66</sup> in the aftermath of the Decade of Disabled Persons, the Standard Rules do not constitute a legally binding document for member states. However the Standard Rules are the most comprehensive set of human rights standards regarding disability policy to date and represent "a strong moral and political commitment of Governments to take action to attain equalization of opportunities for persons with disabilities." The document addresses preconditions for equal participation, target areas of equal participation, implementation measures and monitoring mechanisms.

Implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities is monitored by the UN Special Rapporteur on Disability. The first Special Rapporteur, Bengt Lindqvist (Sweden), was appointed in 1994, and his mandate was renewed twice, in 1997 and 2000. In 2003, Sheikha Hessa Khalifa bin al-Thani (Qatar) was appointed as the Special Rapporteur.

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<sup>66</sup> Standard Rules on the Equalization of Opportunities for Persons with Disabilities-Adopted by General Assembly UN-A/RES/48/96, 85th plenary meeting, 20 December 1993.

### **3.2.12 Beijing Declaration on the Rights of People with Disabilities (2000)<sup>67</sup>**

This declaration was adopted at the World NGO Summit on Disability and calls for a higher standard of living, equal participation and the elimination of discriminatory attitudes and practices.

#### ➤ **Convention on the Rights of Persons with Disabilities (2007)<sup>68</sup>**

This treaty was recently adopted and entered into force in May 2008.

### **3.3 African Union (Formerly Organization of African Unity, Oau)**

#### ➤ **African Charter on Human and Peoples' Rights (1981) (article 18)<sup>69</sup>**

The Charter contains article 18 (4) which states that disabled persons have the right to special measures of protection and article 16 (1) provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.

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<sup>67</sup> Beijing Declaration on Disabled Persons in the New Millennium-by-Light Richard-2000

<sup>68</sup> Selected Legislation & Jurisprudence-UN Convention on the Rights of Persons with Disabilities-European Journal of Health Law 14(2007) 273-298

<sup>69</sup> African Charter on Human and Peoples Rights Adopted in Nairobi June 27, 1981 Entered into Force October 21, 1986, p-3-available at <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf> [Last visited on: 23.01.2017]

### 3.4 Council of Europe

The Council of Europe<sup>70</sup> is a regional intergovernmental organization consisting of 47 countries. It aims to defend human rights, parliamentary democracy and the rule of law. All members of the European Union also belong to the Council of Europe. The Council of Europe has not adopted any specific human rights treaty on persons with disabilities, but created two important treaties that include the protection of disabilities rights:

➤ **European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) (article 5)**<sup>71</sup>

Article 5 of the Convention states that the right to liberty and security can be infringed upon on grounds of mental disability: "No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

➤ **European Social Charter (1961) (article 15)**<sup>72</sup>

The Charter works as the counterpart to the Convention addressing social and economic rights, such as the right to work, or the right to social security.

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<sup>70</sup> [https://www.linkedin.com/company/council-of-europe--about us](https://www.linkedin.com/company/council-of-europe--about-us) [Last visited on: 28.02.2017]

<sup>71</sup> European Convention on Human Rights as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13-Rome, 4.XI.1950, P-7

<sup>72</sup> European Social Charter-Turin, 18.X.1961, European Treaty Series - No. 35, P-7

The Charter was the first human rights treaty to explicitly mention disability.

In addition the Parliamentary Assembly of the Council of Europe has adopted several recommendations about policies regarding persons with disabilities:

➤ **Recommendation (818) on the Situation of the Mentally ill (1977)**<sup>73</sup>

This document outlines recommendations regarding the protection of mentally ill persons in court, and the legislation rules on the confinement of mentally ill persons.

➤ **Recommendation (1185) on Rehabilitation Policies for the Disabled (1992)**<sup>74</sup>

This recommendation urges member states to ensure active participation in society and equal opportunities for disabled persons.

➤ **Recommendation No. R(92)6 on a Coherent Policy for the Rehabilitation of People with Disabilities (1992)**<sup>75</sup>

This instrument recognizes the rights of disabled persons to be different and focuses on the right to independent living and full integration into society.

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<sup>73</sup> Recommendation 818 (1977)-Situation of the mentally ill, Author(s): Parliamentary Assembly, Origin-Assembly debate on 7 and 8 October 1977 (11th and 12th Sittings) (see Doc. 4014, report of the Committee on Social and Health Questions). Text adopted by the Assembly on 8 October 1977 (12th Sitting)-Council of Europe.

<sup>74</sup> Recommendation 1185 (1992)-Rehabilitation policies for the disable, Author(s): Parliamentary Assembly, Origin- Assembly debate on 7 May 1992 (6th Sitting) (see Doc. 6581, report of the Social, Health and Family Affairs Committee, Rapporteurs: Mr Foschi and Mr Schwimmer). Text adopted by the Assembly on 7 May 1992 (6th Sitting).

<sup>75</sup> Council of Europe-Committee of Ministers, Recommendation no. R (92) 6 of the committee of ministers to member states on a coherent policy for people with disabilities (Adopted by the Committee of Ministers on 9 April 1992 at the 474th meeting of the Ministers' Deputies).

### 3.5 Example of Several Countries

Several countries such as Australia, India, United Kingdom and USA have passed and implemented national anti-discrimination laws, guaranteeing full participation in society by persons with disabilities.

❖ In *Australia*, the Disability Discrimination Act was passed in 1992.<sup>76</sup>

The objectives of the Act are "to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of: work, accommodation, education, access to premises, clubs and sport; and the provision of goods, facilities, services and land; and existing laws; and the administration of Commonwealth laws and programs; and to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community."

❖ In *India*, two national instruments were passed, the *Rehabilitation Council of India Bill*<sup>77</sup> and the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act*.<sup>78</sup>

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<sup>76</sup> Disability Discrimination Act 1992, No. 135, 1992, Compilation No. 33, Compilation date: 12 April 2018, Includes amendments up to: Act No. 26, 2018, Registered: 19 April 2018, Federal Register of Legislation.

<sup>77</sup> The Rehabilitation Council of India Act, 1992 (No.34 OF 1992), The Gazette of India Extraordinary Part II–Section-1 Published By Authority New Delhi, Wednesday, September 2, 1992.

<sup>78</sup> The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) Published in Part II, Section-1 of the Extraordinary Gazette of India Ministry of Law, Justice and Company Affairs (Legislative Department) New Delhi, the 1st January, 1996/Pausa 11, 1917 (Saka).

- ❖ In *United Kingdom*, the *Disability Discrimination Act* of 1995<sup>79</sup> aims to end the discrimination of which persons with disabilities have to face. The Act enumerates rights in the areas of employment, access to goods, facilities and services and buying or renting land or property.
- ❖ In *United States*, civil rights law regarding persons with disabilities is based on a number of laws among which the *Americans with Disabilities Act* (ADA) is the most important one. The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. Examples of further national legislation are the Civil Rights of Institutionalized Persons Act, the Individuals with Disabilities Education Act and the Rehabilitation Act.

### **3.6 The Initiatives Taken in the International Level on the Issues of Rights of Persons with Disabilities<sup>80</sup>**

The current paper provides brief introductions on (1) an overview of the issue of the human rights of persons with disabilities at the international level (2) issues concerning a special instrument on the rights of persons with disabilities and (3) options for future action to promote the rights of persons with disabilities.

#### **3.6.1 Fundamental Human Rights of Persons with Disabilities**

The United Nations *Charter* affirms the essentiality of “a universal respect for, and observance of, human rights and fundamental freedoms for all

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<sup>79</sup> Disability Discrimination Act 1995, available at: <https://www.legislation.gov.uk/ukpga/1995/50/contents>. [Last visited on: 05.01.2018]

<sup>80</sup> Declaration on the Rights of Disabled Persons Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975

without distinction. The rights of individuals with disabilities are grounded in a human rights framework based on the United Nations *Charter*<sup>81</sup> and the Universal Declaration of Human Rights<sup>82</sup>, international covenants on human rights and related human rights instruments.

Persons with disabilities are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others under all the international treaties. The full participation of persons with disabilities benefits society as their individual contributions enrich all spheres of life and this is an integral part of individuals and society's well-being and progress for a society for all - with or without disabilities.

The rights of individuals with disabilities have been addressed more generally throughout the development of the international human rights law. The principle of the right to equality, addressed throughout the normative standards set out by the international human rights instruments is the foundation of the rights of individuals with disabilities. In order that the rights of persons with disabilities may be further realized, contemporary international law has increasingly recognized the need for all states. The means chosen to promote full realization of economic, social and cultural rights of persons with disabilities may differ among countries.

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<sup>81</sup> Charter of the United Nations of 1945

<sup>82</sup> Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A)



### **3.6.2 International Norms and Standards Relating to the Rights of Persons with Disabilities<sup>83</sup>**

The international human rights instruments address the rights of individuals and the right with disabilities both generally and specifically. There are a number of specific international human rights instruments, which would contribute to the promotion of the human rights of persons with disabilities. Examples of such instruments are: the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

Research has indicated that the consequences of disablement are particularly serious for women. Women with disabilities are discriminated against on two grounds: gender and disability, and often they have less access to essential services such as health care, education and vocational rehabilitation. General 32 Recommendation by the Committee on the Elimination of All Forms of Discrimination against Women specifically deals with the issue of women with disabilities.<sup>84</sup> The optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which was adopted by the General Assembly in 1999, may also provide an important venue to

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<sup>83</sup> International Norms and Standards Relating to Disability-by United Nations-2003

<sup>84</sup> Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979. available in, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDA WIndex.aspx> [Last visited on: 28.01.2018]

specifically address the issues concerning women with disabilities.

Disability often arises from war and inhumane treatment. The Convention Against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment may be utilized to ensure that appropriate state action be taken for those who have become disabled as a result of inhumane treatment as well as to promote prevention.

The Convention on the Rights of the Child<sup>85</sup> is an example of a human rights instrument that specifically and generally addresses the rights of children with disabilities. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography is also relevant to children with disabilities.

In addition to the general international human rights instruments, disability-specific instruments concerning the rights of persons with disabilities have been adopted at the international level. Unlike the aforementioned international legal instruments, these instruments are declarations, resolutions and normative guidelines adopted by the United Nations General Assembly that are not legally binding. These include the Declaration on the Rights of Mentally Retarded Persons, the Declaration on the Rights of Disabled Persons, the World Programme of Action concerning Disabled

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<sup>85</sup> United Nations Convention on the Rights of the Child (commonly abbreviated as the CRC or UNCRC).

Persons, the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability, the Principles for the Protection of Persons with Mental Illness and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

### **3.7 New Initiative for an International Convention on the Rights of Persons with Disabilities<sup>86</sup>**

President Vincente Fox of Mexico, during general debate of the fifty-sixth session of the General Assembly (2001), called upon the international community to combat poverty and social exclusion; he stated that societies should involve all citizens as stakeholders and that a just world must be inclusive of all groups. For that reason Mexico had proposed establishment of a "Special Committee" to study the elaboration of an international convention on promoting the rights of persons with disabilities.

The United Nations General Assembly adopted the resolution 56/168, which established an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the work done in the field of human rights and social development. The Ad hoc committee will have its first meeting from 29 July-9 August 2002 at United Nations New York headquarters.

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<sup>86</sup> 10th anniversary of the adoption of Convention on the Rights of Persons with Disabilities (CRPD)-(UN-Division for Social Policy and Development Disability)

As part of the implementation of General Assembly resolution 56/168, The Meeting on the Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities (Mexico City, 11-14 June 2002) was organized by the Government of Mexico, with the support of the United Nations Department of Economic and Social Affairs and the sub regional office in Mexico Economic Commission for Latin America and the Caribbean (ECLAC).

### **3.8 Issues Related to Elaborating a Special Instrument on the Rights of Persons with Disabilities<sup>87</sup>**

Experience would suggest that there are advantages and disadvantages to elaborating a new international instrument specifically addressing the human rights of persons with disabilities.

There are extensive lists of existing norms, principles, declarations, standards, and guidelines dealing with disability issues that are dispersed throughout various instruments. The existing human rights mechanisms at the international level have not yet fully addressed the rights of persons with disabilities within their respective mandates.

There is a view that a sufficiently specific, legally binding instrument could be a much better resource than the present dispersed measures in that a new instrument could bring clarity to the current understanding of the rights of

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<sup>87</sup> Observations On The Process Of Elaborating A New Human Rights Instrument On The Rights Of Persons With Disabilities-By- Jukka Kumpuvuori-2003

persons with disabilities and how they fit into the general human rights framework.

A number of experts from the human rights community as well as advocates for disability rights share the view that the issue of a new international instrument should also be examined in the context of-

- a) The present constraints and potential for adjudication of the human rights of persons with disabilities faced by the existing United Nations human rights mechanisms. These have not yet been fully explored either by legal experts or advocates for the rights of persons with disabilities.
- b) General problems of accessibility to the institutional resources for utilizing legal, administrative or other official procedures to adjudicate the rights of persons with disabilities.
- c) The access and the use of the domestic (national) judicial system and the issue of underutilization of international law in the domestic courts.
- d) Empowerment of the disability community as well as the community at large - the issue of capacity building in the disability community as well as non-traditional sectors of society to address issues of concern to them in the existing judicial and administrative for a and through promoting general awareness and education to inform both the disability community and society as a whole about the human rights of persons with disabilities as a critical human rights issue.
- e) Mainstreaming of disability in a broader policy and legal discourse - networking among the disability community and their advocates, the

supporting non-governmental community, academic institutions, legal experts and practitioners to forge a sense of integrated community to prioritize the agenda for protecting and promoting the rights of persons with disabilities.

### **3.9 Options for Future Action to Promote the Rights of Persons with Disabilities<sup>88</sup>**

As a result of consultation, interpretation and implementation of the vast existing body of international norms and standards concerning persons with disabilities, new networks and communities of disability-sensitized policy makers, programme specialists, academics and advocates have emerged. Together, they are contributing to the universal application of the international norms and standards, which would thereby further the advancement of the rights of all. In considering plans for future action, the following points may be incorporated in recommendations to promote a *society for all*:

1. Adoption of legislative frameworks by Governments that reflect international standards relating to disability that advance rights of persons with disabilities;
2. Commitment by policy makers, programme planners and technical experts to broaden policy dialogues with regards to the incorporation of international norms relating to disability as well as specific

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<sup>88</sup> World Programme of Action Concerning Disabled Persons--adopted by the General Assembly on 3 December 1982, by its resolution 37/51, 52 and Toolkit on Disability for Africa-by DESA-UN (available in website <https://www.un.org/development/desa/technical-cooperation/2016/11/18/toolkit-on-disability-for-africa>) [Last visited on: 08.03.2018]

legislative mandates that emanate from the disability legislation in their respective countries;

3. Involvement of civil society in a broad discourse on law and disability policies; how to incorporate international norms in domestic legislation and policies

Organization of innovative forums in which legal and policy professionals, academics and civil society can exchange knowledge and experience as well as obtain technical guidance and advice on development of disability-sensitive policies and laws.

### **3.10 Precedent of foreign Cases**

That there are so many cases field in different countries challenging the discrement to the disable person milestones are discussed below:

#### **Right to Employment**

##### **Case Studies**

#### **Archibald v Fife Council<sup>89</sup>**

**Court** House of Lords

**Date decided** 1 July 2004

**Citation(s)** [2004] ICR 954

**Transcript(s)** [Full text on Bailii](#)

**Judge(s) sitting** Lord Nicholls of Birkenhead, Lord Hope of Craighead, Lord Rodger of Earlsferry, Baroness Hale of Richmond and Lord Brown of Eaton-under-Heywood

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<sup>89</sup> archibald-v-fife-council-hl-2004 available at <https://businessdisabilityforum.org.uk> [Last visited on: 18.03.2018]

*Archibald v Fife Council* [2004] UKHL 32 is a UK labour law case, concerning the Disability Discrimination Act 1995.

### **Facts**

Mrs Archibald was employed as a road sweeper for Fife Council. She had surgery in 1999. Sadly there were complications. For which she lost the ability to walk and could no longer work. The council kept her as an office worker. She was placed on the shortlist for all upcoming vacancies. As Baroness Hale said in her statement of the facts,

"Over the next few months, [Mrs Archibald] applied for over 100 posts within the council. These were all on the APT&C scale rather than on the Manual Worker Grade 1 scale. The basic wage was very slightly higher than for the manual grade. According to the council's redeployment policy, people seeking redeployment at a higher grade had to undertake competitive interviews. Mrs Archibald failed to obtain any of these posts. She told the Employment Tribunal that she did not think that this was anything to do with her disability but rather that 'they' did not look past the fact that she was a road sweeper - someone coming from an industrial background having to compete with others from a staff background. Eventually, as she was still unable to return to work as a road sweeper and the redeployment procedure had been exhausted, she was dismissed on grounds of incapacity from 12 March 2001."



