

**East West University**



**DISSERTATION**

**On**

**Right to Access to Justice for the People with Disabilities: A Legal  
Analysis of the Current Scenario of Bangladesh.**

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### **Declaration**

I do, hereby declare that I myself have produced this research paper without any kind of plagiarism by any means. This research has been prepared by my own effort & findings. I also recognize that this research was not submitted to any institution for any degree or any kind of publication earlier.

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### **List of Abbreviations**

CCC- Case Coordinating Committee

CEDAW - United Nations Convention On the Elimination of All Forms of Discrimination Against Women.

CERD- Convention on the Elimination of Racial Discrimination

CPC- Code of Civil Procedure, 1908

CRPC- Code of Criminal Procedure,1898

CRPD- Committee on the Rights of Persons with Disabilities

DPO- Disable People's Organization

ICCPR- The International Covenant on Civil and Political Rights.

ICESCR- International Covenant on Economic, Social and Cultural Rights

PWDs- Person With Disabilities

RPPDA - Persons with Disabilities Rights and Protection Act, 2013

The Constitution – Constitution of the People's Republic of Bangladesh

UDHR- The Universal Declaration of Human Rights

UNCRPD-The United Nations Convention on the Rights of Persons with Disabilities, 2006

### **Abstract**

The rights of people with disabilities ( PWDs) is one of the most neglected and misunderstood areas of development. But disabled people are inseparable from human beings. To live with dignity, it is necessary for a person to enjoy certain legal rights. However, the existing legal system for the development of the PWDs has many loopholes. As a result, they suffered greatly. This paper provides a critical overview of the legal framework governing the rights and protection of PWDs in Bangladesh. The purpose of this study is to identify gaps and propose possible solutions by reviewing and analyzing the current legal system for the rights of PWDs in Bangladesh. This study shows that the current legal framework for the rights of PWDs in Bangladesh is poorly structured and they are not adequately protected by law. Thus, Bangladesh needs comprehensive legislation with effective enforcement mechanisms to diligently and effectively enforce the rights of PWDs.

## Chapter 1: Introduction

### 1.1 Background of the Study :

Access to justice is a prerequisite for PWDs to lead independent lives and participate fully and equally in society. Without access to justice, PWDs will not have equal opportunities to participate in their communities. The primary international treaty to protect the rights of PWDs is the United Nations Convention on the Rights of Persons with Disabilities, 2006 (UNCRPD)<sup>1</sup>. The implementation of the rights mentioned in UNCRPD is monitored by the Committee on the Rights of Persons with Disabilities<sup>2</sup> (CRPD). The state parties of UNCRPD are obliged to file regular report to the committee.

Bangladesh is under duty for eliminating discriminatory behaviour against the disabled people, as a ratifying state of UNCRPD. The Rights and Protection of Persons with Disabilities Act, 2013<sup>3</sup> (RPPDA) was enacted by the Bangladesh government in compliance with the UNCRPD. Every person with a disability has the right to access justice on an equal footing with other people has been guaranteed by this Act. Access to justice is one of the core principles of the UNCRPD.

The rights of PWDs have been legally recognized internationally as well as in the national laws of Bangladesh. But the harsh reality is that PWDs are still being discriminated and denied access to justice in various ways in our country. Bangladesh has a number of substantive and procedural laws relating to the rights and protection of PWDs. Although both the law and the legal protection of disabled people are improving, there are still many loopholes and gaps in laws that prevent PWDs from accessing justice.

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<sup>1</sup> The Convention on the Rights of Persons with Disabilities, 2006, Article 3 (f).

<sup>2</sup> United Nations, Committee On the Rights of persons with Disabilities, 2006

<sup>3</sup> Rights and Protection of Persons with Disabilities, 2013.

Considering this situation, this paper examines the legal and social framework applied to the rights of PWDs in Bangladesh, defines the current status of the rights of PWDs , and sets out directions for future development in line with international standards and best practices. It also uncovers loopholes in Bangladesh's disability law and proposes a series of recommendations so that the government can take the necessary steps to improve the situation of disables and ensure their equal access to justice.

### **1.2 Objectives :**

The general objective of this research is to evaluate the existing laws and policies in Bangladesh regarding access to justice for the PWDs and provide some suggestions regarding this issue.

The specific objectives of this paper are:

1. To discuss the meaning of disability in National and International perspective.
2. To discuss the importance of access to justice for the PWDs.
3. To discuss about the current scenario of disable peoples regarding access to justice in Bangladesh.
4. To discuss the existing Laws in disability in the National and International level.
5. To find out the major loopholes in the existing laws about disability in Bangladesh.
6. To offer some recommendations to fill the gaps and to improve the present legal system of Bangladesh.

### **1.3 Research Question :**

1. Are the existing laws of Bangladesh effective enough to ensure access to justice for the PWDs?

### **1.4 Methodology :**

My research will be a qualitative one and this research will be secondary database research. Secondary sources such as Articles, books, General comments, case studies, annual reports, news,



newspaper, read people's opinions in social media, international articles, journals, and documents from various NGOs are focused in this research to analyze the access to justice of the disabled persons on an equal basis with others and find out if there are any gaps in the existing legal system of Bangladesh. Through the study of relevant published and unpublished literature, reports and documents on disability and the PWDs, it was possible to get a true picture of the various aspects of their lives regarding access to justice.

### **1.5 Limitations :**

Although this study was carefully drafted, the researcher was mindful of its shortcomings and weaknesses. I study various books, magazines, articles, etc. here, but I don't have enough resources here. Research web documentation is also limited. Too many subscriptions to download or read. I read various online magazines, books, news and articles and finish my research with ideas. Therefore, the lack of access to relevant materials is a limitation of this work.

## Chapter 2: Conceptual Framework

The PWDs are experiencing discrimination and human rights violations all over the world. Disability is not only a health issue but also a complex phenomenon that reflects the interaction between the physical characteristics of a person and the characteristics of the society in which he lives.<sup>4</sup> PWDs has often been denied access to justice and equal protection of the law because of some barriers. The right to access justice depends on and expands the light to an effective remedy, fair trial, and equality. The right to a fair trial sets standards for procedural access to justice, while the right to an effective remedy speaks to substantive access to justice.<sup>5</sup> So we need to know the concept of access to justice and what it means to PWDs and why it is important for them.

### 2.1 What is disability and Who are the people with disabilities?

According to the context of Oxford Dictionary, disability is defined as a physical or mental condition that prevents one from using a part of body completely or easily, or from learning easily, or a physical, mental, or permanent disability.<sup>6</sup> Disability may be a multidimensional experience for the people involved. PWDs are people who have a disability. It means handicapped or unable

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<sup>4</sup> Praveen, ' Rights of disable persons', < <https://www.legalserviceindia.com/legal/article-98-rights-of-disabled-persons.html> >

<sup>5</sup> The Universal Declaration of Human Rights (UDHR), 1948, The right to an effective remedy (Art 8) and the right to a fair trial ( Art 10)

<sup>6</sup> Oxford Learner's Dictionaries, <[https://www.oxfordlearnersdictionaries.com/definition/american\\_english/disability](https://www.oxfordlearnersdictionaries.com/definition/american_english/disability)>

to do something.<sup>7</sup> The UNCRPD includes PWDs as those that have long time period mental, physical, intellectual or sensory impairments which in connection with different barriers may hamper their full and effective participation in the society.<sup>8</sup>

In Bangladesh as per the Section 2(9) of the RPPDA, disability means of any reason a character's everlasting or long-time period of physical, mental, intellectual, sensual destruction or impediment; and therefore the mentality of any other persons to that person that creates impediment before him and as a result he can not consist of him within the society absolutely and actively.<sup>9</sup> There are 12 main types of disabilities covered by this Act<sup>10</sup> which includes: “ 1) Autism (2) Physical disability (3) Mental disability (4) Visual disability (5) Speech disability (6) Intellectual disability (7) blind (8) Deaf (9) Cerebral Palsy (10) Down Syndrome (11) Multiple Disability and (12) Other Disability”.<sup>11</sup>

So the definition of disability has changed from an entirely medical form to one which comprised social realities. Disability is the social outcome of the interaction between individual impairment and material surroundings.<sup>12</sup>

## **2.2 What is access to justice and What does it mean for the PWDs :**

“Access to Justice” is a wide concept that encompasses peoples' effective access to the systems, information, procedures and locations used in the administration of the justice. Access to justice is a fundamental right, in addition to a prerequisite for the safety of all the other rights. Access to justice is a key means of defending other human rights and ensuring accountability for crimes, violence and abuse.<sup>13</sup> The meaning of justice may vary between cultures and countries but the idea of justice is common to all and it usually includes notions of fairness, accountability and equity of outcome.<sup>14</sup> People who feel mistreated in their country generally turn to the justice

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<sup>7</sup> Disabled World, Disabilities: Definition, Types and Models of Disability Document List, Updated/Revised Date: 2022-04-07 <<https://www.disabled-world.com/disability/types/>>

<sup>8</sup> Ibid, Article 1

<sup>9</sup> MukulR, Disability Law: Bangladesh, ( Dhaka, 9 Sep 2021) <https://www.localguidesconnect.com/t5/General-Discussion/Disability-Law-Bangladesh/td-p/3084884>.

<sup>10</sup> Rights and Protection of Persons with Disabilities Act, 2013, sec 3

<sup>11</sup> Ibid

<sup>12</sup> United Nations Committee on the Rights of Persons with Disabilities, General Comment No 5 on women and girls with disabilities (Article 6), 26 August 2016, para 5.

<sup>13</sup> UNHCR, Action Sheet 10, Access to Justice Available at: <http://unhcr.org/4794b4e12.pdf>

<sup>14</sup> Ibid

system seeking help. The ability to obtain an adequate remedy for any harm suffered can be defined as access to justice.<sup>15</sup>

According to the Article 8 of the Universal Declaration of Human Rights( UDHR), it recognized that ‘Every person has the right to get an effective remedy by the competent national tribunals for the act which violets the fundamental human rights granted him by the constitution or by law.’<sup>16</sup> The Constitution of The People’s Republic of Bangladesh also ensures the access to justice for all the citizens. Article 19 (1) of the Constitution States that "The State shall endeavor to ensure equality of opportunity to all citizens."<sup>17</sup> Article 27 further stipulates that "All citizens are equal before law and are entitled to equal protection of law."<sup>18</sup> Article 33 (1) Constitution recognized that "No person arrested shall be detained in custody without being informed and as soon as may be, of the grounds of such arrest, he shall not be denied the right to seek advice and be defended by a legal practitioner of his choice."<sup>19</sup> So it need not to mentioned that the disabled peoples are also entitled to the right to access to justice.

Access to justice for PWDs means achieving substantive equality. It means, having the chance to participate in and live in a society that includes PWDs. In particular, access to justice for PWDs means that they can participate in justice with appropriate consequences and certain circumstances recognized and respected by the justice system.<sup>20</sup> The UNCRPD has covered the right to access to justice in the context of disability<sup>21</sup>. Under Article 13(1) of the convention, ‘State parties were directed to ensure access to justice for the persons with disabilities on an equal Foundation with others’, including through the provision of specified accommodation, in order to simplify their effective role as direct and indirect participants.<sup>22</sup> Under Article 13(2) of the Convention, “positive measures to be taken for the fulfilment of the rights of the disabled people ” are prescribed also.<sup>23</sup>

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<sup>15</sup> Ibid

<sup>16</sup> The Universal Declaration of Human Rights, 1948, Article 8.

<sup>17</sup> The Constitution of the People's Republic of Bangladesh, 1972, Article 19 (1)

<sup>18</sup> Ibid, Article 27

<sup>19</sup> Ibid, Article 33

<sup>20</sup>Patricia Hughes, Advancing Access to Justice through Generic Solutions: the risk of perpetuating exclusion, 31 Windsor Yearbook of Access to Justice 1 (2013) [Hughes, Access to Justice and Generic Solutions], < <http://ojs.uwindsor.ca/ojs/leddy/index.php/WYAJ/article/view/4308> >

<sup>21</sup> Convention on the Rights of Persons with Disabilities, 2006 <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

<sup>22</sup> Ibid, Article 13(1)

<sup>23</sup> Ibid, Article 13(2)

The inspiration of a general right to access to justice are often reflected within the right to effective remedy and fair trial.<sup>24</sup> In order to enjoy effective access to justice, PWDs must be treated equally before regulation and law and have equal opportunities to participate with in the justice system.