Mrs Archibald argued at the employment tribunal that her dismissal was unlawful under s 4(2) DDA 1995 for discrimination in failing in their duty to make reasonable adjustments (s 6) and causing her substantial disadvantage, particularly the requirement for competitive interviews.

The employment tribunal held that the council's treatment was justified under section 5(1)(b) DDA 1995. The request that competitive interviews be removed would have been too favorable, contrary to s 6(7). Both the Employment Appeal Tribunal and the Inner House of the Court of Session dismissed her appeals.

### **Judgment**

The House of Lords<sup>90</sup> allowed Mrs. Archibald's appeal. It held that under section 5 DDA 1995, no finding may be made that less favourable treatment is justified unless the duty to make reasonable adjustments is taken into account. The employer must have made reasonable adjustments, and only then can it be asked whether less favourable treatment (in this case, not hiring Mrs. Archibald in the office) is justified. Accordingly, under section 6(3)(c), the duty to make reasonable adjustments included transferring an employee to "fill an existing vacancy" and this can include the possibility that a disabled person be placed at the same or higher grade without any

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<sup>90</sup> House of Lords- Archibald (Appellant) v. Fife Council (Respondents) (Scotland).

competitive interview if that is reasonable under the circumstances. Such favourable treatment was not at all precluded by section 6(7), which should be read subject to the previous provisions of the section. Furthermore the duty under the DDA 1995 to make reasonable adjustments overrode the Local Government and Housing Act 1989 s 7 requiring that staff be appointed by merit.

In conclusion, the tribunal had never considered whether the council had fulfilled its s 6 duty, and that the case should be remitted to determine that question.

## **Notion of Equalization and Opportunities**

### **Case Studies**

#### **Esthe Muller Vs Depts. of Justice, public works.<sup>91</sup>**

- **Place:** Equality court, Jurmiston, South- Africa.
- **Date of judgment:** 15 September, 2004.
- **Reference:** Filed this case on 10 October, 2003

#### **Fact of the case**

In this case the plaintiff is an Advocate of South-Africa and she is disabled and for this reason she used a Wheel chair. She found that the row of local court's buildings is narrow. So, she cannot move easily like other Advocate. Then she filed a case under Promotion of Equality and Prevention of unfair discrimination Act-2000 in 2003.

#### **Judgment**

Human right commission had conducted this matter with bona-fide intention. In this case the court directed that in the up-coming five years all the court of South-Africa will ensure accessibility of disabled peoples.

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<sup>91</sup> Lawyer wins her right to a dignified entrance-by-Jonathan Ancer-South Africa / 25 February 2004 & Disabled lawyer takes courts-to court.

## **Right to Access to Legal Support Justice**

### **Case Studies**

**Case Name: In Re Marion**<sup>92</sup>

- **Place of Court-** High Court of Australia
- **Date of Judgment:** 6 May, 1992.
- **Reference-** 175/CLR/218

### **Fact of the Case**

Marion an intellectual 14 years old girl who was suffer from hearing disabilities and mental retardation. On the consequence of pregnancy, her parents decide to make her physical functions impotent through taking treatment. For this reason, her parents filed an application in family court, Australia.

### **Judgment**

Considering the above mentioned facts the court decided that this kind of cause of impotent are not the part of proper treatment. So the court did not declare his decision for this task. So this application is dismissed.

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<sup>92</sup> Department of Health and Community Services v JWB and SMB (Marion's Case) [1992] HCA 15; (1992), 175 CLR 218, (6 May 1992)-High Court of Australia.

### **3.11 Conclusion**

Deprived of human rights, more than half of all people with disabilities in developing countries live in extreme poverty. Although considered a prerequisite for equalization of opportunities, about nine out of ten of those who need assistive technologies do not have access to them. Human rights for persons with disabilities encompass human rights in all spheres of life. Together newly emerging disability-sensitized communities would work towards the goal of a society for all in promoting economic, social and cultural rights from a disability perspective, which would play a significant role in the common endeavor of the international community to achieve a society accessible for all.

## **Chapter Four**

# **Organizations and Our State Initiatives to Uphold the Rights of the Persons with Disability**

### **4.1 Introduction**

The dignity, rights and privileges of persons with disabilities have been upheld by many national and our state events, instruments, declarations, treaties, commitments, covenants and conventions, committees in time to time. Below is a chronological list of some events, which have at the least earmarked the beginning of some movements that could positively influence the lives and livelihoods of persons with disabilities in our state. This chapter also discusses the discriminatory policies and practices that stand in the way of equal opportunity for Persons with Disabilities in political participation, access to education, health, employment and mobility and freedom from abuse, and it's discusses violence against women too.

### **4.2 Major Organizations & Institutions who worked for the Rights of the Persons with Disability in Bangladesh**

#### **4.2.1 Government of Bangladesh**

In Bangladesh, the Ministry of Social Welfare, the Department of Social Services and the National Foundation for Development of the Disabled Persons are the three government bodies to cater to the issues of persons with disabilities.

The first National State initiative towards recognizing the rights of the PWDs was in 1993 when the National Coordination Committee on Disability was established under the Ministry of Social Welfare. Since then, from time to time, the State has further formulated various policies:<sup>93</sup>

- ❖ In 1995, National Policy on Disability was adopted;
- ❖ In 1996, the State formulated Action Plan on Disability which approved the outlines for the implementation of the National Policy;
- ❖ In 2000, the State established the National Foundation for the Development of Disabled Persons;
- ❖ In 2001, the Disability Welfare Act was passed and out of the many flaws in this Act, there was no punishment mentioned for the violation of law related to the persons with disabilities.
- ❖ The year 2007 had been a milestone given this year Bangladesh ratified the UNCRPD (United Nations Convention on Rights of the Persons with Disability). In addition to that, the Government introduced from the month of July, 2007, Special Stipend program for Disable students at all levels of the country;
- ❖ In 2009, a National Forum of Law and Legislation committee was formed;

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<sup>93</sup> The evolution of disability law in the light of Rights of Persons with Disabilities and their Protection Act 2013- Barrister Shehrin Salam Oishee

- ❖ In 2012, the Draft Act on Rights of Persons with Disabilities was drafted (hereinafter referred to as the Proposed Act 2012) and finally in 2013, the Draft Act on Rights of Persons with Disabilities Proposed Act was passed and enforced as Rights of the Persons with Disabilities and their Protection Act 2013;

#### **4.2.1.1 Ministry of Social Welfare**

The Ministry of Social Welfare had been responsible for adopting the National Policy of Disability in 1995 and the Disability Welfare Act in 2001 (Revoked by the Disable persons Right And Protection Act-2013). Since then, by heading an Inter-Ministerial Taskforce on Disability, involving key government representatives from 16 different Ministries and Departments and a few Disability Rights Activists, the Ministry had drafted a comprehensive National Action Plan on Disability. The Plan was then approved by the National Coordination Committee in 2006. The Ministry had also played some role in incorporating Disability issues into the national Poverty Reduction Strategy Paper (PRSP). It has launched a Committee for monitoring the implementation of the CRPD in Bangladesh.

#### **4.2.1.2 Department of Social Services**

The Department of Social Services is the implementing wing of the Ministry of Social Welfare and has offices up to the remote Upazila (sub-district)



level across the country. Disability is only one amongst many different vulnerable target groups they address. However, as the name of the ministry itself suggest the Department of Social Services (DSS), Bangladesh treats disability as a welfare & charity issue and not as a rights issues. As such, even though they are responsible for the 64 integrated education programs (one in each district) for the children with visually impairments, and the other handful of special schools for the children with visual, hearing & speech, intellectual and physical disabilities, all their work is still from a charity perspective. In all their educational institutions combined together, they can cater to less than 1,300 children with disabilities every year, where a large number of those few seats also remain vacant due to negligence of the concerned authorities.<sup>94</sup>

Apart from education, the DSS also runs a handful of rehabilitation programs for people with different types of disabilities from different centers located across the country. For the last few years (since 2003), along with women victims of acid violence, the DSS had initiated a micro-credit program for people with physical disabilities. Under this scheme, recipients would get a soft loan amounting BDT 10,000 at 0% interest (however paying a 5% service charge) with a 6 months breathing period, henceforth

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<sup>94</sup> Few facilities for disabled students-The Independent-24/12/2015

paying back the loans in 10 quarterly equal installments. A committee at the local Upazilla level has been formed for selecting the recipients and monitoring the scheme. But in most cases, this has become politicized and the truly deserving persons with disabilities are not being able to access these loans.

Under different other safety net schemes the DSS distributes Vulnerable Group Feeding (VGF) and Vulnerable Group Development (VGD) cards amongst destitute people. They also have monthly allowances for aged people and widows.<sup>95</sup> Even though the DSS claims that the people with disabilities are prioritized during the selection of these beneficiary groups, in most of the cases local political leaders use these schemes amongst their ‘vote-banks’ and so the disabled people lose out.

Another program is the introduction of a monthly allowance scheme from the 2005-2006 fiscal year specifically for people with severe disabilities, under which a total of 250,000 people currently receive a monthly allowance of BDT 300 from the DSS.

Under yet another scheme, introduced from the 2008-09 fiscal year, the DSS provides an education stipend to students with disabilities in different levels

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<sup>95</sup> Social Safety Net Programmes in Bangladesh: A Review-Bangladesh Development Studies-Vol. XXXIV, June 2011, No. 2-P-91-93

of formal education. So far, about 13,041 students with disabilities in different educational levels, from primary level education to post-graduate higher level education across the country are covered under this scheme.<sup>96</sup>

#### **4.2.1.3 National Foundation for Development of the Disabled Persons (NFDDP)**

The National Foundation for Development of the Disabled Persons (NFDDP) falls under the purview of the Ministry of Social Welfare, but is registered under the Charities Act. Governed by a twelve-member board, where seven are from the Government and the remaining five are selected from the development sector by the Government (apart from the President & Secretary General of NFOWD, who are ex-officio members), the NFDDP runs with only a handful of staff located in its lone office in Dhaka. It has no branch offices, and so is highly dependent on the DSS for its smooth operations.<sup>97</sup>

The Foundation was formed many years back upon a demand raised by NGOs, but became functional only in 2002. Even though its charter declares a wide range of activities for the overall development of persons with disabilities of the country, so far, it has only provided micro level financial assistance to a few hundred NGOs as a support to run their disability programs. There have been accusations of corruption practices of selecting such recipient organizations,

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<sup>96</sup> More disabled students to get stipend-report published on 02/12/2008, available in website [www.bdnews24.com](http://www.bdnews24.com)

<sup>97</sup> Annual Report 2013-14, NFDDP available in <http://www.jpuf.gov.bd> [Last visited on: 17.04.2018]

and about lapses in its financial governance in the past. So in early 2008, the Caretaker Government restructured it into an independent quasi-government entity with its own General Body and Governing Board. This change had also attracted donors, including a 5 year project amounting USD 22 Million in the form of a long-term, interest-free credit support from the World Bank. However, the elected Government has overturned that decision, taking it back to its former status. As a result, the World Bank support is now in jeopardy.

In addition to annual grants, the Foundation also channels funds to a handful of NGOs to run about 50 schools for children with intellectual disabilities.

In the 2009-10 fiscal years the Foundation has taken up two major initiatives. The first is to set up, on a piloting basis, five “one stop service centers” on disability issues in different districts. These centers will provide necessary therapy and rehabilitation services, assistive devices, and counseling services to people with disabilities,<sup>98</sup> in addition to creating a few employment opportunities for persons with disabilities. And the second is to set up a hostel at Dhaka, for both male and female educated people with disabilities coming to the capital in search of employment, from around the country. They will be allowed to live in the hostel free of cost for maximum six months, also being provided meals at a subsidized rate, until they secure a job, and move to other affordable places.

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<sup>98</sup> Annual Report 2011-12, NFDDP available in <http://www.jpuf.gov.bd> [Last visited on: 28.04.2018]

#### **4.2.1.4 The National Coordination Committee (NCC)<sup>99</sup>**

The National Coordination Committee had been formed many years back, but after the enactment of the Disability Welfare Act 2001, it was reconstituted and started to work. Headed by the Minister of the Ministry of Social Welfare, the NCC is responsible for coordinating all the disability work addressed by the Government of Bangladesh. The NCC is a 17-member committee, where only 5 are from the non-government sector (including the President of NFOWD, who is an ex-officio member). As per the legislation, either the Managing Director of the NFDDP or a Joint Secretary of the MOSW would operate as the Member Secretary of the NCC. According to the legislation, this Committee is supposed to convene on an annual basis. But it has so far missed three of its annual meetings. In September 2006, as per its mandate provided in the Disability Welfare Act 2001, this Committee approved the National Action Plan on Disability encompassing the work of 17 Ministries. In 2008, the plan was expanded to cover the work of 33 different Ministries and concerned departments.

That the above mentioned Disability Welfare Act 2001 revoked by The Rights and Protection of Persons with Disabilities Act 2013 and the NCC committee format changed through section 17 of the same act<sup>100</sup> where it is stated that 28-members Committee will be formed by the Ministry of Social Welfare, different ministry representatives and representatives from

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<sup>99</sup> Disability Welfare Act 2001

<sup>100</sup> The Rights and Protection of Persons with Disabilities Act 2013, section 17.

Disabled People's Organizations (DPOs) and will maintain the rights of persons with disabilities and their liabilities and responsibilities also narrated in section 18 of the this Act, 2013.<sup>101</sup>

#### **4.2.1.5 The National Executive Committee (NEC)<sup>102</sup>**

The 12-member National Executive Committee has been constituted under the Disability Welfare Act 2001. Headed by the Secretary, Ministry of Social Welfare, it has three members from the non-government sector (including the NFOWD Secretary General, who is an ex-officio member), and is responsible for implementing the disability work on behalf of the government. In this Committee too, either the Managing Director of the NFDDP or a Joint Secretary of the MOSW would operate as the Member Secretary. As per the legislation, the Committee is supposed convene on a quarterly basis, but this has rarely taken place over the years.

That the above mentioned Disability Welfare Act 2001 revoked by The Rights and Protection of Persons with Disabilities Act 2013 and the NEC committee reformed through section 19 of the same act<sup>103</sup> where it is stated that 17-members Committee will be formed by the Ministry of Social Welfare and their liabilities and responsibilities also narrated in section 20 of the this Act, 2013.<sup>104</sup>

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<sup>101</sup> The Rights and Protection of Persons with Disabilities Act 2013, section 18.

<sup>102</sup> Disability Welfare Act 2001

<sup>103</sup> Ibid, section 19.

<sup>104</sup> Ibid, section 20.

#### **4.2.1.6 The District Disability Welfare Committees (DDWC)<sup>105</sup>**

District Disability Welfare Committees have been constituted in all the 64 administrative districts of Bangladesh under the Disability Welfare Act 2001. Chaired by the respective Deputy Commissioner (DC), the 9-member DDWC has 2 members from NGOs (nominated by the DC and the President of the Bus Owners' Association. Under the guidance of the NCC and the NEC, the DDWC is responsible for all the disability related programs and activities within the district. The Deputy Director of DSS (who is the respective head of DSS in the district) acts as the Member Secretary of the DDWC. The Committee is supposed to convene on a bi-monthly basis.

Unfortunately, in most cases, the DC is not aware of the existence of such a committee, and so the meetings are rarely held. In some cases the committees have not convened at all in even two years. Following Section 15 of the Disability Welfare Act 2001, the DDWC is responsible to provide an identity card to the persons with disabilities, and maintain a register. But due to a lack of allocation of central funds, these cards are not being provided at all. In most cases, the DDWC is merely issuing certificates, which too are not under any centrally approved format. At the same time, the system that is followed for providing the certificate is cumbersome and littered with administrative tangles creating a huge physical and economic barrier on poor people with disabilities.