### **2.3 Why access to justice is important for the persons with disabilities?**

There are barriers faced by the PWDs and they have often been denied access to fair and equal protection of law before courts, tribunals, prison systems, law enforcement officials and other bodies that frames the Justice system in their country.<sup>25</sup> In addition to this, PWDs have been discriminated to become lawyers, judges, and other officials in the justice system. The ability of PWDs to use the justice system and contribute to the administration of justice are limited by these barriers. Sometimes the inequality remedies and discrimination of the justice system and sometimes it is itself the justice system which preserved that inequality and discrimination.

In spite of that, the ability to access justice is essential for the enjoyment of all other human rights and for ensuring the fair and substantial administration of justice. If a PWDs feels that they have been denied the right to work<sup>26</sup> they can turn to the justice system for remedy. When the justice system do not accommodate physical, communication, or other disability related needs to the PWDs and discriminates against him, then it is clearly denial of access to the justice system. Again, a disabled parson who has been the victim of a crime may want to report the crime against the offender to the police.<sup>27</sup> If he is denied access to the police station, he may not be able to exercise rights as a victim.

These examples shows that human rights are indivisible and interconnected. The ability of PWDs to enjoy access to justice either positively or negatively impacted by the enjoyment of other human rights. Access to transportation can determine whether a person a disability can get to a police station, courtroom, or other place where justice is operated.<sup>28</sup> If the right to education<sup>29</sup> to the

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<sup>24</sup> The European Convention on Human Rights, 1950, (Art 14).

<sup>25</sup> Ortoleva, Stephanie, *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System* (2011). *ILSA Journal of International & Comparative Law*, Vol. 17, No. 297, 2011, Available at <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2127888](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2127888)>

<sup>26</sup> CRPD, 2006, *supra* note 1, Art. 27.

<sup>27</sup> *Ibid*, Art 15

<sup>28</sup> *Ibid*, Art 9

<sup>29</sup> *Ibid*, Art 24

PWDs is denied, their participation in justice may be difficult or impossible. When a PWD is denied formal legal education, he cannot work as lawyers or judges who can present their views and experience to the Justice system. Without the right to participate in politics<sup>30</sup> PWDs cannot participate in elections, vote or campaign for candidates who support access to justice.

To fully include PWDs into society, they need access to justice. PWDs cannot perform their duties as members of society until they are able to participate in the administration of justice. For this reason, it is important to break down these barriers so that PWDs have an equal opportunity to fulfill their duties as parties, juries, witnesses, lawyers, arbitrators, judges, prosecutors and other participants in court administration. It is also very important that PWDs enjoy their civil, economic, political, social and cultural rights which set out in the UNCRPD and that they are treated fairly and equally in judicial administration.

#### **2.4 Current scenario of the rights of disabled peoples in Bangladesh :**

On October 9, 2013, a bill named 'Persons with Disabilities Rights and Protection Act 2013' (RPPDA)<sup>31</sup> was passed in parliament of Bangladesh. The obligations of UNCRPD also implemented by this law. Before this, Bangladesh followed the National Policy on Disability (1995)<sup>32</sup>, the Disability Welfare Act (2001)<sup>33</sup> and the National Action Plan on Disability (2006)<sup>34</sup>. There were many loopholes within the Welfare Act, 2001. It left the people with disabilities in vulnerable condition<sup>35</sup>. The situation began to change when Bangladesh ratified CRPD in 2007 and repealed the welfare Act 2001 through section 44(1) of the RPPDA<sup>36</sup>. Within two years, the Government of Bangladesh formulated the Rights and Protection of Persons with Disabilities Rules 2015<sup>37</sup> and published it through an official gazette notification.

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<sup>30</sup> Ibid, Art 29

<sup>31</sup> The Rights and Protection of Persons with Disabilities Act, 2013, sec 44(1)

<sup>32</sup> National Policy on Disability, 1995

<sup>33</sup> The Disability welfare Act, 2001

<sup>34</sup> National Action Plan on Disability, 2006

<sup>35</sup> en.banglapedia.org was first indexed by Google in May 2014

<https://en.banglapedia.org/index.php?title=Disability>

<sup>36</sup> The Rights and Protection of Persons with Disabilities Act, 2013

<sup>37</sup> The Rights and Protection of Persons with Disabilities Rules, 2015

Section 16 of this Act guarantees equality before law<sup>38</sup>, proper to hereditament, accessibility, right to require part in a unified gadget of education, right to urge safety from persecution, right to urge National ID card, right to get covered in voter list, right to require part in election and right to require employment.<sup>39</sup> Sections 17-28 of this Act point out approximately diverse committees from vital to neighborhood level, the very reason of that is to make sure transparency and responsibility in numerous levels of administration. Section 31, offers for registration and identification card for disabled individual which could really paintings as an warranty that the disabled gets to revel in their rights nicely with none sorts of inconvenience.<sup>40</sup> But without clean administrative process, this gadget can flip to turn out to be a tricky barrier in gaining access to the Justice as well. The new Act seems to us to be very positive, but without the actual implementation it is difficult to evaluate its effectiveness.

Many PWDs are being discriminated still. It is not always the fault of the texts of law. Parochial thoughts of society, lack of knowledge about available facilities for PWDs, and non-implementation of laws are some of the factors. The proper implementation of the UNCRPD in Bangladesh is still in question regarding the rights of disabled person. The RPPDA acts as a safeguard to the right to access for PWDs is still being questioned.

Before analyzing the national legal framework of access to justice for the PWDs, the international legal obligations of access to justice for the PWDs need to be analyzed. The international law addresses the access to justice for the PWDs through many international conventions and treaties. By analyzing the international obligations, the gaps in the national laws will be identified more.

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<sup>38</sup> The Rights and Protection of Persons with Disabilities Act, 2013, sec 16

<sup>39</sup> Ibid

<sup>40</sup> Ibid, sec 31

### **Chapter 3: The International Legal Obligations of Access to Justice for the People with Disabilities :**

Disability is a growing concern around the world both nationally and internationally. International law introduced a comprehensive set of rights and minimum guarantees which are tailored to the requirements and conditions of PWDs. The first human rights treaty of the 21st century was the UNCRPD , which allowed PWDs to enforce their rights. The motive of the Convention is to promote, protect and make sure that the full and equal enjoyment of all human rights and fundamental freedoms by all PWDs and to promote respect for their inherent dignity.<sup>41</sup>

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<sup>41</sup> Ibid, Art 1



Not only the UNCRPD but also some other international Convention included the right of access to justice to the disables without any discrimination. All human rights treaties include the right of access to justice also. The provisions of these conventions dealing with access to justice of the disables, are briefly discussed in the below segments of this paper.

### **3.1 : Under the Provisions of UNCRPD :**

The UNCRPD clearly states that access to justice is important for PWDs and states must make sure that justice is available on an equal basis.<sup>42</sup> There are many general obligations mentioned by the UNCRPD that states parties must follow. States Parties have to give full effect to these rights by ensuring laws and practices that do not discriminate against persons with disabilities, and they have to make sure to change those laws that do so.<sup>43</sup>

Article 5 of the UNCRPD<sup>44</sup> also emphasizes that states must take all necessary steps to ensure that PWDs are provided with reasonable accommodations to raise equality and eliminate discrimination. According to the UNCRPD, reasonable accommodation means necessary and reasonable changes and adjustments that do not create a dissimilar or undue burden to PWDs. This article can be read in line with Article 13 of the UNCRPD<sup>45</sup> which focuses on how to ensure effective access to justice. While Article 5 focuses on reasonable accommodations for PWDs to promote equality, Article 13 makes States responsible for providing procedures and age-appropriate facilities to ensure this.<sup>46</sup> Article 13 also emphasizes the need for adequate training for members of the judiciary, including police and prison officials.<sup>47</sup> Otherwise, in the absence of the above provision, access to justice will not be guaranteed to the PWDs.

Article 12 of the UNCRPD requires states to take all measures related to the exercise of their legal capacity to provide adequate and effective protection against violations of international human

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<sup>42</sup> Ibid, Art 13

<sup>43</sup> CRPD, supra note 1, art 4

<sup>44</sup> Convention on the Rights of Persons with Disabilities, 2006, Art 5

<sup>45</sup> Ibid, Art 13

<sup>46</sup> Centre for Peace and Justice, BRAC University and Advocacy for Social Change, BRAC, "Study on the Rights and Protection of the Persons with Disabilities Act 2013" Adaptation, Application and Recommendation, 5th of August 2018 <[http://www.brac.net/program/wp-content/uploads/reports/Final%20Report\\_CPJ\\_ASC\\_Disability%205th%20August%202018.pdf](http://www.brac.net/program/wp-content/uploads/reports/Final%20Report_CPJ_ASC_Disability%205th%20August%202018.pdf)>

<sup>47</sup> Convention on the Rights of Persons with Disabilities, 2006, Art 13

rights law.<sup>48</sup> These precautions must be proportionate to the extent to which the rights and interests of the individual are affected. This provision requires the state to respect the rights, will and preferences of the affected party and take measures related to the exercise of legal capacity without conflict of interest and undue influence. Preventive measures should be appropriate to the individual circumstances and should be taken as soon as possible by a competent, independent and impartial judicial body.<sup>49</sup> From the perspective of an efficient access to justice, an optional protocol establishes a complaint mechanism where individuals can bring claims if the rights established within the UNCRPD are violated.<sup>50</sup>

### **3.2 The Implications of UNCRPD :**

The UNCRPD focuses on how procedural accommodations can be implemented for people with disabilities. For example, to meet the needs of various forms of disability in the judiciary, it is important to provide sign language interpreters, accessible formats for legal and judicial information, and a variety of easy-to-read communication tools.<sup>51</sup> Scholars on the rights of persons with disabilities argue that the obligation to provide procedural accommodations is closely linked to the principle of non-discrimination. Thus, the UNCRPD committee emphasizes that failure to provide procedural accommodation to PWDs may constitute a form of disability discrimination.<sup>52</sup> In addition to direct participation in this process, the UNCRPD regulates the indirect participation of persons with disabilities in judicial administration in various capacities, including lawyers, judges or witnesses.<sup>53</sup> In order to enable persons with disabilities to participate in the administration of justice through active participation, States must remove all types of barriers, including physical and legal barriers, that PWDs face when interacting with the judiciary.

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<sup>48</sup> Ibid, Art 12

<sup>49</sup> Pears and Shields (n 44)

<sup>50</sup> Optional Protocol to the United Nations Convention on the Rights of Persons with disabilities, 2006

<sup>51</sup> Md. Abdur Razzak, "Can we make our justice system disabled-friendly?", The Daily Star ( Dhaka, 12 Nov, 2019) <https://www.thedailystar.net/law-our-rights/news/can-we-make-our-justice-system-disabled-friendly-1825993>

<sup>52</sup> Centre for Peace and Justice, BRAC University and Advocacy for Social Change, BRAC, "Study on the Rights and Protection of the Persons with Disabilities Act 2013" Adaptation, Application and Recommendation, 5th of August 2018 < [http://www.brac.net/program/wp-content/uploads/reports/Final%20Report\\_CPJ\\_ASC\\_Disability%205th%20August%202018.pdf](http://www.brac.net/program/wp-content/uploads/reports/Final%20Report_CPJ_ASC_Disability%205th%20August%202018.pdf) >

<sup>53</sup> Pears and Shields (n 50)

Many UNCRPD state parties are gradually working to improve justice systems for PWDs. In Chile, for example, the ban on judges for the blind and deaf has been lifted.<sup>54</sup> Similarly, the Ethiopian Federal Senate opposed the common practice of banning the blind from serving in the judiciary and ordered the courts to take the necessary measures to enable disabled judges to perform their duties effectively.<sup>55</sup> It is possible for blind candidates to participate in the exams to become judges or prosecutors in Peru.<sup>56</sup> Today in Germany, about 70 blind judges work at various levels of the judiciary, including the highest court.<sup>57</sup> Countries such as India, Pakistan and the United States also has appointed blind judges.<sup>58</sup>

The UNCRPD requires States Parties to ensure that age-appropriate procedures and conditions are in place to facilitate the effective role of PWDs both as direct and indirect actors in the administration of justice.