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<sup>105</sup> Disability Welfare Act 2001

That the above mentioned Disability Welfare Act 2001 revoked by The Rights and Protection of Persons with Disabilities Act 2013 and the DDWC committee reformed through section 21 of the same act<sup>106</sup> with changed name to District Committee (DC), where it is stated that 17-members Committee will be formed by the District Commissioner; the Deputy Director of the District Social Welfare Office will be the Secretary and their liabilities and responsibilities also narrated in section 22 of the this Act, 2013.<sup>107</sup>

#### **4.2.1.7 The Upazila Committees (UC)**

This Committee will be formed with 14 members by the Upazila Nirbahi Officer through section 23 of the this very act, 2013.<sup>108</sup>

#### **4.2.1.8 The City Committees (CC)**

This Committee will be formed with 9 members in the city area under the City Corporation through section 24 of the this very act, 2013.<sup>109</sup>

#### **4.2.1.9 Local Government**

Even though it is generally highly politicized, Bangladesh has a very strong, elaborate and vibrant local government structure, especially evident in the pre-urban & rural communities. People with disabilities actively participate in the elections, and several of them have been elected into responsible

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<sup>106</sup> The Rights and Protection of Persons with Disabilities Act 2013, section 21.

<sup>107</sup> Ibid, section 22.

<sup>108</sup> Ibid, section 23.

<sup>109</sup> Ibid, section 24.



positions across the country, thereby contributing towards & playing a significant role in the local level governance. However, most of these successes are noticed generally in areas with strong NGO activity, where people with disabilities have been organized and adequately been trained to take up leadership roles.<sup>110</sup> The City Corporations, which are the authoritative bodies to oversee most of the public amenities of the city dwellers, and which are mostly inaccessible to persons with disabilities, are yet to open its doors for participation of people with disabilities in the election process. Until and unless these authoritative bodies are inclusive of persons with disabilities, their services will continue to remain inaccessible.

### **4.3 Non-Government Organizations (NGOs)**

Apart from the government, approximately 3,000 large or small NGOs are working hand in hand and sharing the responsibility of development in Bangladesh. The major program in which almost all of these NGOs are involved in is Micro-credit, which is also the principal step adopted by the NGOs for their own sustainability. Education programs possibly come in second, and health (including with water & sanitation) programs are very common. Gender and development is gradually being recognized widely as a crosscutting development agenda. In this playground, only about 1,500

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<sup>110</sup> Disability in Bangladesh: A Situation Analysis-The Danish Bilharziasis Laboratory for the World Bank, People's Republic of Bangladesh-A Final Report, May, 2004. P-26

NGOs are claiming to work with people with disabilities. But only about 600 NGOs have adequately trained human resources to cater to the rehabilitative needs of disabled people.<sup>111</sup> Most of the others simply have either awareness raising programs on disability, or have casually included disabled people (mostly women) in their respective mainstream micro-credit programs.

Prior to 1996-97, any NGO willing to get their staff trained on Disability rehabilitation efforts had to send their respective staff abroad. Most of these organizations being small, and with limited funding support found it extremely difficult, and so the number of NGOs catering to people with disabilities was very limited. A major breakthrough in this arena was the emergence of the Center for Disability in Development (CDD), an NGO dedicated to development of quality human resources and information, education & communication (IEC) materials on Disability, in 1996 and offering training programs since 1997. CDD has emerged as a very renowned and important stakeholder in the disability development arena not only in Bangladesh, but in the entire region also. Almost simultaneously, the emergence of the Disability Information Dissemination Network (DIDN) operated by Center for Services & Information on Disability (CSID) in 1999 also played a major role in disseminating information on the progress of the

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<sup>111</sup> <https://ngonewsbd.com/ngo-list-of-bangladesh> [Last visited on: 10.05.2017]

disability work at the national and international level.<sup>112</sup> These two NGOs, along with NFOWD (National Forum of Organizations Working with the Disabled), the national disability network, have played a major role in highlighting Bangladesh on the international disability development scenario.

#### **4.3.1 National Forum of Organizations Working with the Disable (NFOWD)**

NFOWD is the apex federating body of NGOs working in the field of Disability in Bangladesh having their office 8/9, Block A, Lalmatia, Dhaka-1207 with a vision of an inclusive society where all people with disabilities will be visible, and contribute equitably in the nation-building process. Established in 1991, it is registered with the Department of Social Services under the Ministry of Social Welfare and with the NGO Affairs Bureau. NFOWD (National Forum of Organizations Working with the Disabled)<sup>113</sup> is an executive member on the Boards of the National Foundation for Development of the Disabled Persons and the National Social Welfare Council. It is also a member of the National Coordination Committee and the National Executive Committee on Disability (constituted under the Disability Welfare Act 2001). At the Regional level, it is a member of the Asia & Pacific Disability Forum (APDF) of which NFOWD is the current

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<sup>112</sup> <http://www.csid-bd.com/> [Last visited on: 17.03.2017]

<sup>113</sup> <http://www.nfowd.net/> [Last visited on: 22.04.2017]

Chair, and South Asian Network on Community Based Rehabilitation. At the international level, it is a governing member of the International Disability Alliance (IDA) and the Global Partnership for Disability & Development (GPDD). Initiating with only 22 member organizations, NFOWD now has 318 members spread across 59 districts (out of 64) in the country.

NFOWD works in three areas: (a) coordination amongst its members, (b) raising national level awareness & sensitization on Disability issues and (c) policy advocacy & influencing work, and its principal working relationship is with the Government of Bangladesh. As such, over the years it has gained the reputation and recognition within the country to work as the perfect interface between the Government and the NGOs in this field. Any Committee, taskforce, working group etc. the Government forms on disability issues, by default NFOWD is a member. This is upheld either by law, policy or an administrative decision. At the Regional level, UN-ESCAP has recognized this linkage as one of the ‘best practices’ in the area of ‘GO-NGO Collaboration’ in this Region.<sup>114</sup>

In 1997 NFOWD hosted the 2<sup>nd</sup> Regional Seminar on Community Based Rehabilitation and in 2003 it hosted the Regional Symposium on Disability following the ESCAP Regional Biwako Millennium Framework. In January 2006, NFOWD co-hosted the 2<sup>nd</sup> Asian Conference of Deaf blind

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<sup>114</sup> A N Zafar Ullah and others, *Health Policy and Planning*, Volume 21, Issue 2, 1 March 2006.

International, and in February 2008, along with the Government of Bangladesh, NFOWD hosted the 3<sup>rd</sup> general Assembly & Conference of the Asia & Pacific Disability Forum. These international meets has also helped in raising its profile at the international disability development arena.

NFOWD actively participated in the drafting of the CRPD by the Ad Hoc Committee. It's first involvement came about in 2004 in drafting the Bangkok Draft. Then, after receiving accreditation from the ECOSOC, NFOWD participated in the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> (final) meetings of the Ad Hoc Committee. NFOWD played an active role in ensuring that children with disabilities are actively discussed within the drafting of the CRPD. As a result, 2 of the 6 children, who subsequently represented all the children with disabilities of the world in the UN, were selected from Bangladesh.

#### **4.3.2 Organizations of Persons with Disabilities (DPOs) and Self-Help Organizations (SHOs)**

Following the internationally acclaimed spirit of “Nothing About Us Without Us” and a more recent target set in the Biwako Millennium Framework (BMF) on Self-help initiatives, and the CRPD itself, a large number of DPOs are coming up all over Bangladesh, mostly being supported by two large NGOs – Action on Disability and Development (ADD) and the Bangladesh Protibondhi Kallyan Shomity (BPKS).<sup>115</sup> Other organizations,

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<sup>115</sup> Bangladesh and Persons with Disabilities-by-Khandaker Jahurul Alam-Asia Pacific Human Rights Information Center-FOCUS March 2009 Volume 55

such as Center for the Rehabilitation of the Paralyzed (CRP), Center for Services & Information on Disability (CSID), Young Power in Social Action (YPSA) and many others also have supported establishment of DPOs across the country.<sup>116</sup>

ADD is a widely known large INGO, BPKS is a large national NGO. They are both coordinating people with disabilities at the grassroots level by providing skills and leadership training, and encouraging them to come together as self-help groups. ADD is helping them in forming district level federations, with an aim to unite to become a national level federating body. BPKS has a little different approach and calls it the Persons with Disability's Self Initiatives to Development (PSID). While these small DPOs look mostly into their own micro-level issues, with experience and gradually gathering maturity, they also are looking into the macro level issues, and are contributing in the national disability development movement. In 2004, ADD had organized a national convention of about 5,000 people with disabilities at Dhaka. The practice has been repeated almost every year ever since.

Under the patronization of ADD a grassroots level federating body named the National Grassroots Disability Organization (NGDO) was launched in 2004. Over the last five years, this has grown substantially, now having 92 member DPOs and close to 750 self-help groups in 23 districts, with an

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<sup>116</sup> <http://www.ngoab.gov.bd> [Last visited on: 16.02.2018]

overall membership of almost 21,000 persons with disabilities. Considering the additional plight of women with disabilities, in 2005 ADD also patronized the formation of a women's federation, the National Council of Disabled Women (NCDW). This also has grown alongside the NGDO, with equal number of members, covering about 10,000 women with disabilities in 23 districts.<sup>117</sup>

There are other very old DPOs and SHOs such as the National Federation of the Blind, and the National Federation of the Deaf, which had been established many decades back. The Bangladesh Visually Impaired Peoples' Society (BVIPS) has also earned a good reputation in the country in a short span of time, since the DPO was established only in 2005.

Amongst the parents, Society for the Welfare of the Intellectually Disabled (SWID), Bangladesh, Bangladesh Parents' Club of the Deaf, and a more recent Welfare Society for Mental Health & Rehabilitation are playing a notable role as self-help organizations.<sup>118</sup>

Over the recent years, sign language users are forming their own associations across the country, with two very established communities in Sylhet and Jhenaidah. Children of Deaf Adults (CODA) have also formed a strong association centrally in Dhaka, and are working to establish and popularize sign language.

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<sup>117</sup> <https://www.add.org.uk/countries/bangladesh> [Last visited on: 06.03.2018]

<sup>118</sup> <https://swidbd.wordpress.com/> [Last visited on: 13.03.2018]

### **4.3.3 The Campaign for Popular Education (CAMPE)<sup>119</sup>**

CAMPE is probably the only mainstream NGO network that specifically addresses concerns of people with disabilities. Having its office House: 5/14, Humayun Road, Mohammadpur, Dhaka-1207, Bangladesh. Focusing specifically on quality education in addition to ensuring education for all, and with a membership & partnership of about 1,200 NGOs across the country, CAMPE has been a great ally of the disability rights movement for almost a decade, trying to ensure that all children with disabilities have access to basic and quality education.

### **4.3.4 Bangladesh Shishu Adhikar Forum (BSAF)**

BSAF is the national network of all NGOs working with children. Many of the NGOs working with children with disabilities are also members of this mainstream child rights network, which mostly works to promote the practical & effective implementation of the Convention on the Rights of the Child (CRC) in Bangladesh. Its office situated at House-42/43,(level-2), Road-2, Janata Cooperative Housing Society, Ring Road, Adabar, Dhaka-1207, Bangladesh. While Article 32 of the CRC specifically calls for special provisions for children with disabilities, it took years for most of the organizations to realize that the entire CRC applies to children with

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<sup>119</sup> Education Watch Report-2016 (Full Version)- available at <http://www.campebd.org/> [Last visited on: 22.04.2017]



disabilities, and not only its Article 32.<sup>120</sup> BSAF itself has not addressed issues concerning children with disabilities in the past, up until in very recent years, where at least a day of its annual celebrations of the Child Rights Week is allocated for children with disabilities.<sup>121</sup>

#### **4.3.5 The Disaster Forum (DF)<sup>122</sup>**

A unique platform of NGOs, civil society organizations and concerned individuals, the DF has played a significant role for almost two decades in tracking disasters, and coordinating a response during and after disasters. Working closely with the Ministry of Food and Disaster Management, in Bangladesh they runs there office at 10/15, Iqbal Road (1st Floor), Flat B1, Mohammadpur, Block – A, Dhaka-1207. DF had played the key role in the coordination of all efforts, up until the large bilateral & multilateral donors & INGOs established the Disaster & Emergency Response (DER) group, for coordinating their own responses. Both DF and DER concentrate almost all their efforts on natural disasters, and only very special cases of man-made disasters, such as large building collapse cases-like Rana Plaza, Savar, Dhaka.<sup>123</sup> Road traffic accidents, which are part & parcel of the daily life of Bangladesh, are rarely addressed by these groups. Even in cases of major

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<sup>120</sup> Convention on the Rights of the Child-UNITED NATIONS-CRC/C/BGD/CO/4, 26 June 2009.

<sup>121</sup> <http://bsafchild.net/> [Last visited on: 02.09.2017]

<sup>122</sup> <https://www.disasterforum.org/index.html> [Last visited on: 23.10.2017]

<sup>123</sup> Assessment Report of the Rehabilitation and Reintegration of Rana Plaza Victims-24 October 2013-Study commissioned by Action Aid Bangladesh

natural disasters, most of the statistical data available with DF is related to number of deaths, the amount of land area (especially standing crop) affected by disasters, number of families affected or dislocated, number of houses destroyed, number of tube wells and sanitation outlets destroyed or affected, even the number of cattle or livestock that has perished. But there is hardly any data on how many persons with disabilities are affected, or how many fresh cases of disabilities occurred immediately as a result of the disaster (such as cyclones or tornadoes), or how many of the injured cases later on resulted into lifelong disabilities<sup>124</sup>

#### **4.3.6 Action Aid Bangladesh**

Working in Bangladesh since 1983, Bangladesh office at House SE(C) 5/B (old 8), Road 136, Gulshan 1, Dhaka 1212. Action Aid Bangladesh (AAB) started addressing disability issues since 1992, by supporting a national NGO as a pilot program scheme in one of its large development areas. The experience was not a good one, and so AAB recognized the necessity to go for a more coordinated effort. As a result, Disability was highlighted as one of its priority working areas, and a Unit was formed in 1993 to support its disability employment work in Bangladesh. With time & experience, AAB has changed enormously since then, but Disability has still remained a major

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<sup>124</sup> Health problems of victims before and after disaster: a longitudinal study in general practice-by-C Joris Yzermans-*International Journal of Epidemiology*, Volume 34, Issue 4, 1 August 2005, p. 820-826.

focal area of all their work. They currently work with 14 partner organizations with an annual estimated budget in excess of USD 0.5 million, which is about 10% of their entire program budget.<sup>125</sup> Their partners range from very small grassroots level NGOs to large national platforms for information dissemination, research & policy advocacy.

#### **4.3.7 Handicap International**

France-based Handicap International (HI) came into Bangladesh only recently in 1999. But it has been supporting NGOs in this country since 1997. HI supports a number of NGOs in Bangladesh (all in the disability field) in the areas of prevention, disaster preparedness & mitigation, sports games & cultural development, human resource development, capacity development, information dissemination, research initiatives and policy advocacy & policy influencing work.

#### **4.3.8 Sight Savers International**

Otherwise known as the Royal Commonwealth Society for the Blind, the UK based Sight Savers International has been working in Bangladesh since the early 70s. SSI supports a large number of NGOs for CBR initiatives across the country (focused almost only on visual impairments), having its office at Bangladesh House 1/B (5th floor), Road 8, Block – I, Banani, Dhaka-1213,

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<sup>125</sup> Employment & Health Rights of Persons with Disabilities in Bangladesh-Date published: Sunday, May 15, 2016-Developed and Compiled by Md. Abdul Koddus (Jahid)-Edited by-Md. Khairul Islam-Rubayat Ahsan

Bangladesh and has played an instrumental role in launching a large national campaign for the prevention of childhood blindness under the global Vision 2020 campaign. SSI is now on the brink of getting involved in the overall national rights-based disability development scenario.<sup>126</sup>

#### **4.3.9 Save the Children**

The Save the Children alliance of INGOs have been active in Bangladesh for more than three decades, but only the one originating in Sweden (later merged with Denmark) has work in the area of Disability. It had quite a number of partners in this field even a couple of years back, but now supports only a handful of programs, with a very small budget.

#### **4.3.10 The Polli Karma Shohayak Foundation (PKSF)**

PKSF is by far the largest domestic source of funding support for NGOs operating micro-credit work in Bangladesh. Through its Dhaka office at PKSF Bhaban, Plot: E-4/B, Agargaon Administrative Area, Sher-e-Bangla Nagar, Dhaka-1207. It provides loans to smaller NGOs at a certain interest rate, which the NGOs are to repay in long-term intervals. They have a set of guidelines, following which the recipients (NGOs) are to operate their respective micro-credit programs. The guidelines also include a set of selection criteria for the intended micro-credit beneficiaries. Under these

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<sup>126</sup> <https://www.sightsavers.org/where-we-work/bangladesh> [Last visited on: 11.07.2017]

criteria, in the earlier days, people with disabilities could not be identified as beneficiaries, as these called for physical & psychological fitness on the part of the intended beneficiaries. This however, has been modified. Now people with disabilities can also access the support from the recipient NGOs.<sup>127</sup>

#### **4.3.11 Civil Society Organizations**

Bangladesh has a very active & well-informed civil society, which also plays a major role in the national development. A few civil society organizations, as part of their initiatives are also gradually addressing disability issues.

The Rotary Clubs, The Lions Clubs and their affiliate organizations have for long been involved in health camps and eye camps for decades in this country, contributing much in the area of control & prevention of blindness. Rotary Clubs have, during the last few years,<sup>128</sup> donated several hundreds of wheelchairs amongst poor people with disabilities.

The Center for Policy Dialogue (CPD), Unnayan Shomunnay and a few such other CSOs are involved in policy research, especially in national budgetary allocations on disability issues.

The civil society of Bangladesh played a very active role in convincing the Government of Bangladesh towards signing and ratifying the CRPD and its

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<sup>127</sup> PKSF-Annual Report 2017.

<sup>128</sup> Bangladesh and Persons with Disabilities-by-Khandaker Jahurul Alam-Asia Pacific Human Rights Information Center-FOCUS March 2009 Volume 55

Optional Protocol. That initiative has more recently laid the foundation of the launching of a Disability Rights Watch Group.

#### **4.3.12 United Nations Agencies<sup>129</sup>**

The UN entities in Bangladesh have so far totally ignored the concerns of people with disabilities rather shamelessly. UNICEF supports the GOB (Department of Primary Education) operated Primary Education Development Program, but could not enforce inclusion of the children with disabilities effectively. The only support UNICEF probably can claim is through raising awareness by making the much-acclaimed Meena Cartoon series vaguely inclusive of issues concerning children with disabilities. But the UNDP, ILO, WFP, UNIFEM etc. have played no role as yet towards the development of persons with disabilities in Bangladesh. Even during the International Day of Persons with Disabilities (IDPD), which is declared by the UN itself, or for promoting the CRPD, which again was commissioned by the UN, UNDP has not even issued a single statement so far! In 2010, the UN agencies in Bangladesh will formulate their new Development Assistance Frameworks commencing 2011. It remains to be seen whether these agencies will wake up to the concerns of persons with disabilities.

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<sup>129</sup> <http://www.internationaldisabilityalliance.org>

## **State Initiatives**

### **4.4 Legal and Policy Framework**

Bangladesh has ratified the UN Convention on the Rights of Persons with Disabilities (CRPD).<sup>130</sup> Pursuant to constitutional guarantees of equality and nondiscrimination; specific laws have been passed to safeguard the rights of persons with disabilities (PWDs) such as the Disability Welfare Act 2001. In addition, the National Policy on Disability 1995 and the National Action Plan on Disability 2006 have also been adopted. However PWDs continue to face legal and practical barriers to equality including unjust treatment, discrimination in access to voting rights, lack of free access to educational opportunities, health services and job opportunities without discrimination. Their right to free movement is still restricted and many PWDs are still victims of violence and abuse without remedy.

### **4.5 Political Participation**

Political participation of PWDs as voters, candidates and campaigners remained limited, due mainly to poverty, poor literacy and lack of organizational affiliation and support. In a notable positive change, and resulting from continuing advocacy by activists among PWDs, this year, the major political

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<sup>130</sup> The evolution of disability law in the light of Rights of Persons with Disabilities and their Protection Act 2013- Barrister Shehrin Salam Oishee..... Adopted in the 61st General Assembly of the United Nations on 13 December 2006, Bangladesh being the eighth state party to ratify it on 30 November 2007. The Convention came into force on 3 May and Bangladesh has to report to the UN Committee every two years.

parties addressed disability issues in their election manifestos of 2008 for the first time.<sup>131</sup> Important steps were also taken for PWDs to participate as voters, but unfortunately due to the Election Commission's criteria regarding minimum educational qualifications, some PWDs were impeded from acting as election observers. In 2007, the Election Commission, for the first time, inserted a provision for identifying voters with disabilities in the registration form. While this enabled many PWDs to be registered, it excluded persons with mild or moderate disabilities as the registration form as it only referred to severe disabilities. In practice, persons with severe disabilities, as well as elderly and pregnant women, had limited access to the registration centers. Upon receiving of this information, the EC issued instructions for home visits, but in the absence of adequate information on eligible voters, this has proved difficult to implement. Initiatives by ADD (Action on Disability and Development), and various Disabled Peoples' Organizations to compile information on PWDs and provide these lists to the EC and the security forces involved in the registration process enhanced the numbers of PWDs ultimately registered.

In addition to voter registration, further affirmative action is required for voters to participate fully in electoral activities as candidates, campaigners, election observers, and to cast their votes freely. For example, in the Rajshahi

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<sup>131</sup> The Bangladesh Awami League (AL) has committed itself to updating the existing Disabled Welfare Act and take necessary measures to promote education, health and employment of persons with disabilities. The Bangladesh Nationalist Party (BNP) is committed to improving education and health services, child welfare and rehabilitation and employment for disabled persons. In their respective manifesto 2008.



City Corporation elections held on 4 August 2008, voters with disabilities faced difficulties in casting their votes due to lack of ramp facilities, separate queues, inaccessible polling booths and insensitive behavior from the law enforcement agency in clear breach of affirmative action provisions under the law.<sup>132</sup> It is estimated that some seven million eligible people with disabilities have had limited access to voter registration, due to high levels of illiteracy, lack of access to information, vulnerability and poverty. Exclusion from the voter list has in turn excluded them in claiming and receiving services from the public service department and local government.

#### **4.6 Right to Education**

Article 17 of the Bangladesh Constitution provides that all children receive free and compulsory education. By law,<sup>133</sup> children between the ages of six and ten must attend school. However, the quality of education in Bangladesh is generally regarded as poor. According to UNICEF, access to education remains a challenge for working children, disabled children, indigenous children, those in remote areas, and those living in extreme poverty. Reportedly only four percent of children with disabilities have access to education in any form. About 1.6 million eligible school-aged children with disabilities are unable to access formal and non-formal education. The

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<sup>132</sup> Article 31 (7) of Representation of People's Order 1972

<sup>133</sup> The Constitution of the People's Republic of Bangladesh: Article 17 (Free and compulsory education).

ongoing Primary Education Development Program (PEDP II) envisions inclusive education but lacks implementation.<sup>134</sup> For example though the Government has initiated ramp installation in primary schools, the designs adopted are flawed. Accessibility is still perceived as exclusively about ramp installation, and does not extend to the classroom environment, teaching materials and curriculum, which means that visual, hearing and speech challenged students remain excluded. Such exclusion is reinforced by disability issues being dealt with by the Ministry of Social Welfare under the current ‘Rules of Business’ instead of the Primary and Mass Education and Ministry of Education.

#### **4.7 Right to Health**

The development budget for 2007-08 made no specific allocation for health care services to PWDs. Persons with disabilities in practice, public health centers, such as Upazila Health Complexes and District general hospitals, were also inaccessible to PWDs and provided no disability related services such as early identification, fitting of artificial limbs, aids and appliances, educational or therapeutic services or vocational rehabilitation. NGOs are providing some limited services.<sup>135</sup>

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<sup>134</sup> Impact Evaluation Study of Second Primary Education Development Programme (PEDP-II)-by-READ & IMED

<sup>135</sup> Disability in Bangladesh-A Situation Analysis-Final Report, May 2004 for The World Bank-p. 35.

Rights of Persons both private and public health practitioners to secure access to free medical services in public hospitals and receive 40-50 percent discount at private clinics in Bogra and Natore districts.

#### **4.8 Right to Employment**

According to a recent study,<sup>136</sup> the mean employment rate of persons with disabilities is less than a quarter of those without a disability, and 87 percent of disabled persons leave full-time employment within the first year of becoming disabled. These findings illustrate the limited employment opportunities and inadequate work environment for PWDs. Such opportunities are further limited by actions such as those of the Bangladesh Public Service Commission is failing to provide admit cards to the visually challenged candidates for BCS examinations and denying scribe support for a visually challenged candidate for the preliminary test of the 28th BCS examination.<sup>137</sup> More positively, the Department of Social Welfare's credit supports facilitated self-employment for PWDs, and the private sector also took some laudable initiatives to provide employment opportunities. In an important legal challenge to disability-based discrimination in public employment, the High Court directed the Government to show cause why

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<sup>136</sup> NOT ON THE GUEST LIST: Disabled people and the Millennium Development Goals (MDGs)-Sight Savers Report-P-2, and also Chowdhury, "Disability and Chronic Poverty: An Empirical Study on Bangladesh", M Phil Thesis, Oxford University, 2005.

<sup>137</sup> "Deprived visually challenged candidates demand opportunities to PSC in Press Conference", Amar Desh and Ittefaq, 21 November 2008.

the denial of appointment in a government post to a physically challenged engineer on health grounds should not be held to be in violation of Sections 5 and 7 of Schedule “Cha/F” of the Disabled Welfare Act, 2001.<sup>138</sup>

#### **4.9 Right to Movement**

In 2008, some new initiatives were taken by public institutions to facilitate mobility, for example Dhaka University’s Transport Department reserved seats in university buses from October onwards and installation of ramp facilities in front of the library and different faculties are in process. ADD dialogues with the Bus Owners’ Association and Trade Union leaders in 2007 have resulted in fare reductions by 50 percent for disabled passengers along with provision for reserved seats in Rajshahi, Rangpur, Faridpur, Bogra and Natore districts. A joint initiative of ADD (Action on Disabilities & Development) and the bus owners’ association in Rangpur and Rajshahi led to the provision of identity cards among PWDs.

#### **4.10 Right to Freedom from Violence against Women<sup>139</sup>**

Around one in five women worldwide is a woman with a disability. For women with disabilities, gender-based violence is often compounded by disability-based discrimination. Women with disabilities continue facing

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<sup>138</sup> Disabled Welfare Act, 2001-People’s Republic of Bangladesh Govt.

<sup>139</sup> Disability And Gender-Based Violence--Add International’s Approach--A Learning Paper

serious obstacles in accessing justice in cases of violence, with courts rarely taking any specific measures to enable them to give their evidence before the courts. Currently there are some 70 ongoing prosecutions nationwide regarding instances of violence against women with disabilities (most involving accusations of rape or sexual harassment). In many cases, the inadequacy of the investigation and prosecution as well as of expert witnesses results in the failure of such prosecutions. For example, in Nilphamari, a speech and hearing challenged girl was allegedly raped by the headmaster of a Madrasah. Although the police and doctors acted promptly and effectively, the public prosecutor was relatively inactive, failing even to oppose the prayer for bail of the accused after he had been absconding for some time.

#### **4.11 Notion of Equalization and Opportunities<sup>140</sup>**

Persons with disabilities suffer from discrimination based on society's prejudice and ignorance. In addition, they often do not enjoy the same opportunities as other people because of the lack of access to essential services.

International human rights law determines that every person has:

1. The right of equality before law
2. The right to non discrimination
3. The right to equal opportunity

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<sup>140</sup> What's at Stake at the Supreme Court for People with Disabilities? The Arc Reviews Judge Gorsuch's Record on Disability Rights- March 17, 2017 by The Arc.

4. The right to independent living
5. The right to full integration
6. The right to security

Policy regarding disabilities is often dominated by the notion of "equalization of opportunities", which means that society must employ its resources in such a way that every individual, including persons with disabilities, has an equal opportunity to participate in society.

#### **4.12 Right to Access to Legal Support Justice**

The access of people with disabilities to legal support and justice is highly limited in Bangladesh, due to a number of factors. Firstly, there is a general lack of awareness even amongst persons with disabilities & their families regarding their own rights & entitlements. Secondly, there are no adequate proactive laws to protect the rights to their special needs. Thirdly, the legal system is fairly complex, complicated & time consuming, to a great extent also beyond affordability. Fourthly, there is a lack of proper knowledge and understanding of the special needs issues amongst the law enforcing agencies and legal service providers. A system is also absent in the country to disseminate appropriate information to the families of persons with disabilities. On top of all that, abject poverty often ensures that they are dependent on the rights perpetrators, against whom they have no voice, or means to fight against. Developing an inclusive process to address specific demands of the persons

with disabilities is therefore an important demand of the time.<sup>141</sup>

UN convention affirms the effective access to justice for persons with disabilities, stating that: States parties shall facilitate their effective role as a direct and indirect participants, including as witness as, in all legal proceeding, including at investigate ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and reasonable accommodation age-appropriate accommodations, in order to five and other preliminary stages. In order to help to ensure effective access to criminal justice for persons with disabilities, states Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

#### **4.13 Right to Access to Income**

Employment and/or self-income generated activities are essential towards economic self-reliance of people with disabilities. Where the mere access to education is a huge obstacle, even though the National Constitution categorically prohibits discrimination in employment in any form, employment of people with disabilities in Bangladesh has been a farfetched dream. The government had declared a 10% quota for people with disabilities along with orphans about two decades back. But due to insensitization of employers about the potentialities of disabled people,

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<sup>141</sup> Disability Rights Watch Group Bangladesh 2009

contradictory employment policies, loopholes in the system and a lack of proper monitoring, the declared quota for the people with disabilities had never been implemented properly.

#### **4.14 Right to Reasonable Accommodation**

We have to think of our disable people for making reasonable accommodation and also other proper housing facilities such as place of movement, work environment, health facilities etc. these things have to be ensured before making accommodation. It may be considered as our moral task for disabled people.

Same management may not be ensured for them. So the building maker should take highest steps to comfort them. If we ensure these reasonable accommodations, then our disable persons, specially children those who are studying in educational institutions, may take equal facilities as like as general people.

#### **4.15 Conclusion**

Disability has, and will always remain in our society, with the entire social stigma attached to it. But in the backdrop of all these problems, the silver lining is that the government is showing an increasing interest in the Disability sector, and at the same time, a keen interest to work hand in hand with the non-government sector. But to make some real progress in this field



in a developing country like Bangladesh, an all out effort from all quarters is mandatory. Now that the revised Allocation of Business of different Ministries and Departments is in its final stages of approval, it can be anticipated that, when this change sees the light of day, all the development ministries of the government, in addition to the Ministry of Social welfare, will have some concrete role to play. Similarly, at the non-government sector, many NGOs are also increasingly taking up disability work. The Corporate sector is also opening up to the issue, creating new avenues for employment and other types of support. The media – electronic & print – have also begun to show a responsibility to highlight the problems and prospects regarding people with disabilities. In accordance with all national and international commitments/ obligations.

## **Chapter Five**

# **Different Laws for Protect Disables and Established their Organizations and it's Practice in Bangladesh**

### **5.1 Introduction**

Fundamental rights are described in chapter- three of the Bangladesh constitution. If any person is aggrieved for violation of any of his/her fundamental right then that person may go to high court division of Supreme Court of Bangladesh under article-102 of the constitution for filing writ petition against the government concern authority.

Constitution the supreme law of the land, here under Article-7 has given the right that every person is able to establish an organization. Disabled person, his/her family member or close relative, activities or friend-circle next friends can become active through organization in favor of them as per law.

So disabled organizations may take a vital role for seeking different legal rights for PWDs from society and the state. In this chapter we will discuss different side of organizing disabled organization in different laws. Which protect the rights of disables.

The practice of special laws regarding disabilities in Bangladesh is not very long. In our country, there are many special sections of different laws. In this

chapter I would like to mention different sections of different laws and constitution of Bangladesh in following ways-

## 5.2 Fundamental Rights and Special Sections of Different Laws in Bangladesh

Chapter – three of the constitution, People’s Republic of Bangladesh<sup>142</sup> -

Articles	Fundamental rights
Article-26	Laws inconsistent with fundamental rights.
Article-27	Equality before law
Article-28	Discrimination on grounds of religion, etc.
Article-29	Equality of opportunity in public employment
Article-31	Right to protection of law.
Article-32	Protection of right to life and personal liberty
Article-33	Safeguards as to arrest and detention.
Article-34	Prohibition of forced labour
Article-35	Protection in respect of trial and punishment
Article-36	Freedom of movement
Article-37	Freedom of assembly
Article-38	Freedom of association
Article-39	Freedom of thought and conscience, and of speech.
Article-40	Freedom of profession or occupation.
Article-41	Freedom of religion.

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<sup>142</sup> Constitution of The People’s Republic of Bangladesh.