### 3.3 Different International Conventions Dealing with Access to Justice :

- a. **Under the Universal Declaration of Human Rights (UDHR)<sup>59</sup>**: The UDHR was the first declaration to formally mention access to justice. These rights are enumerated in several articles of the UDHR. Article 7 (equality before the law and equal protection under the law)<sup>60</sup> and Article 8 (everyone has a right to an effective remedy)<sup>61</sup>. Article 10 expresses an individual's fundamental right to a fair trial in both civil and criminal matters.<sup>62</sup>
- b. **Under the ‘International Covenant on Civil and Political Rights<sup>63</sup> (ICCPR)’**: The ICCPR defines this right in Article 14 of the relevant section: “All persons are equal before courts and tribunals.<sup>64</sup> With regard to criminal proceedings, Article 14(2)(f) of the ICCPR provides for “free assistance of an interpreter if a person does not

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<sup>54</sup> Md. Abdur Razzak, “Can we make our justice system disabled-friendly?”, The Daily Star ( Dhaka, 12 Nov, 2019) <https://www.thedailystar.net/law-our-rights/news/can-we-make-our-justice-system-disabled-friendly-1825993>

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> The Universal Declaration of Human Rights, 1948

<sup>60</sup> Ibid, Art 7

<sup>61</sup> Ibid, Art 8

<sup>62</sup> Ibid, Art 10

<sup>63</sup> The International Covenant on Civil and Political Rights (ICCPR), 1966.

<sup>64</sup> Ibid, Art 14

understand or cannot speak the language used in court".<sup>65</sup> Article 16<sup>66</sup> states that "everyone everywhere has the right to be a legal person." This concept provides reasonable accommodations for deaf people who use sign language to communicate with others, as well as visually impaired people who cannot read standard scripts.

- c. **Under the 'International Covenant on Economic, Social and Cultural Rights )<sup>67</sup> (ICESCR)'**: In general comment on 9, it recognizes that judicial or administrative remedies are indispensable for access to justice.
- d. **Under the ' United Nations Convention On the Elimination of All Forms of Discrimination Against Women<sup>68</sup> ( CEDAW)'**: According to the Article 15 of CEDAW ,equal rights for men and women are required before the law and the courts.<sup>69</sup>
- e. **Under the 'Convention on the Elimination of Racial Discrimination' ( CERD)<sup>70</sup> :** The right to equality before the law, the right to equal treatment before tribunals and all other elements of the justice system are included in the CERD also.<sup>71</sup>

The multi-dimensional aspects of access to justice affects women with disabilities and people with disabilities from other marginalized groups and it would be useful for the UNCRPD committee to examine it. PWDs are entitled to enjoy the standards contained in all previously adopted international and regional human rights instruments which are more relevant to justice systems, access to justice and specially the administration of justice without discrimination on an equal basis with others<sup>72</sup>

### **3.4. The International Principles of Access to Justice for PWDs:**

The first-ever guidelines on access to justice for the PWDs have been outlined by the United Nations.<sup>73</sup> These principles are based on the provisions and interpretations of the UNCRPD and

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<sup>65</sup> Ibid, Art 14(2)(f)

<sup>66</sup> Ibid, Art 16

<sup>67</sup> The International Covenant on Economic, Social and Cultural Rights, 1998. General comment 9

<sup>68</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

<sup>69</sup> Ibid, Article 15

<sup>70</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

<sup>71</sup> Ibid, Article 5

<sup>72</sup> 'International Principles and Guidelines on Access to Justice for Persons with Disabilities, 2020

<sup>73</sup> Office of the High Commissioner for Human Rights (OHCHR), 'International Principles and Guidelines on Access to Justice for Persons with Disabilities', 28 August, 2020 < <https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons->

other international standards. There are 10 international principles regarding access to justice of the PWDs. The principles are briefly discussed below:

- a. PWDs have the legal capacity to access justice.<sup>74</sup> States shall guarantee that PWDs shall enjoy legal capacity on an equal basis with others and where necessary shall provide the support and accommodations necessary to exercise legal capacity according to the guidelines.
- b. Equal access to justice can only be ensured if facilities and services are universally accessible.<sup>75</sup> To ensure equal access to justice and non-discrimination, States must guarantee the facilities and services used in legal systems are built, developed and provided in accordance with universal design.
- c. Children with disabilities have the right to appropriate procedural accommodation.<sup>76</sup> States shall provide gender and age-appropriate individualized procedural accommodations for persons with disabilities in order to avoid discrimination.
- d. On an equal footing with others, PWDs have the right to timely and accessible legal notices and information.<sup>77</sup>
- e. PWDs have the same right as everyone else to all substantive and procedural safeguards recognized in international law, and states must make the necessary accommodations to ensure due process.<sup>78</sup>
- f. Disabled people have the right to free or low-cost legal representation.<sup>79</sup>
- g. Disabled people have the same right as everyone else to participate in the administration of justice.<sup>80</sup>
- h. PWDs have the right to report complaints and initiate legal proceedings regarding human rights violations and crimes.<sup>81</sup>

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[disabilities#:~:text=The%20International%20Principles%20and%20Guidelines,with%20international%20human%20Rights%20standards.>](#)

<sup>74</sup> Ibid, principle 1

<sup>75</sup> Ibid, principle 2

<sup>76</sup> Ibid, principle 3

<sup>77</sup> Ibid, principle 4

<sup>78</sup> Ibid, principle 5

<sup>79</sup> Ibid, principle 6

<sup>80</sup> Ibid, principle 7

<sup>81</sup> Ibid, principle 8

- i. Access to justice for PWDs has supported by effective and robust monitoring mechanisms.<sup>82</sup>
- j. The rights of PWDs must be addressed by those, working in the justice system.<sup>83</sup>

The lack of understanding about PWDs by officials in the justice system is pinpointed in the Principles and Guidelines. The perpetrators of crimes against PWDs will not be held accountable if the victims' testimonies are not considered credible. So, the Principles and Guidelines are important in facilitating access to justice for the disables.