Article-42	Rights to property.
Article-43	Protection of home and correspondence
Article-44	Enforcement of fundamental rights

**Special sections of different laws in Bangladesh: Relating the persons with disability**

NAME OF THE ACT	SPECIAL SECTION
1. The Evidence Act-1872 (Act no-1)	Section-118,119
2. The contract Act-1872 (Act no-9)	Section- 11,12,16,19 (a)
3. The code of criminal procedure-1898 (Act no-5)	Section-199, 199 (a) ,468, 475
4. The code of civil procedure-1908	Section-147, order-32
5. The Lunatic Act-1912 (Act no-4)	Section-71

### **5.3 Disabled Right and Constriction of Bangladesh**

#### **5.3.1 Enforcing the Fundamental Rights<sup>143</sup>**

Disable person can enforce their fundamental rights by filing writ petition in the High Court Division of Supreme Court of Bangladesh. By article 102 that the article ran as follows:

- (1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.

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<sup>143</sup> The Constitution of the People's Republic of Bangladesh.

- (2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law –
- (a) on the application of any person aggrieved, make an order-
    - (i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do ; or
    - (ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority, has been done or taken without lawful authority and is of no legal effect ; or
  - (b) on the application of any person, make an order-
    - (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner ; or
    - (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.
- (3) Notwithstanding anything contained in the forgoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.
- (4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of-

- (a) prejudicing or interfering with any measure designed to implement any development programme, or any development work ; or
  - (b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorised by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b).
- (5) In this article, unless the context otherwise requires, “person” includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.

### **5.3.2 Laws Inconsistent with Fundamental Rights**

That the laws inconsistent with the fundamental rights are very much clear in our constitution from Article 26 to Article 44 of the constitution. Here, every article is for all citizens of all status including the disabled of the peoples' Republic of Bangladesh. Gradually the article of the constitution is described herein. Article-26 run as follows:

All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution. The State shall not make any law inconsistent with any

provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void. Nothing in this article shall apply to any amendment of this Constitution made under article-142.<sup>144</sup>

### **5.3.3 Equality before Law**

All citizens are equal before law and are entitled to equal protection of law. Article-27.<sup>145</sup>

#### **Abu Naser, Mohsin Hossain and others v Bangladesh and others [‘BCS Forestry’ Case]<sup>146</sup>**

**Facts:** Five graduates from the Institution of Forestry of Chittagong University (IFCU) along with the Bangladesh Professional Forestry Students Association and the Bangladesh Professional Forestry Graduate Association, filed a writ petition challenging the decision of the Ministerial Committee of the Ministry of Establishment in denying appointments for the post of Assistant Forest Conservator to be made exclusively from among B. Sc. (Forestry) graduates. Earlier the provision for appointments to the post had been extended to B. Sc. (Forestry) graduates by the Bangladesh Civil Service Age, Qualification and Examination for Direct Recruitment Rules 1982 (BCS Recruitment Rules). However, no exclusive reservation had been

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<sup>144</sup> Constitution of Bangladesh, Article-16.

<sup>145</sup> Ibid, Article-17.

<sup>146</sup> Writ Petition No. 1145/1997, filed in the High Court Division of the Supreme Court of Bangladesh.

made for appointment only of such graduates, and this was sought to be justified by the shortage of such graduates. Several representations were made to the Government to reserve the posts exclusively for B. Sc. (Forestry) Degree holders. The Ministry of Forest and Environment made recommendations to the Ministry of Establishment to that effect in 1988. After a series of consultations, in the final hours, the Senior Appointment, Promotion and Service Structure Ministerial Committee on 28.04.1994 decided that the B.Sc (Forestry) course was a non-professional and non-technical course and therefore students of all disciplines would be eligible for the Public Service Commission (PSC) qualifying examinations.

**Argument:** The petitioners argued that the decision of the Ministerial Committee without consultation with the PSC was in contravention of the provisions of the Public Service Commission Ordinance, 1977 . They also challenged the BCS Recruitment Rules of 1982 as discriminatory, inasmuch as while exclusive reservation was made for all professional cadres, access to the Forestry Cadre was allowed to graduates from other disciplines also. Finally, they argued that the impugned action was in violation of their fundamental rights to equality before the law and treatment in accordance with law guaranteed under articles 27 and 31 of the Constitution.

**Order:** The High Court issued a Rule Nisi calling upon the respondents to show cause why the impugned decision of the Ministerial Committee of the



Ministry of Establishment should not be declared to have been made without lawful authority.

**Status:** Pending for hearing.

**Laws Cited:** Constitution, Articles 27 and 31; National Forest Policy; Bangladesh Civil Service Age, Qualification and Examination for Direct Recruitment Rules 1982; Public Service Commission Ordinance, 1977.

#### **5.3.4 No Discrimination on the Basis of Religious, Race, Caste, and Sex or Place of Birth etc.**

In article-28 of the constitution it is clear that there should not be any discrimination and the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. Women shall have equal rights with men in all corners of the State and of public life. No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution. Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

But the discrimination is not the base of disability. Our constitution gives us clear conception for all citizens in our country. This conception is only man

made or our society made and it is just a rumor. Despite these, this article may be a safeguard in favor of the disabled people. By applying this article every person may admit in any institution as per his/her educational capacity. In our country we saw the disabled is a victim of discrimination openly at the time of admitting into educational institution. On the basis of this type of discrimination any person may file a writ petition before the high court division, Supreme Court of Bangladesh by mentioning this article and article-102 of our constitution.<sup>147</sup>

### **5.3.5 Equality of Opportunity in Public Employment**

Generally, disabled people are victim of discrimination of appointment in government services. As per Article 29 of the constitution of Bangladesh, in spite of proper educational qualification disabled people are not entered to any good job sectors for their disability. Here we mention schedule (f) 5 and 7 of Disabled Welfare Act-2001 which mentions the appointment procedure of disabled people. At the same time article-29 run as follows, nothing in this article shall prevent the State from. Making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic; On the basis of this article disabled people may be the part of backward section and it is high time to secure their adequate representation in the service of the Republic.<sup>148</sup>

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<sup>147</sup> Constitution of Bangladesh, Article-28.

<sup>148</sup> Ibid, Article-29.

### **Case Study-One**

#### **BLAST, ASK and others vs. Bangladesh and others [‘Disability Based Discrimination in Employment’ Case]<sup>149</sup>**

**Facts:** Md. Nurur Rahman, an engineer with a physical disability who was denied appointment to the post of Assistant Manager (Mechanical) in the Bangladesh Gas Field Company Limited (BGFCL), filed a writ petition, along with Ain o Salish Kendra (ASK) and BLAST, challenging the denial of appointment. Mr. Rahman had obtained his Secondary School Certificate (S.S.C) and Higher Secondary Certificate (H.S.C) with First Divisions in 1994 and 1996, respectively. Following errors in his medical treatment, he suffered from a physical disability beginning in the year 1999. He was admitted to the Bangladesh University of Engineering and Technology (BUET) Dhaka and obtained BSc in Naval Architecture and Marine Engineering in year 2004. He was appointed as an Upazilla Rural Development Officer in Bangladesh Rural Development Board; his responsibilities included regular field visits and the Civil Surgeon recording his physical disability noted that his physical condition would not be a barrier for discharging his responsibilities. He applied for the post with BGFCL, meeting all the eligibility criteria stated in the advertisement published in the Daily Ittefaq, was allowed to take part in both written and viva voce exams and was asked to undergo a physical examination.

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<sup>149</sup> Writ Petition No. 2652 of 2008, filed in the High Court Division of the Supreme Court of Bangladesh

Following a medical checkup and a report by the internal doctor of the BGFCL that the petitioner was disabled, the petitioner was not asked to join. The petitioners sent a notice demanding justice to the Ministry of Power, Energy and Mineral Resources, the Ministry of Social Welfare, Bangladesh Oil, Gas and Mineral Corporation and BGFCL. The Social Welfare Ministry (Disability Section) sent a letter to the Ministry of Power, Energy and Mineral Resources to consider the Disability Welfare Act, 2001 regarding the petitioner's disability as well as quotas under the Act but no step was taken.

**Arguments:** The petitioners argued that Mr. Rahman came within the purview of the Disability Welfare Act and was entitled to special measures regarding appointment of disabled persons under Section 5 and 7 of the Schedule 'Cha' of the Act. The petitioners also cited Article 27 of the United Nations Convention on the Rights of Persons with Disabilities ratified by Bangladesh.

**Order:** The High Court issued a Rule Nisi on 9.4.2008 on the respondents to show cause why their refusal to appoint Mr. Rahman should not be declared to be without lawful authority and of no legal effect and why BGFCL should not be directed to appoint him.

**Laws Cited:** Constitution, Article 27, 28 and 31; Disability Welfare Act, 2001

**International Instrument Cited:** United Nations Convention on the Rights of Persons with Disabilities

**Status:** Pending hearing

## **Case Study-Two**

### **BLAST and others v Bangladesh and others [‘JSC Disability Discrimination’ Case]<sup>150</sup>**

**Fact:** Shapan Chowkidar, a lawyer with visual disabilities, along with BLAST, Action on Disability and Development (ADD), and the National Council of Women with Disabilities (NCDW), filed a writ petition challenging Schedule III of the Bangladesh Judicial Service Appointment Order, 2007, which bars persons with disabilities from being eligible for employment in judicial service. Shapan Chowkidar had participated in competitive examinations throughout his academic life with the aid of scribe and/or by use of documents in Braille. He obtained his Secondary School Certificate (S.S.C) with star marks in 1999, and his Higher Secondary Certificate (H.S.C) with a First Division in 2001. He was admitted to the Department of Law, University of Dhaka in 2002, where he obtained his LL.B. (Hons) and LL.M. degrees in 2008 and 2009 respectively. In 2009 he was enrolled as an Advocate with the Bar Council after qualifying in both the written and viva voce examinations. However, when he submitted his application for appearing for the JSC examinations he received an admit card, but his request for the aid of a scribe was denied by the Secretary of the Judicial Service Commission (JSC) on the grounds that no such facilities

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<sup>150</sup> Writ Petition No. 2867 of 2010, filed in the High Court Division of the Supreme Court of Bangladesh.

could be made available, and that in any event, persons with disabilities were not eligible for admission to the judicial service.

**Arguments:** The petitioners argued that institutionalized discrimination in the form of the JSC Rules violates the fundamental rights of all persons with disabilities to equality before law, particularly the rights to equal opportunities to public employment and to freedom of profession as guaranteed under Articles 27 and 29 read with Articles 15 and 19(2), and that the failure of the concerned authorities to make any accommodation for employment of persons with disabilities amounts to non-compliance with their statutory obligations under the Disability Welfare Act 2001, as well as their constitutional duties and their international obligations under the Convention on the Rights of Persons with Disabilities.

**Order:** The High Court issued a Rule Nisi on 08.06.2010 on the respondents, including the Ministry of Law, Justice and Parliamentary Affairs and the Judicial Service Commission, to show cause as to why certain provisions the JSC Rules Judicial Service appointment order 2007 should not be declared to be unconstitutional to the extent that they are inconsistent with the fundamental rights of persons with disabilities to equality, equality of opportunity and the right to a profession. It also directed the respondents to show cause as to why they should not be directed to apply their discretionary powers and to perform their duties as prescribed by law to

identify cadre posts within the Bangladesh Judicial Service as appropriate for citizens with disabilities as well as to ensure the hiring of citizens with disabilities for these posts. Earlier, on 25.04.2010, the Court had directed the Judicial Service Commission to submit a report within thirty days on the steps taken to date implement their obligations under Section 6(2) and Schedule 'Cha' of the Disability Welfare Act, 2001.

**Laws Cited:** Constitution, Articles 27, 29, 15 and 19 (2); Disability Welfare Act 2001.

**International Instrument Cited:** United Nations Convention on the Rights of Persons with Disabilities

**Status:** Pending hearing

### **5.3.6 Right to Protection of Law**

In our running social structure and legal system disable people are deprived of being entitled to protection of law As per Article 31 of the constitution of Bangladesh and they are not getting proper legal support. So they are victimized. For this reason, disabled people may intent to deprive of enjoying constitutional protection such as right to life, freedom, physical, goodwill or taking asset.<sup>151</sup>

**Example:** A disable person wants to take part in BCS preliminary examination. For this reason, he needs a translator so as usual he filed an

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<sup>151</sup> Constitution of Bangladesh, Article-31.

application to the chairman of Bangladesh Public Service Commission (BPSC) before the day of the examination. So the BPSC gave permission with some conditions. The condition is the translator–maximum–S.S.C. pass student but in admission test exam sight disabled person may get the help of a translator who is a student of HSC 2<sup>nd</sup> year (up to).

But It's an un-equality cause as the translator of one is maximum S.S.C and the other upto HSC 2<sup>nd</sup> year, it's a gross discrimination. So this deprived person may file a writ petition to high court division on the basis of the article-31 and 102 of the constitution.

### **5.3.7 Protection of Right to Life and Personal Liberty**

The life of disabled people and freedom of expression are the matter of shame. Article 32 describes-right to life which means to bear the life by getting necessary elements. To maintain the life of disabled people needs different modern technology and medical facilities that are involved in regular life. In our society, we do not see the practice of freedom let alone for the disabled people. So disabled people may not enjoy the right to life and liberty.<sup>152</sup>

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<sup>152</sup> Constitution of Bangladesh, Article-32.



**CASE- DR. Shepra chowdhury**

Vs

**Government of Bangladesh and others**

**Ref: Bangladesh 29 BLD (HCD) 183**

**Fact of the Case**

Shepra Chowdhury was a medical student and she got married to another medical student without consent of her parents. So her family did not accept this marriage and forced her to break it in the mean time she got a chance to go to UK for higher education and she went there. She started practice in a hospital and she took leave for one week to meet her parents but again they express their opinion and reinforced her to marry with their chosen bridegroom. She wanted to leave Bangladesh instantly. When she took decision to leave Bangladesh her parents forcefully admitted her into a mental hospital. In this situation her close relative filed a writ petition before the High Court Division, Supreme Court of Bangladesh and after getting remedy she went to her previous place.

Judgement delivered on January 19, 2009 By Mr. Justice Md. Syed Mahamud Hossain and Mr. Justice Quamrul Islam Siddiqui.

**5.3.8 Safeguards as to Arrest and Detention**

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be

denied the right to consult and be defended by a legal practitioner of his choice. As per Article 29 of the constitution of Bangladesh, every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate. No law providing for preventive detention shall authorise the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order: Provided that the authority making any such order may refuse to disclose facts which such authority considers to be against

the public interest to disclose. Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (4).<sup>153</sup>

### **5.3.9 Prohibition of Forced Labour**

In article-34 of Bangladesh constitution there is a Barr of forced labour that the article describes as follows, All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Nothing in this article shall apply to compulsory labour– (a) by persons undergoing lawful punishment for a criminal offence; or (b) required by any law for public purposes.<sup>154</sup>

### **5.3.10 Protection in Respect of Trial and Punishment**

Bangladesh constitution by its article 35 give protection to its citizens including disable by stating no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence. No person shall be prosecuted and punished for the same offence more than once. Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial Court or tribunal established by law. No person

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<sup>153</sup> Constitution of Bangladesh, Article-33.

<sup>154</sup> Ibid, Article-34.

accused of any offence shall be compelled to be a witness against himself. No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. Here every person means including disable.<sup>155</sup>

### **5.3.11 Freedom of Movement**

Normally, disabled people enjoy limited right of freedom of movement because of physical disability. Moreover our general buildings and other structures are not suitable for disable to move. Therefore, to violate specific right the victim person may file a writ petition in High Court Division, Supreme Court of Bangladesh in violation of Article 36 of the constitution of Bangladesh.<sup>156</sup>

### **5.3.12 Freedom of Assembly**

Every citizen including the disables shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health as per Article 37 of the Constitution of Bangladesh.<sup>157</sup>

### **5.3.13 Freedom of association**

Every citizen including the disables shall have the right to form associations

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<sup>155</sup> Constitution of Bangladesh, Article-35.

<sup>156</sup> Ibid, Article-36.

<sup>157</sup> Ibid, Article-37.

or unions, as per Article 38 of the Constitution of Bangladesh subject to any reasonable restrictions imposed by law in the interests of morality or public order: Provided that no person shall have the right to form, or be a member of the said association or union, if- it is formed for the purposes of destroying the religious, social and communal harmony among the citizens; if it is formed for the purposes of creating discrimination among the citizens, on the ground of religion, race, caste, sex, place of birth or language. If it is formed for the purposes of organizing terrorist acts or militant activities against the State or the citizens or any other country; its formation and objects are inconsistent with the Constitution.<sup>158</sup>

#### **5.3.14 Freedom of thought and conscience, and of speech**

Like other disable person have freedom of thought and conscience is guaranteed by Article 39 of the Constitution of Bangladesh. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence– (a) the right of every citizen to freedom of speech and expression; and (b) freedom of the press, are guaranteed.<sup>159</sup>

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<sup>158</sup> Constitution of Bangladesh, Article-38.