The concept of access to justice set out in the UNCRPD in more than just fair trial, equality and effective reparation. It has added several new aspects to the law, including more than just ensuring equal access to justice. The right to access to Justice for PWDs is developing day by day by the development of international law. The state parties of UNCRPD, are also working to improve their Justice system for PWDs by enacting laws in compliance with UNCRD. Bangladesh also simultaneously agreed to implement state measures in compliance with the provisions of the convention. But how much our Justice system is disabled friendly in reality, is hard to understand.

#### **Chapter 4: The National Legal Framework of Access to Justice for the People with Disabilities :**

In today's human rights context, the concept of disability rights is one of the most demanding issues. In Bangladesh, PWDs are entitled to the same rights and entitlements as the rest of the population. All persons are equal before the law and are entitled without discrimination to the

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<sup>82</sup> Ibid, principle 9

<sup>83</sup> Ibid, principle 10

equal protection and equal benefit of the law. Both of these aspects are recognized by the UNCRPD and also in the Constitution of Bangladesh. The protection and benefit of the law for PWDs are emphasized by the RPPDA in Bangladesh, to stop discrimination based on grounds of disability.

There are a set of substantive and procedural laws dealing with the rights and protection of the PWDs in Bangladesh. To ensure all the human rights to a PWDs, a country needs to ensure the access to justice to a PWDs firstly, with out any discrimination. Though the laws and legal protections of PWDs both are improving, but there are still many loopholes and gaps in the laws, for which PWDs are denied access to justice. The laws and policies dealing with the disable people's access to justice and the major loopholes of this laws are briefly discussed below :

#### **4.1 Under the Constitution of Bangladesh:**

The Constitution of the People's Republic of Bangladesh guarantees fundamental human rights to all citizens, regardless of colour , sex, religion or race. The constitution also prohibits all forms of discrimination between different social groups, including the disabled. The government is obligated to protect the rights and dignity of all citizens of the country equally. In Part II of the Constitution of Bangladesh, Article 11 talks about a democratic republic wherein there are often appreciate for human dignity and essential human rights and freedom for all.<sup>84</sup> Moreover, Article 27 said that everybody is equal before the law and regulation<sup>85</sup> at an equivalent time as Article 28(4) states that the Government can enact unique legal guidelines for the development of the backward segment of residents.<sup>86</sup> Furthermore, Article 29(3)(a) talks about the State to form unique provisions in favour of any backward segment of residents withinside the service of Bangladesh.<sup>87</sup> Under the Constitution, an individual features a right to file a writ petition under article 102 read with article 44 in the Supreme Court of Bangladesh if there's a violation of their fundamental rights.<sup>88</sup>

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<sup>84</sup> The Constitution of the People's Republic of Bangladesh, Art 11

<sup>85</sup> Ibid, Art 27

<sup>86</sup> Ibid, Art 28(4)

<sup>87</sup> Ibid, Art 29(3)(a)

<sup>88</sup> Ibid. Art 44 and Art 102

It might not be incorrect to mention that the provisions of rights and principles are applicable to the PWDs in protecting their rights under the constitution of our country. But There is still discrimination against the handicapped. In spite of the constitutional obligations, the citizens with disabilities in Bangladesh were subjected to discrimination.<sup>89</sup> Equality and non-discrimination are general principles laid down in the Constitution of Bangladesh<sup>90</sup>.But the Constitution does not expressly safeguard PWDs from discrimination. Section 36(1) of the RPPDA prohibits disparity or acts of discrimination in any form by any person, institution or organization against PWDs. In Bangladesh, discrimination on the basis of disability is regulated only by law and not at the constitutional level.

#### **4.2 Under the ‘Rights and Protection of Persons with Disabilities Act, 2013’ of Bangladesh:**

The RPPDA provides that PWDs have the right to access to Justice<sup>91</sup> and they are entitled to equal legal protection under law.<sup>92</sup> All kind of discrimination against a disabled parson on the part of any Government authority, organization or individual are prohibited.<sup>93</sup> It is a punishable offence under law to interrupt the access to Justice for PWD.<sup>94</sup> Police, prisons and courts need to be trained on the rights and concerns of PWDs.<sup>95</sup> States must ensure that persons with disabilities who are victims of violence have access to legal proceedings.<sup>96</sup> But still the Act has some gaps in it to ensure access to justice to the PWDs.

Disability due to injury or medical condition is not included in the definition of disability of the RPPDA<sup>97</sup>. A person with a mental illness should be included in the definition clause. All PWDs should be covered by the protective legal umbrella so that they can fully realize their rights. As per the section 36 of RPPDA, The District Committee can be used to file complaints against any discrimination against the disabled who has been harassed or discriminated. Yet the complaint is

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<sup>89</sup> CRPD report, "Current status of Rights of Persons with Disabilities in Bangladesh: Legal and Grassroots Perspectives" < <https://www.blast.org.bd/content/publications/crpd-report.pdf>>

<sup>90</sup> The Constitution of the People’s Republic of Bangladesh, Art 27,28 and 29

<sup>91</sup> Rights of Persons with Disabilities Act, 2013, Section 38 (1).

<sup>92</sup> Ibid, Section 16 (1)(b)

<sup>93</sup> Ibid, section 16 (2).

<sup>94</sup> Ibid, section 37 (1) and Part 12 of the Schedule.

<sup>95</sup> Ibid, Schedule 12 (ka).

<sup>96</sup> Ibid, Schedule 12 (gha).