<sup>159</sup> Ibid, Article-39.

### **5.3.15 Freedom of Profession or Occupation**

Disabled people may not qualify to stay proper quality despite little disability. So if there is proper evidence of violation of specific right then he/she may file writ petition in High Court Division, Supreme Court of Bangladesh.<sup>160</sup>

### **5.3.16 Freedom of Religion**

Subject to law, public order and morality – (a) every citizen including the disables has the right to profess, practise or propagate any religion; as per Article 31 of the Constitution of Bangladesh (b) every religious community or denomination has the right to establish, maintain and manage its religious institutions. No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.<sup>161</sup>

### **5.3.17 Rights to Property**

Our country has some barricade for won property in the case of disabled people. According to Hindu personal law and inherit age system disabled people are not entitled to get property. In this matter personal religious law and constitutional law is contradictory as per Article 42 of the Constitution of

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<sup>160</sup> Constitution of Bangladesh, Article-40.

<sup>161</sup> Ibid, Article-41.

Bangladesh all are in title to won property. Then, personally disabled people may be a hirer and can only enjoy whole life not for sale and it may give by will or by proper agent. In this case, disabled right organization may be a proper organization to help the disabled people.<sup>162</sup>

### **5.3.18 Protection of home and Correspondence**

Every citizen including the disables shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health – (a) to be secured in his home against entry, search and seizure; and (b) to the privacy of his correspondence and other means of communication as per Article 43 of the Constitution of Bangladesh.<sup>163</sup>

### **5.3.19 Enforcement of Fundamental Rights**

The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed under Article 44 of the Constitution of Bangladesh. Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.<sup>164</sup>

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<sup>162</sup> Ibid, Article-42.

<sup>163</sup> Constitution of Bangladesh, Article-43.

<sup>164</sup> Ibid, Article-44.

## 5.4 The Evidence Act-1872 (Act No- 1)

In Evidence Act-1872 some sections are related with the disable persons.

Those are as follows:

According to Section 118 of Evidence Act all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.<sup>165</sup>

**Explanation**.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

It is clear to say that an intellectual disabled may not be considered as an incompetent witness. So a person is intellectual disable for this reason he/she may not be a competent witness, it is not true.

A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be eligible and the signs are to be made in open Court.

Evidence as such shall be deemed to be oral evidence. Section-119.<sup>166</sup>

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<sup>165</sup> Obaidul Huq Chowdhury's The Evidence Act [I of 1872], Fourth Edition 2004, Dhaka Law Reports

<sup>166</sup> The contract Act section 119.



## **5.5 The Contract Act-1872 (Act No- 9)**

In Contract Act-1872 there are some sections like section- 11,16 and 19 are relates to the person with disabilities and those are discussed below:

### **Competency for Contract**

Under Section 11 of the contract Act every person is competent to contract who has reached the age of being considered as a major according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. <sup>167</sup>

### **Sound mind for the purposes of contract**

According to Section 12 A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

### **Undue influence defined**

A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair

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<sup>167</sup> The contract Act-1872, Vol-2, Bangladesh Code, p. 14-96.

advantage over the other. Section 16.<sup>168</sup>

- (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-
  - (a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
  - (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

### **Power to set aside contract induced by undue influence**

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it and has received any benefit hereunder, upon such terms and conditions as to the Court may seem just. If anyhow a disable person

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<sup>168</sup> The contract Act section 16.

becomes victim of undue influence under section-16(2)b, he/she can also get benefit under section 19 of contacted Act.<sup>169</sup>

## **5.6 Disabled Welfare Act-2001 (Act No -12)<sup>170</sup> and Disabled Welfare Rules-2008**

Disable Welfare Act-2001 is a special Act for disabled but the area of application of the area of this Act is not vast. This act is not effective for the disable. It has some laps, for this reason by this Act the disabled people are not able to raise their rights before the government through court.

This Act discussed as follows:

### **5.6.1 Name of the Act**

The Act may be called Bangladesh Persons with Disability Welfare Act-2001. It shall come into force on such date as the government determines by a Gazette notification.<sup>171</sup>

### **5.6.2 Definitions**

In this Act, definitions given in section 2(a) to 2(f) here the definitions of District Committee, Schedule, Executive Committee, Disability, Rules, Coordination Committee.<sup>172</sup>

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<sup>169</sup> The contract Act section 19.

<sup>170</sup> Disable Welfare Act-2001.

<sup>171</sup> Disable Welfare Act-2001, Section-1.

<sup>172</sup> Ibid, Section-2.

### 5.6.3 Definition and identification of Disability

- (I) “Disability” means any person who,
- (a) is physically crippled either congenitally or as result of disease or being a victim of accident, or due to improper or maltreatment or for any other reasons became physically incapacitated or mentally imbalanced, and
  - (b) as a result of such crippledness or mental impairedness,-
    - (i) has become incapacitated, either partially or fully; and
    - (ii) is unable to lead a normal life.
- (II) Any person having disability described hereunder shall be included in the meaning and scope of the definition under subsection (I) of this section.
- a) Visual impaired
  - b) Physically handicapped
  - c) hearing impairment
  - d) speech impairment
  - e) mental disability
  - f) multiple disabilities
  - g) other type of impairment.<sup>173</sup>

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<sup>173</sup> Disable Welfare Act-2001, Section-3.

#### **5.6.4 Constitution of National Coordination Committee and re-constitution of its members:**

In order to implement the objectives set in this Act a committee called, 'National Coordination Committee for Welfare of the Persons with Disabilities' should be constituted (hence the Committee so constituted) with the followings:- The Minister-In-Charge, Ministry (or Division) of Social Welfare shall (by virtue of his post) be the President of this Committee; ex-officio; The Secretary of the Ministry (or Division) of Social Welfare shall, by virtue of his post; be the Vice- President of the Committee; ex-officio.<sup>174</sup>

#### **5.6.5 Disqualification of membership**

Any person shall be deemed to be disqualified as to be nominated as member, or retain his membership so nominated; under Section 4 (I) (g) of this Act, if he,- is not a citizen of Bangladesh, or has rescinded his citizenship or has lost it, or is of unsound mind and stands so declared by a competent court, or is adjusted bankrupt/ insolvent by a competent court constituted under any law now in effect or has not paid up his court adjusted debts, or is or has been convicted of an offence which involves moral turpitudes and sentenced for a period of more than two years jail term by a

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<sup>174</sup> Ibid, Section-4.

Criminal Court; or is or has been convicted for committing of an offence under this Act or any of its provision.<sup>175</sup>

#### **5.6.6 Responsibilities and functions of the National Coordination Committee:**

The responsibilities and functions of the Co-ordination Committee shall be:-

To review the existing policies of the Government to protect and safeguard the rights and dignity of the persons with disabilities, to ensure full participation of the disabled community in accordance to their capacity/ability in the national and social programmes, and to recommend corrective measures; or if needed be, put suggestion(s) for formulation of a newer policy to this effect, in consideration of the prevailing realistic situations related to the issues; to advise the Government to undertake various projects and programmes for implementing the policies on disability issues; to review and coordinate the activities of the Executive Committee, the District Committees and other concerned Government and Non-Government agencies, engaged in the acts of welfare for the disabled community under the purview of this Act or other laws so applicable, and to pass on necessary directives, if deemed expedient, to that effect; to advise the Government on matters to protect the rights of the disabled Community/ population and motivate other agencies/ organizations to that effect; to arrange Skill Development Training for persons working in

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<sup>175</sup> Disable Welfare Act-2001, Section-5.

disability sector programmes to raise their work efficiency; to establish a Disability Information Centre and to provide information to various mass media and arrange dissemination/ media-coverage of those information for the welfare of the persons with disability. to advise the Government to initiate proper steps to up-grade National policies and up- date concerned laws related to disability issues to keep pace in line with the development on the agenda that are taking place in the International arena and suggest for their implementation; and to recommend to the Government for reviewing of the existing laws and effect amendment, if so needed, from time to time, the laws in force.<sup>176</sup>

#### **5.6.7 Meeting of the Coordination Committee**

Subject to the provisions laid in this section of this Act, the Coordination Committee shall have the authority to determine the mode of conducting business--modus operandi-- of its meetings. The Coordination Committee shall at least meet once in a Calendar Year.<sup>177</sup>

#### **5.6.8 Constitution of the Executive Committee, Disqualification of its members, and matters incidental thereto:**

In order to fulfil the objectives set in this Act, a committee, called, The Persons with Disability Welfare Executive Committee; shall be

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<sup>176</sup> Disable Welfare Act-2001, Section-6.

<sup>177</sup> Ibid, Section-7.

constituted (and hence constituted) consisting of the persons named hereunder: The Secretary, Ministry or Division of Social Welfare, ex-officio; who shall also be the President of this Committee. Six (6) Government officials, not below the rank of Joint Secretary; who shall be nominated by their respective Ministry/Division viz. Primary and Mass Education Division, Finance Division, Roads and Railways Division, Ministry of Housing and Public Works, Ministry of Health and Family Welfare and Ministry of Social Welfare, ex-officio; shall be its members.<sup>178</sup>

#### **5.6.9 Responsibilities and functions of the Executive Committee, District Committee**

In section 9-14 of disable welfare Act 2001 (Act No-12) discussed about the responsibilities, functions, office operation of the Executive Committee and district committee.<sup>179</sup>

#### **5.6.10 Sub-Committee**

The Coordination Committee, the Executive Committee or the District Committee shall have the authority, if it is deemed expedient; to constitute Sub-Committee(s) comprising of one or more than one member or any other person, to assist the respective committee in discharging their functions and it (the committee concerned) shall also have the authority to determine the

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<sup>178</sup> Disable Welfare Act-2001, Section-8.

<sup>179</sup> Ibid, Section-9-14.



number of members of such sub-committee, its responsibilities and functions and the terms of reference (TOR) of its operation.<sup>180</sup>

#### **5.6.11 Responsibilities of the Government, Non-Government Organisations and the Local Authority:**

It would be the responsibilities of the Government, Non-Government Organisations and the Local Authorities to extend all out cooperation to implement the projects and programmes taken up by the National Coordination Committee at the field level operation and also to execute the decisions and directives of the said Committee.<sup>181</sup>

#### **5.6.12 Delegation of Power**

The Coordination Committee, the Executive Committee or the District Committee may delegate its power (except provision of this section) to any of its constituent member or such other person to the extent and manner as it is deemed appropriate by the Committee concerned to facilitate efficient discharging of the responsibilities and functions of the respective Committee.<sup>182</sup>

#### **5.6.13 Offences, Trial and Punishment**

In order to execute the provisions of this Act, the Government, by notification, may define committing of certain acts as offences and the

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<sup>180</sup> Disable Welfare Act-2001, Section-16.

<sup>181</sup> Ibid, Section-17.

<sup>182</sup> Ibid, Section-18.

contravenes shall be guilty of an offence, prosecuted and punished for imprisonment of a minimum of three (3) months, or a fine of Taka 5,000 (Five thousand) or both. The trial of such offences shall take place under established procedures of the Court of Law.<sup>183</sup>

#### **5.6.14 Offences committed by Company**

In case of any offence under this Act is committed by a company or bodies of persons then every director, or manager, or secretary or any officer or agent assigned thereto shall each be deemed to be guilty of that offence. Provided that, no such person shall be deemed to be guilty of an offence under this Act, if he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent the commission of the offence.<sup>184</sup>

#### **5.6.15 Freeing from personal liabilities/ Protection against being sued:**

No suit or prosecution shall lie in any civil or criminal courts against the Government, or any member of the Coordination Committee, or the Executive Committee or the District Committee or any officer, employee or any other person, so authorised or assigned, for his actions in discharging the assigned duties so done in good faith under this Act or at the order of the competent authority to that effect even if such act has either caused; or has reasons to be caused that happen, damages to any one in the process.<sup>185</sup>

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<sup>183</sup> Disable Welfare Act-2001, Section-19.

<sup>184</sup> Ibid, Section-20.

<sup>185</sup> Ibid, Section-21.

### **5.6.16 Power to formulate regulation**

The Government shall have the power to formulate such regulations, by Government notification; required to fulfil the objectives set in this Act.<sup>186</sup>

### **5.6.17 Removal of inconsistencies**

Should there be any inconsistency, of any type or manner; in this Act; the Government shall have the authority to pass on such orders or directives for removal of the extent of inconsistencies or to enforce that provision of this Act by lawful order.<sup>187</sup>

The Act more says- functions of the government in different stages in different committee, their formulations and their duty and functions etc. of National Co-ordinate Committee, Administrative committee, distract committee and sub- committee among them. The Disabled Welfare Act 2001 was revoked with the support of the Charter of the United Nations when Bangladesh activated its new law on disability in 2013.

## **5.7 Criticism of the Act "Disable welfare-2001"**

That the Government passed the Disabled welfare Act-2001 but in this Act there was no enforcing sections. So it was a kind of eye-wash to the society especially to the persons with disability and to those who worked for their

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<sup>186</sup> Disable Welfare Act-2001, Section-22.

<sup>187</sup> Ibid, Section-23.

rights. Unfortunately, this Act could not work out. Here in view of section-6(2), 7,8,9,10 there are many committees mentioned but actually the work-plan was not distributed. Under but actually the work-plan was not distributed. Under section-21 there was a clause where the government officers and the committees made free from their personal liability if they could not work as per this law in the name of good-faith. So, the PWDs cannot get relief from the court against the government officers.

So The Government of Bangladesh revoked this act (The Disabled Welfare Act 2001) by activating its new law on disability in 2013 named “Rights of Persons with Disabilities Act 2013”

### **5.8 The “Rights of Persons with Disabilities Act 2013”**

According to the Constitution of Bangladesh, all citizens of the country have the right to enjoy their dignity, fundamental human rights and have social equality. It does not give any special rights to persons with disabilities. But the Constitution says that Bangladesh Government should make sure that persons with disabilities have equal rights like everyone else. In the light of the constitution of Bangladesh and experience of the disabled welfare Act-2001, the Government of Bangladesh passed new law named "Rights of Persons with Disabilities Act-2013" that it as follows:

These include:

### **5.8.1 Definition of this Act**

The definitions of Upazila Committee, Inclusive Education, Committee, Program, Fixed, Disability, Persons with Disabilities, Rights of Persons with Disabilities, Organization of Persons with Disabilities, Accessibility, Appropriate Environment and Real Opportunity to Freedom of Choice is Necessary and other are given in section 2 of this act.<sup>188</sup>

### **5.8.2 Types of Disability<sup>189</sup>**

#### **Autism**

Autism is a difficulty in development of brain growth that reveals itself within six months to three years of a child being born. Persons with autism can appear extremely excited and often display unnatural physical gestures.

#### **Physical**

Physical disability refers to a person who does not have one or both hands or legs, or is partly or fully paralyzed in hand or leg function and/or cannot balance themselves without support.

#### **Psychosocial**

Psychosocial refers to schizophrenia or other disabilities such as clinical depression, bipolar disorder, post-traumatic stress, anxiety or phobic disorders that prevent persons from engaging in daily activities.

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<sup>188</sup> Persons with disabilities rights and protection Act 2013, Section: 2.

<sup>189</sup> Ibid, Section: 3-15.

## **Visual Impaired**

According to this Act, there are 3 different kinds of visual disabilities:

- 1) Fully Visual: No visual function in both eyes. Vision below 6/60 or 20/200 is considered fully blind.
- 2) Partially Visual: One eye is completely sightless or blind.
- 3) Indistinct Visual: Vision within 6/18 or 20/60 and 6/60 or 20/200 (between 20 degrees to 40 degrees out of 60 is considered as insufficient blindness).

## **Speech Disability**

According to this Act, persons with speech disabilities cannot speak well due to difficulties in the palate.

## **Intellectual Disability**

According to this Act, Intellectual Disability refers to the incapability of doing something on the basis of age and cognitive ability that create barriers to work efficiently, as well as carry out own daily activities without relying on others for help.

## **Hearing Disability**

This refers to the incapability of hearing below 60 decibels (dB), the range of human hearing. The three kinds of hearing disabilities are:

- 1) Totally Inaudible: Both ears are inaudible.