<sup>97</sup> Khandakar Kohinur Akter, Revisiting Laws on Disability Rights in Bangladesh, [https://www.academia.edu/25435204/Revisiting\\_Laws\\_on\\_Disability\\_Rights\\_in\\_Bangladesh](https://www.academia.edu/25435204/Revisiting_Laws_on_Disability_Rights_in_Bangladesh)



reviewed by the executive body since the District Committee is made up of members from the Parliament.<sup>98</sup> This may make it harder for disabled people to file complaints. If the powers are left in the hands of the Executive Committee, then they became the judges of their peers. This violates the rule of natural justice which states that no one should be a judge in his own case. Again, Section 27 of the RPPDA states that the committee should hold at least four meetings annually. According to the information, no meeting was ever held.<sup>99</sup>

Again Schedule 12 of RPPDA also requires police, prisons and court officials to take steps including the commission of interpreters to guarantee access to justice for PWDs who are victims of violence, but neither the law nor the schedule addresses the procedures which required for a disabled offender<sup>100</sup>. The RPPDA gives PWDs the right to inherit, but it does not put off personal laws that discriminate against the person with intellectual disabilities. For example, the Hindu Inheritance (Removal of Disabilities) Act, 1928<sup>101</sup> deprives persons with mental and psychosocial disabilities of any right or right to participate in inheritance or joint family property.<sup>102</sup>

According to section 36 of RPPDA<sup>103</sup>, PWDs have the right to file a complaint of harassment or discrimination if they have experienced such discrimination. However, section 36 has not in force because the order has not yet been published in the Official Gazette.<sup>104</sup> In addition to that, section 31 of the RPPDA<sup>105</sup> refers to the registration and issuance of identity cards for persons with disabilities. However, this article was not published in the official gazette, as required by section 2(1)(b) of the Act. Thus, Article 31 of the RPPDA is not enforceable. Without their identity, PWDs cannot be fully recognized in the state. They cannot enjoy all the rights they deserve.

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<sup>98</sup> National Grassroots and Disabilities Organization (NGDO). National Council for Women with Disabilities (NCDW), Bangladesh Legal Aid and Services Trust (BLAST), "Current status of Rights of Persons with Disabilities in Bangladesh: Legal and Grassroots Perspectives". August 1, 2015:

<https://www.blast.org.bd/content/publications/crpd-report.pdf>

<sup>99</sup> Kohinur Khyum Tithila, "Call for Dhaka district committee for people with disability meetings", Dhaka Tribune, January 16, 2020: <https://archive.dhakatribune.com/bangladesh/dhaka/2020/01/16/call-for-dhaka-district-committee-for-people-with-disability-meetings>

<sup>100</sup> *ibid*

<sup>101</sup> The Hindu Inheritance (Removal of Disabilities) Act, 1928

<sup>102</sup> *Ibid*, Sec 2

<sup>103</sup> Rights of Persons with Disabilities Act, 2013, section 36

<sup>104</sup> *Ibid*., section 1

<sup>105</sup> Rights of Persons with Disabilities Act, 2013, section 31

**4.3 Under the Legal Aid and Services Act 2000:** The Legal Aid and Services Act 2000<sup>106</sup> expressly guarantees "the right of access to legal aid and services for the poor, the insolvent, the indigent and those with socioeconomic disabilities."<sup>107</sup> The Legal Aid Services Rules,2014<sup>108</sup> specifically mention persons with disabilities included in the list of eligible persons. But Bangladesh currently lacks an anti discrimination law or legislation that express fundamental freedom. In 2014, a draft of an anti-discrimination law was created, but it never formed and never voted out of the ministry of law.<sup>109</sup>

**4.4 Under the Evidence Act 1872<sup>110</sup>:** Section 118 of this Act states that all persons, including the disabled, have the right to testify, except when they are unable to testify due to mental retardation in terms of understanding and reasonable answers to questions. A witness who cannot speak may testify in other ways, for example Written or sign<sup>111</sup>. But it is difficult for women with intellectual disabilities to testify in court. Section 118 of the Evidence Act 1872 prohibits the taking of evidence by a person who is not entitled to testify because the question put in court cannot be understood by him. This is contrary to Articles 5(2), 12(2) and 16(5) of the CRPD, which require states to provide equal legal protection to all.

**4.5 Under the Code of Criminal Procedure, 1898 (CRPC) and Code of Civil Procedure, 1908( CPC):**

Sections 199,199A and 468-475 of the Code of Criminal Procedure,1898<sup>112</sup> (CRPC) provides for certain procedures for the accused Who is identified as "Lunatic", including the release of "lunatics" and the imprisonment of "lunatics" during the investigation or trial. According to the Code of Civil Procedure ( CPC) 1908<sup>113</sup>, consent or deed of agreement of a PWDs may be made on behalf of a PWDs by his or her closest friend or guardian in any process with the permission of the court.<sup>114</sup> In addition, Order XXXII of the CPC contains special provisions

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<sup>106</sup> The Legal Aid and Services Act, 2000

<sup>107</sup> Ibid, Section 2 (a)

<sup>108</sup> The Legal Aid Services Rules, 2014

<sup>109</sup> Naimul Karim, "How effective will the anti-discrimination law be?". The Daily Star. October 20, 2017:

<https://www.thedailystar.net/star-weekend/human-rights/how-effective-will-the-anti-discrimination-law-be-1478878>

<sup>110</sup> The Evidence Act, 1872

<sup>111</sup> Ibid, section 118

<sup>112</sup> The Code of Criminal Procedure, 1898

<sup>113</sup> The Code of Civil Procedure, 1908

<sup>114</sup> Ibid, section 147

for claims against or by a person who is unsound mind and Order XXXIII permits the trial of the paupers.

The RPPDA stands for CRPC, which applies to the Bangladeshi legal system in case of discrimination against a person on the basis of disability. But CPC does not contain a definition of discrimination. This law completely eliminates the right of PWDs to protection from harassment and to redress for complaints.

#### **4.6 Under the Succession Act, 1925:**

The Succession Act, 1925<sup>115</sup> allows a disabled person to create a will if he understands what is being accomplished by that will.<sup>116</sup> But the Contracts Act, 1872<sup>117</sup> prohibit persons with intellectual disabilities from signing and executing any deed or agreement<sup>118</sup>. Furthermore, in Bangladesh, the Lunacy Act, 1912<sup>119</sup> is still in effect. In many instances intellectually disabled persons and persons with psycho-social disabilities become victims of this Act when there are co-sharer or in absence of their legal guardians, the court declared them mentally unsound to manage their property interest. The Succession Act, 1925 does not include any provision for them by which that kind of disabled peoples could get advantage.