- 2) Partially Inaudible: One ear is fully inaudible.
- 3) Weaken Inaudible: Both ears can hear very little or sometimes fully inaudible.

### **Hearing-Visual Disability**

Hearing-visual disability refers to persons who are incapable of hearing fully or partially, as well as incapable of seeing fully or partially. There are four divisions among persons with hearing-visual disability type:

- 1) Medium to severe position of hearing and visual disability
- 2) Medium to severe position of hearing, visual and other disabilities
- 3) Limitation of vision and hearing level
- 4) Decreasing vulnerability of vision and hearing capacity

### **Cerebral Palsy**

Cerebral palsy refers to the incapability to function generally, or the limitation of performing daily activities due to brain damage.

### **Down Syndrome**

This is a disability passing from generation to generation where the 21st pair of chromosomes has an extra chromosome, which weakens the muscular system, and develops short stature and a circular face, which are considered to be characteristics of a person with Down Syndrome.

## **Multiple Disabilities**

Multiple disabilities refers to having more than one disability.

### **5.8.3 Establishment of Committees**

According to this Act, five types of committees will be established based on their responsibilities and process of work from national to town levels.

#### **National Coordinating Committee<sup>190</sup>**

This 28-member Committee will be formed by the Ministry of Social Welfare, different ministry representatives and representatives from Disabled People's Organizations (DPOs) and will maintain the rights of persons with disabilities.

#### **National Executive Committee<sup>191</sup>**

This Committee will consist 17 members and will be formed by the Ministry of Social Welfare.

#### **District Committee<sup>192</sup>**

This 17-member Committee will be formed by the District Commissioner; the Deputy Director of the District Social Welfare Office will be the Secretary.

#### **Upazila Committee<sup>193</sup>**

This Committee will be formed with 14 members by the Upazila Nirbahi Officer.

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<sup>190</sup> Persons with disabilities rights and protection Act 2013, Section: 18.

<sup>191</sup> Ibid, Section: 19.

<sup>192</sup> Ibid, Section: 21.

<sup>193</sup> Ibid, Section: 23.



### **City Committee**<sup>194</sup>

This Committee will be formed with nine members in the city area under the city corporation. There will be a City Committee of eight members under the city corporation.

#### **5.8.4 Responsibilities of Concerned Authorities**

All government, non-government organizations, educational institutions and local authorities will have the right to make new laws, instead of existing government laws, to establish the rights of persons with disabilities. The initiatives by the government will become beneficial tools to improve the rights of persons with disabilities. The government must follow the mentioned laws, which are set out by the committee for implementing equal rights of persons with disabilities. Government will conduct a survey program for the collection of statistics and data of all persons with disabilities.

#### **5.8.5 Criticism of the Act "Rights of Persons with Disabilities-2013"**

That this Act is a milestone in the sector of Disables' Acts. Here as many as 44 sections are included. These sections were not enforced earlier. In 2016. January 12 this Act by a gazette notifications S.R.O. No. 02 Ain/2016 declared the sections-31 and 36 of this Act. Where in section-31 it is stated about the issue of the ID card to the disable persons. And section-36 disclose about the compensation and punishment for disobeying the Act of 2013.

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<sup>194</sup> Persons with disabilities rights and protection Act 2013, Section: 24.

Now, the disable persons can rush to the court if any right given in the above mentioned act is violated and can get relief from the court of law.

### **5.9 Neuro-Developmental Disabled Protection Trust Act 2013**

By this Act Government give a guideline to a make trust for the disable persons of Bangladesh. This Act discusses about how to establish the trust, how it will function and the jurisdiction and function of the trustees. It is also included with the duties, rights and removal procedure of trustee Board and the Trustee. Here, the disables will be the beneficiary of the trust. This Act upon the door to make the life of the disable easy and smooth.

### **5.10 The Code of Criminal Procedure-1898<sup>195</sup>**

In our country, there is no special law for the crime against the disabled persons like Nari O Shishu Nirjatan Ain-2000 for women or Shishu Ain-1974. So, the disables are in more vulgarable position than those. If any disable person victimizes any criminal offence it becomes very tough to prove it by them specially for deaf and dumb through the existing criminal and Evidence Act of Bangladesh. And societies don't want to take responsibility to establish their rights by giving support and being witness of the fact how a disable is victimized. In many of the cases it is found that the victimized disabled person cannot prove the case and compromise with the

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<sup>195</sup> The Code of Criminal Procedure-1898-Act No. V of 1898, Vol. 4 of Bangladesh Code. p. 1-428.

accused for the pressure of the society. But now as because there is no special law and special court or tribunal in favour of the disable person. They are bound to follow the traditional and as usual criminal judiciary system from filing to disposal of the case like others.

### **5.10.1 In the Stage of filing the Case**

In criminal law a case may be filed in two ways-

- I) by first information reports (FIR & GR CASE) and
- II) By submitting complain to the magistrate (CR CASE).

#### **By First Information (FIR)**

FIR may be filed in a police station by a disabled person whose legal rights (criminal right) has been violated. So in this case the disabled person is the supreme authority to file the case. In some special cases the mother of disabled person or who has much good will or a responsible person of the society or disable right's organization or in legal language next friend of disable person may file First Information Report<sup>196</sup> under section-154 code of criminal procedure. This process is called G.R. case.

#### **By Submitting Complain to the Magistrate (C.R. Case)**

Another way to file a criminal case before the Magistrate by submitting a complain petition this process is called complaint register case or CR case.

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<sup>196</sup> Code of Criminal Procedure, Section-154

In this procedure a disable person or his or her legal representative may submit complain case before the court. That the definition of the word of 'complaint' is given in section-4(h)<sup>197</sup> of the code of criminal procedure.

### **5.10.2 Deposition taken by Magistrate**

After submitting complaint to the Magistrate take deposition of complainant under section-200 of the code of criminal procedure-1898 both in FIR and CR case. The Magistrate take cognizance<sup>198</sup> and observes the merit of the case. Then he issues summon against the criminal or pass an order for investigating the matter.

### **5.10.3 Inquiry,<sup>199</sup> Chargesheet,<sup>200</sup> Final Report and Naraji Petition**

When a complain is submitted before the Magistrate then this complain may be inquired in three ways- viz

- I. Magistrate may do the inquiry by himself
- II. By police officer
- III. give order to another as magistrate like fit and proper

If the report of the case comes then the magistrate issues summon. In the G.R. case after investigation charge sheet may submitted by the police. In the case if investigator does not find any truthfulness of complain petition then the police officer may submit final reports before the court.

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<sup>197</sup> Ibid, Section-4(h)

<sup>198</sup> Code of Criminal Procedure-1898, Section-190.

<sup>199</sup> Civil Procedure Code, Chapter 24.

<sup>200</sup> Ibid, Chapter 19.

**Naraji petition**– If disable person do not agree with the final report he/she has every opportunity to file Naraji petition and magistrate after hearing the parties can give the order of further investigation.

#### **5.10.4 Arrest and Bail<sup>201</sup>**

To arrest an accused the police-officer or other person touch or confine the body of the person to be arrested.

When any person accused of any non-bail able offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court, he may be released on bail, but he shall not be so released if there is reasonable ground for believing that he has been guilty of an offence punishable with death or sentence for life.

But the court may direct that any person under the age of sixteen years or any woman or any sick or infect or disabled person accused of such an offence be released on bail. Under see 498 of the criminal procedure code.

#### **5.10.5 Written Statement**

In favour of the accused person one cannot submit written statement. In some criminal cases under section 107, 117(c) and 145 of the code of criminal Procedure opposite party can submit written statement. this rule is the same for the PWDs.<sup>202</sup>

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<sup>201</sup> Civil Procedure Code, Section-498,

<sup>202</sup> Code of criminal Procedure, Section 107, 117(c) and 145.

### **5.10.6 Framing Charge**

On presence or absence of the accused person a charge is framed.

### **5.10.7 Taking Evidence<sup>203</sup>**

For disabled person, evidence is taken under section 118 and section 119 of the evidence Act-1872.

### **5.10.8 Hearing and Judgment**

After hearing, the court delivers the judgement in presence of the parties. If necessary court can mention special section related with disable in its judgement.

## **5.11 The Code of Civil Procedure-1908<sup>204</sup>**

That in code of civil procedure section-147 and in order-32 rule 1-14 it is mentioned how a disable or unsound mind person can file a case in civil courts and in order-32 rule-15, marks that order-32 Rule-1-14 is also applicable to persons of unsound mind. These rules have been made for protecting the civil rights of disabled persons specially mental infirmity, deaf, dumb and persons with weak intelligence.

The code of civil procedure says that In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if

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<sup>203</sup> Evidence Act-1872.

<sup>204</sup> The Code of Civil Procedure-1908-Act No. V of 1908, 21st March 1908. Vol. 5 of Bangladesh Code. p. 73-497. Section 147.

given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement. In section 147.

### **5.11.1 Filing suits by minor and person of unsound mind**

The code of civil procedure says in order 32, Rule 1-15<sup>205</sup> the procedure of filing suits by or against in favor of the minor and person of **unsound mind**. This rule provides that every suit by a minor plaintiff shall be brought in his name by a next friend; it may not be brought by guardian ad litem.<sup>206</sup>

### **5.11.2 Disable and Minor to sue by next Friend**

Every suit by a minor shall be instituted in his name by a person who, in such suit shall be called the next friend<sup>207</sup> of the minor under Order 32, Rule-1 code of civil procedure. This section specially enacted to protect the interest of minor and persons with unsound mind.<sup>208</sup>

The guardian can bring a suit on his behalf at any time during the minority of the ward. (1996 DLC 652)

In the case of minor Muslim girl- a suit by a Muslim minor, who has attained puberty, for dissolution of marriage is maintainable without a next friend under section-2 of the Majority Act

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<sup>205</sup> Order 32, Rule 1-15, Code of Civil Procedure, 1908.

<sup>206</sup> PLD 1986 KAR, p. 489.

<sup>207</sup> Order 32, Rule-1, Code of Civil Procedure.

<sup>208</sup> Ramchander V. Gopi Krishna, AIR 1957 pat 260.

### **5.11.3 If suit instituted without next friend, plaint to be taken off the file**

Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or by the other person by whom it was presented. Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit- Where a minor sues as a major by a bona fide mistake, an application for amendment of the mistake and proper representative may be allowed even if such application is beyond time.

Guardians for the suit to be appointed by court for minor defendant:-

Where the defendant is a minor, the court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit of the minor.

**Case Reference:** Sukumar Sen vs Gouranga Bejoy Dey, 42 DLR (Ad) 18

Appointment of guardian by court for minor defendant is mandatory, but its non-compliance in a case where minor has not been prejudiced does not render the whole proceeding of the suit including the passing of the decree against others a nullity. The minor defendants were performed ones against whom no decree was sought.



#### **5.11.4 Who may act as next friend or be appointed guardian for the suit**

Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit. Under order 32, rule-4 of the code of civil procedure. Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.

Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appoint his guardian for the suit unless the court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be A person whose interest is adverse to that of the minor is disqualified to be the guardian of the minor and a decree obtain against the minor in such a case will be nullified.<sup>209</sup>

#### **5.11.5 Representation of minor and disable by next friend or guardian for the suit**

Every application to the court on behalf of a minor other than an application shall be made by his next friend or by his guardian for the suit-<sup>210</sup> Every order made in suit or on any application, before the court in or by which a minor is in any concerned or affected, without such minor being represented

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<sup>209</sup> AIR 1956 Tray-co 70, Bejoy vs Mathuriya 56 Ind Cal., p. 97.

<sup>210</sup> Under order 32, rule-5 of the code of civil procedure.

by a next friend as guardian for the suit, as the case may be discharged, and where the pleader of the party at whose instance such order was obtained on or might reasonably have known, the fact of such minority with costs to be paid by such pleader. Every application means every application in connection with the lis.<sup>211</sup> Under the rule no other affecting the minor can legally be made without his being properly represented.<sup>212</sup>

#### **5.11.6 Receipts by next friend or guardian for the suit of property under decree for minor**

A next friend or guardian for the suit shall not, without leave of the court, receive any money or other moveable property on behalf of a minor either-

- a) By way of compromise before decree or order or
- b) Under a decree or order in favour of the minor.<sup>213</sup>

The rule applies to a certificated guardian who acts next friend or guardian ad litem for a minor plaintiff or defendant.<sup>214</sup>

#### **5.11.7 Agreement or compromise by next friend or guardian for the suit**

No next friend or guardian for the suit shall, without the leave of the, expressly recorded innings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.<sup>215</sup>

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<sup>211</sup> Santabai vs Luxmi AIR 1930 Nag, p. 185.

<sup>212</sup> Amichand vs collector ILR 13 Bom, p. 234.

<sup>213</sup> Under order 32, rule-6 of the code of civil procedure.

<sup>214</sup> AIR 1935 CAL, p. 631

<sup>215</sup> Under order 32, rule-7 of the code of civil procedure.

The object of this rule in imposing restrictions on the power of next friend or guardian of a minor, to enter into an agreement or compromise on behalf of minor, without leave of the court recorded expressly, is to protect minor's right in the suit from being adversely affected by negligence or wrongful acts of the guardian.<sup>216</sup>

#### **5.11.8 Retirement of next friend**

Unless otherwise ordered by the court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.<sup>217</sup>

The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor. Next friend cannot retire without a special order of the court.<sup>218</sup>

#### **5.11.9 Removal of next friend**

This rule says that where the interest of the next friend of a minor is adverse to that of minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or during

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<sup>216</sup> PLD 2000 LAH, p. 172.

<sup>217</sup> Under order 32, rule-8 of the code of civil procedure.

<sup>218</sup> Banrasi vs Ram ILR 30 All, p. 105.

the pendency of the suit, ceases to reside within Bangladesh, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for this removal;<sup>219</sup> and the court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly and make such other order as to costs as it thinks fit.

#### **5.11.10 Stay of proceedings on removal, etc. of next friend**

On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.<sup>220</sup>

Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the court for the appointment of one and the court, may appoint such person as it thinks fit

#### **5.11.11 Retirement, removal or death of guardian for the suit**

Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.<sup>221</sup>

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<sup>219</sup> Under order 32, Rule-9 of the code of civil procedure.

<sup>220</sup> Ibid, under order 32, Rule-10.

<sup>221</sup> Ibid, under order 32, Rule-11.

Where the guardian for the suit retires, dies or is removed by the court during the pendency of the suit, the court shall appoint a new guardian in his place. That the rule is applicable also in case of a court officer appointed as guardian.<sup>222</sup>

#### **5.11.12 Course to be followed by minor plaintiff or applicant on attaining majority**

A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority,<sup>223</sup> elect whether he will proceed with the suit or application.

Where he elect to abandon the suit application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend. Here 12(5) only applicable in the case of defendant respondent.<sup>224</sup>

#### **5.11.13 Where minor co-plaintiff attaining majority desires to repudiate suit**

Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit-<sup>225</sup>

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<sup>222</sup> Tikaram vs Tarachand AIR 1954, Nag, p. 135.

<sup>223</sup> Under order 32, rule-12 of the code of civil procedure.

<sup>224</sup> Sheomongal vs Birandra AIR 1949 Mad, p. 169.

<sup>225</sup> Under order 32, rule-13 of the code of civil procedure.

Where the applicant is a necessary party to the suit, the court may direct him to be made a defendant.

#### **5.11.14 Unreasonable or improper suit**

A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper. Notice of the application shall be served on all the parties concerned; and the court, upon being satisfied of such unreasonableness or impropriety,<sup>226</sup> may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

#### **5.11.15 Apply to persons of unsound mind**

Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the court on enquiry to be incapable,<sup>227</sup> by reason of any mental infirmity, of protecting their interest when suing or being sued. The present rule marks rule 1 to 14 applicable to persons of unsound mind. These rule have been made applicable in protecting his own due to mantal infirmity.<sup>228</sup> By Judicial

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<sup>226</sup> Under order 32, rule-14 of the code of civil procedure.

<sup>227</sup> Ibid, under order 32, rule-15.

<sup>228</sup> Re Pariaswami Goundon AIR 1954 Mad, p. 810 & Mazharuddin vs Seragudin 4 CLJ, p. 115.

interpretation these rules have been made applicable in case of a person who is deaf and dumb or a person of weak intellect and cannot protect his interest.<sup>229</sup>

## **5.12 Transgender and Legal System in Bangladesh<sup>230</sup>**

Now in our country (from November -2013) transgender is recognized as a third gender. Now they are constitutionally recognized and every document has to mention them as a third gender. This is the good step of government on transgender of our country. So they are not neglected by general people and they are examined as one kind of disable.

## **5.13 How to Establish a Disables' Organization in Different Laws Existing in Bangladesh**

By these following Acts our disabled organization can be established:

- The Charitable Endowments Act,1890 (Act –VI)
- The Trusts Act,1882 (Act-II)
- The Societies Registration Act,1860 (Act –XXI)
- The Charitable and Religious Trusts Act, 1920 (Act-XIV)
- The Voluntary social Welfare Agencies (Registration and control) Ordinance, 1961 (ordinance XLVI)
- The Waqfs Ordinance, 1962

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<sup>229</sup> Wankchand vs Banarasi, AIR, 1930, Lah, p. 425; Ramanathan vs Samasuudaram, AIR 1941 Mad, p. 505.

<sup>230</sup> The paradox of recognition: *hijra*, third gender and sexual rights in Bangladesh- by Adnan Hossain Published, 24 Aug 2016.

- The Foreign Donations Regulation Ordinance, 1978 (Ordinance No. XLVI of the 1978)
- The Companies Act-1994 (Act no. 18)
- Cooperative Society Act -2001 (Act no. 47)
- The Personal Law

#### **5.14 As per Personal Law**

Once, this type of organizations were conducted enormously. But now those organizations became rare. As per Muslim personal law under waqf ordinance 1962 and as per Hindu Personal Law Debottor sompotti donated for disables' charities for religious purposes.

#### **5.15 General Laws for Establishing Organization**

This type of organizations are known as "disabled right organizations" where disable people could express their rights. These organizations are established and conducted by the Societies Registration Act, 1860.

#### **5.16 Procedure to Take Donation**

To get donation from government, the organization must be registered under “The Voluntary Social Welfare Agencies (Registration and Control) ordinance, 1961 (ordinance- XLVI).”<sup>231</sup>

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<sup>231</sup> The Voluntary Social Welfare Agencies (Registration and Control) ordinance, 1961 (ordinance- XLVI)-2nd December, 1961.



And for taking foreign donation then that organization must be registered under “The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 Ordinance no-XLVI, 1961 (Ordinance XLVI).”<sup>232</sup>

### **5.17 Unprofitable Company**

Under section 28 & 29 of the Company Act-1994,<sup>233</sup> a disables' organization can be registered. And this kind of organization work for the betterment of disables'.

### **5.18 Trust/Foundation**

Trust is a very popular and old age organization. It is established, registered and conducted under the Trust Act-1882.<sup>234</sup> The liability of trust is vested on trustee board.

In the matter of charitable or religious, purposes, trust may be registred by The Charitable and Religious Trust Act -1920.

### **5.19 Co-Operative Society (Somobai Somiti)**

To save the interest of the disabled people a co-operative society (somobai somiti) may be registered under Shomobay Samity Ain-2001.<sup>235</sup> But these

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<sup>232</sup> The Foreign Donations (voluntary activities) Regulation Rules, 1978. President's Secretariat Public Division, 12th December, 1978. This Ordinance has been repealed by Foreign Grants (Voluntary Activities) Regulation Act, 2016 (Act No.36 of 2016).

<sup>233</sup> The Company Act, 1994. Act No. 18 of 1994. Bangladesh.

<sup>234</sup> Trust Act-1882, Act No. 2 of 1882 Vol-2 of Bangladesh Code. p. 434-478.

<sup>235</sup> Shomobay Samity Ain-2001.

organizations may follow hard and fast rules of the government. For this reason it may hamper to conduct the functions of the charitable organization.

### **5.20 Club**

To save the interest of disabled people, a club may be established under section-28 of the Societies Registration Act-1860.<sup>236</sup> This institution may be a platform for developing awareness of the rights of disable persons to the society.

### **5.21 Conclusion**

Bangladesh is an over populated country where most of the people are not aware of their rights. In our country every person has right to enjoy fundamental rights. So no doubt that disabled people also enjoy their fundamental rights as usual. That for disabled people, our government organization and some non-government organization established by different laws and they have taken different steps to support physical, mental, economical needs of disables. Above this if any one violates or try to violate these fundamental rights then disable people or their organization or anyone in favor of the disabled people may file writ petition. These organizations are the safeguard of disable people in our country.

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<sup>236</sup> Societies Registration Act-1860.

## **Chapter Six**

# **General Conclusion**

### **6.1 Introduction**

Disability is a condition of the human being every person of the world can be temporality or permanently impaired at any stage of his life. there are multiple problems to establish the disable rights in Bangladesh even in the world. Its law and practice is also not satisfactory in our country. The earlier chapters disclose the problems for not only establishing the legal rights of disable but also focus on the econmical, social and the political rights. In this chapter, the problems and barriers of the rights of disable and the findings to uphold the disables' rights will be discussed.

### **6.2 Problems and Findings**

This study found that Disabled people faced different kinds of problems in home, society and country. Overall our state is not able to support their rights and their demands as they want. We are human being and every person has a maximum sustainable capacity to bear their uneasiness and unsupportable functions. Normally, the disabled people face following problems.<sup>237</sup>

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<sup>237</sup> <http://www.ohchr.org/SP/HRBodies/CRPD/Documents/disabilities-convention.htm> [Last visited on: 15.05.2018]

### **6.2.1 Inadequate Policies and Standards**

Policy design does not always take into account the needs of people with disabilities, or existing policies and standards are not enforced. Examples include a lack of clear policy of inclusive education, a lack of enforceable access standards in physical environments, and the low priority accorded to rehabilitation.

### **6.2.2 Negative Attitudes towards Persons with Disability**

Beliefs and prejudices constitute barriers to the health-care workers to work in favor of persons with disability, teachers do not see the value in teaching children with disabilities, employers discriminate against people with disabilities, and family members also have low expectations from their relatives with disabilities.<sup>238</sup>

### **6.2.3 Lack of Opportunity of Services**

People with disabilities are particularly vulnerable to deficiencies in services such as health care, rehabilitation, or support and assistance.

### **6.2.4 Problems with Service Delivery**

Issues such as poor coordination among services, inadequate staffing, staff competencies, and training affect the quality and adequacy of services for persons with disabilities.

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<sup>238</sup> Access to Health Care for Persons with Disabilities in rural Madwaleni, Eastern Cape, South Africa-by Richard Vergunst, March-2016, p. 5, of“vergunst\_access\_2016.pdf”

### **6.2.5 Not Enough Funding<sup>239</sup>**

Resources allocated for implementing policies and plans are often not good enough. Strategy papers on poverty reduction, for instance, may mention disability but without considering funding.

### **6.2.6 Lack of Accessibility in all Respects**

Built environments (including public accommodations) transport systems and information are often inaccessible. Lack of access to transport is a frequent reason for a person with a disability being discouraged from seeking work or prevented from accessing health care. Even in countries with laws on accessibility, compliance in public buildings is often very low. The communication needs of people with disabilities are not often met. Information is frequently unavailable in accessible formats, and some people with disabilities are unable to access basic information and communication technologies such as telephones and television.

### **6.2.7 Lack of Consultation and Involvement of PWDs in decision-making**

Often people with disabilities are excluded from decision-making in matters directly affecting their lives. Only the sufferer can understand their own problems as such the disable persons should be included in decision-making in their own matters.

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<sup>239</sup> Summary-World Report on Disability-2011, Jointly Organized by-The World Health Organization & The World Bank, 2011, pp. 9-10.

### **6.2.8 Unavailability of Actual Data and Evidence of Disabled**

Unavailability of rigorous and comparable data on disability and evidence on programmers that work often impedes understanding and action.

### **6.2.9 They are Less Economically Active**

People with disabilities have lower employment rates than people without disabilities. Where people with disabilities are employed, they commonly earn less than the people without disabilities.

### **6.2.10 Higher Cost of Households with Persons with Disability**

Households with a person with disability have higher rates of poverty than households without disabled members. As a group and across settings, people with disabilities have worse living conditions and fewer assets. Poverty may lead to disability, through malnutrition, poor health care, and dangerous working or living conditions. Disability may lead to poverty through lost earnings, due to lack of employment or underemployment, and through the additional costs of living with disability, such as extra medical, housing, and transport costs.

### **6.2.11 They cannot always live independently or Participate fully in Community Activities**

Reliance on institutional solutions, lack of community living, inaccessible transport and other public facilities, and negative attitudes leave people with

disabilities dependent on others and isolated from mainstream social, cultural, and political opportunities.

### **6.3 Recommendation for Disable People<sup>240</sup>**

This section makes recommendations to improve the effectiveness of future implementation activities, and to extend implementation of the Disable's rights. It also offers considerations for disabled persons for the implementation of the Disable's rights. The perceptions of disabled people match, generally, this finding. To reiterate, disabled people perceive that across central government agencies, there is a greater understanding of disability issues, and attempts are being made to include them in decision-making. However, disabled people's perception is that, despite wide implementation activity, little has changed for them in the life outcome areas of health and wellbeing, education, transport, housing and disability supports, and that the disparities between disabled people in general and disabled Māori, Pacific people, rural people or those with high and complex needs are increasing. These life outcome areas, and these groups of disabled people, require particular focus in the ongoing implementation of the Disable's rights<sup>241</sup>.

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<sup>240</sup> Summary-World Report on Disability-Jointly Organized by-The World Health Organization & The World Bank, 2011, p. 17.

<sup>241</sup> Implementing the Convention on the Rights of Persons with Disabilities The Participation of Disabled Peoples' Organisations (DPOs) The Netherlands-by-Mariska Neefjes & Samira Sakhi

### 6.3.1 States can take the initiatives to the disable<sup>242</sup>

- a. Review and revise existing legislation and policies for consistency with our constitution and other laws and legal agencies.
- b. Review mainstream and disability specific policies, systems, and services to identify gaps and barriers and to plan actions to overcome them.
- c. Develop a national disability strategy and action plan, establishing clear lines of responsibility and mechanisms for coordination, monitoring and reporting across sectors.
- d. Regulate service provision by introducing service standards and by monitoring and enforcing compliance.
- e. Allocate adequate resources to existing publicly-funded services and appropriately fund the implementation of the national disability strategy and plan of action.
- f. Adopt national accessibility standards and ensure compliance in new buildings, in transport, and in information and communication.
- g. Introduce measures to ensure that people with disabilities are protected from poverty and benefit adequately from mainstream poverty alleviation programmes.
- i. Include disability in national data collection systems and provide disability-disaggregated data wherever possible.

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<sup>242</sup> <http://www.ohchr.org/SP/HRBodies/CRPD/Documents/disabilities-convention.htm> [Last visited on: 14.04.2018]



- j. Implement communication campaigns to increase public knowledge and understanding of disability.
- k. Establish channels for people with disabilities and third parties to lodge complaints on human rights issues and laws that are not implemented or enforced.

### **6.3.2 Non-Government Organizations (NGOs) have to take more initiatives toward the disabled**

- a. Include disability in development aid programmes, using the twin-track approach (mainstreaming and targeted).
- b. Exchange information and coordinate actions to agree on priorities for initiatives to learn lessons and to reduce duplication of effort.
- c. Provide technical assistance to the countries to build capacity and strengthen existing policies, systems and services – for example, by sharing good and promising practices.
- d. Contribute to the development of internationally comparable research methodologies for collecting and analyzing data relating to people with disabilities.
- e. Regularly include relevant disability data into statistical publications.

### **6.3.3 Organizations Mainly Related with Disable Persons can provide**

- a. Support people with disabilities to become aware of their rights, to live independently, and to develop their skills.
- b. Support children with disabilities and their families to ensure inclusion in education.

- c. Represent the views of their constituency to international, national, and local decision- makers and service providers, and advocate for their rights.
- d. Contribute to the evaluation and monitoring of services, and collaborate with researchers to support applied research that can contribute to service development.
- e. Promote public awareness and under- standing by professionals about the rights of persons with disabilities – for example, through campaigning, advocacy, and disability-equality training.
- f. Conduct audits of environments, transport, and other systems and services to promote barrier removal.

#### **6.3.4 Service Providers can Take Following Steps to Provide Disabled People**

- a. Carry out access audits, in partnership with local disability groups, to identify physical and information barriers that may exclude persons with disabilities.
- b. Ensure that staff is adequately trained about disability, implementing training as required and including service users in developing and delivering training.
- c. Develop individual service plans in consultation with disabled people, and their families where necessary.
- d. Introduce case management, referral systems, and electronic record-keeping to coordinate and integrate service provision.
- e. Ensure that people with disabilities are informed of their rights and the mechanisms for complaints.

### **6.3.5 Academic Institutions can ensure the Followings**

- a. Remove barriers to the recruitment and participation of students and staff with disabilities.
- b. Ensure that professional training courses include adequate information about disability, based on human rights principles.
- c. Conduct research on the lives of persons with disabilities and on disabling barriers, in consultation with disabled people's organizations.
- d. No discrimination in education about their sex, race, color and crust.

### **6.3.6 The private sector can take steps like<sup>243</sup>**

- a. Promote diversity and inclusion in working environments.
- b. Facilitate employment of persons with disabilities, ensuring that recruitment is equitable, that reasonable accommodations are provided, and that employees who become disabled are supported to return to work.
- c. Remove barriers of access to microfinance, so that persons with disabilities can develop their own businesses.
- d. Develop a range of quality support services for persons with disabilities and their fami- lies at different stages of the life cycle.
- e. Ensure that construction projects, such as public accommodations, offices and housing include adequate access for persons with disabilities.

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<sup>243</sup> Helping disabled people do the best they can and take part in their local area- Next steps-September 2012, BY Department for Work and Pension, p. 20.

- f. Ensure that ICT products, systems, and services are accessible to persons with disabilities.

**6.3.7 Society can make disabled people Familiar<sup>244</sup>**

- a. Change and improve their own beliefs and attitudes.
- b. Protect the rights of persons with disabilities.
- c. Promote the inclusion and participation of disabled people in their community.
- d. Ensure that community environments are accessible for people with disabilities, including schools, recreational areas and cultural facilities.
- e. Challenge violence and bullying against people with disabilities.

**6.3.8 Expected Language from our Society to the Disabled**

There is a proverb-many man, many minds. So many persons may call the disabled persons in different language, it may sound bad and it creates a negative image towards PWDs.

<b>Traditional negative words</b>	<b>Expected word</b>
1. Kana	Visual impaired
2. Kala/Bodhir	Hearing impaired
3. Pagol	Mentally disable
4. Gogya /Boba	Speech impaired
5. Boba and kala (unable to hear and talk)	Multiple Disable
6. Bad head	Mentally disturbed

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<sup>244</sup> Helping disabled people do the best they can and take part in their local area-Next steps-September 2012, BY Department for Work and Pension, p. 20.

7. Lula (unable to walk)	Physical disabled
8. Langra ( unable to walk)	Physical disabled
9. Haba-Goba (unable to think)	Intellectual disabled

Table: Traditional negative words & Expected words<sup>245</sup>

Now a days, the activists who fight for disables' rights disable the word "disable". They want to substitute it by the word "Alternatively able".

### **6.3.9 Families of Disabled People Can Play Major Role<sup>246</sup>**

The familial support is the most important for disable people-

- a. Support the family member with disabilities through peer support, training, information, and advice.
- b. Family member can promote the rights of persons with disabilities within their local communities– for example by conducting access audits, delivering disability equality training, and campaigning for human rights.
- c. Become involved in awareness-raising and social marketing campaigns.
- d. Participate in forums (international, national, local) to determine priorities for change, to influence policy, and to shape service delivery.
- e. Participate in research projects.

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<sup>245</sup> Disable's Rights Act: Direction of the Advocates, written by-Khondakar Shahrir Shakir.

<sup>246</sup> <http://www.ohchr.org/SP/HRBodies/CRPD/Documents/disabilities-convention.htm> [Last visited on: 26.04.2018]

## **6.4 Conclusion**

Disable persons are not the burden of the society but they can be the asset of the nation if they are guided properly. Earlier, this problem was not addressed rightly. But now, in past few years it is highlighted by different sectors especially in the year of 1995, National Policy on Disability was adopted by the Bangladesh government. In the year of 1996, the State formulated Action Plan on Disability which approved the outlines for the implementation of the National Policy taken. In the year of 2000, the state established the National Foundation for the Development of Disabled Persons. And in the year of 2001, the Disability Welfare Act was passed and out of the many flaws in this Act, there was no punishment mentioned for the violation of law related to the persons with disabilities. It's was revoked by the disable persons right and protection Act-2013. Now society and states trying to give some attention to the disable persons but that is not much actually we have to change our society's negative attitude towards to the disable persons.

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