**4.7 Under the Penal Code, 1860:** The Penal Code, 1860<sup>120</sup> protects persons with intellectual disabilities by acknowledging that persons who cannot understand the legality or nature of conduct cannot be prosecuted for criminal acts based on unsoundness.<sup>121</sup>

Victims of human rights violations can file a complaint to the Commission to find out if an official is responsible and to take measures, according to the National Human Rights Commission Act, 2009<sup>122</sup>. Though a set of substantial and procedural laws are connected to securing disability rights in Bangladesh, yet there is the absence of an effective legal mechanism. Efforts are constantly being made to recognize, promote and protect the disability rights in Bangladesh. But existence of law and implementation of law do not always go hand in hand. Lack of legal

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<sup>115</sup> The Succession Act, 1925

<sup>116</sup> Ibid, Section 59

<sup>117</sup> The Contract Act, 1872

<sup>118</sup> Ibid, Sec 11

<sup>119</sup> The Lunacy Act, 1912

<sup>120</sup> The Penal Code, 1860

<sup>121</sup> Ibid, section 84

<sup>122</sup> The National Human Rights Commission Act, 2009

knowledge and understanding by both duty bearers and rights holders is a serious obstacle to justice.

#### **4.8 The Barriers Faced by the PWDs in the Procedural Aspect of Access to Justice :**

While giving evidence in a court, blind, deaf and people with speech impairments are facing barriers. During trial or defense, judges are reluctant to release arrested criminals on bail because courts do not take into account a person's disability. Many courts do not provide interpreters for victims with hearing or speech impairments. As there are not enough disabled interpreters due to insufficient state support and remuneration for these interpreters. Even in the presence of interpreters, the testimony of PWDs is often considered unreliable<sup>123</sup>. There are no clear guidelines on how judges should record their statements.

Complaints made by PWDs, particularly those made by women with disabilities, are not usually taken seriously by police officers.<sup>124</sup>As a result, PWDs are discouraged to file complaints in the police station. Even though officers should be taught to recognize the characteristics of disability and to accommodate handicapped people in accordance with Section 12 of RPPDA, but these discrimination reveal a lack of awareness about the practical image of disability<sup>125</sup>. The PWDs are not aware of legal protections or access to affordable services. In general, the law does not take into account the special needs of PWDs. Judicial or law enforcement training programs do not address how to provide or expand legal protection for PWDs. Many courthouses and police stations are physically inaccessible to the disabled. Transportation systems providing access to police stations and courts are not yet accessible to PWDs.<sup>126</sup>

This is a common attempt by the local court to turn a court case into a mediation one, even if it is a criminal case.<sup>127</sup> Even if the law does not permit such settlements, though disabled persons who are victims of violence (specially woman) settled for alternative dispute resolution. There are no

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<sup>123</sup> Maliha Khan, "What about justice for the unheard?", The Daily Star, Dhaka. 17 July 2017, < <https://www.thedailystar.net/star-weekend/spotlight/what-about-justice-the-unheard-1436161?amp> >

<sup>124</sup> Handicap International, "Good practice report on access to justice for people with disabilities in Bangladesh". February 25, 2015 : <https://www.blast.org.bd/content/publications/MIW-Report-English-PWD.pdf>.

<sup>125</sup> CRPD report, "Current status of Rights of Persons with Disabilities in Bangladesh: Legal and Grassroots Perspectives", <https://www.blast.org.bd/content/publications/crpd-report.pdf>

<sup>126</sup> Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, "Access to justice for persons with disabilities: From international principles to practice", October 2017, < [https://www.biicl.org/documents/1771\\_access\\_to\\_justice\\_persons\\_with\\_disabilities\\_report\\_october\\_2017.pdf](https://www.biicl.org/documents/1771_access_to_justice_persons_with_disabilities_report_october_2017.pdf) >

<sup>127</sup> Handicap International, "Good practice report on access to justice for people with disabilities in Bangladesh", 25 Feb, 2015, < <https://www.blast.org.bd/content/publications/MIW-Report-English-PWD.pdf> >

safeguards for the disabled with regular review by a competent, independent and impartial authority.<sup>128</sup>

So, it can be said that, there are many provisions in different legislations and policies in Bangladesh for the PWDs but they can't fulfill the interest of the disabled peoples completely. The people with disabilities are the most neglected part of the country. No one cares about the opinions of disabled people. They are often deprived of access to justice, because they are isolated from the mainstream of the society. It must be remembered that a law contrary to its purpose is, after all, nothing but a withered tree.<sup>129</sup> Of course, the RPPDA looks very positive for us, but its effectiveness, in fact, is difficult to judge without actual implementation.

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<sup>128</sup> Ibid

<sup>129</sup> K. M. Ashbarul Bari and Nusrat Jahan, "A Legal Assessment of the Rights of the Persons with Disability: Bangladesh Perspective", Dhaka Law Review, July 31, 2015, <<https://www.dhakalawreview.org/blog/2015/07/rights-persons-with-disability-901>>

## Chapter 5: Recommendations and Conclusion

### 5.1 Recommendations :

Disability will remain in our society because of the social stigma attached to it. To make some real progress in this field in a developing country like Bangladesh, the laws and policies dealing with the disabled people's access to justice need some amendments and proper implementations. In light of the observation, some recommendations are discussed below to ensure access to justice to the PWDs :

- a. Ensuring an enabling legal environment for PWDs through the implementation of schedule 5 (Accessibility), 6 (Mobility) and 12 (Access to non-violence, justice and legal aid) of the RPPDA to provide accessibility in all areas of justice and in all public places especially police stations, courts, victim centers and one-stop crisis centers.
- b. Increase the competence of the judiciary, including disability issues, in training modules for police officers, penitentiaries etc as well as in the Code of Professional Conduct and Etiquette of the Bar Association.<sup>130</sup> The guidelines and rules for the judges and magistrates, which set out in bench book, needs enforcement to promote the proper treatment of the disabled in the courts.
- c. Chapter V of the CRPC (Arrests, escapes and re-imprisonment) should be supplemented with additional provisions and precautions to be taken when apprehending offenders with disabilities.<sup>131</sup>
- d. Section 1 of the RPPDA should be amended to protect the inheritance right of the PWDs by stating that all other discriminatory personal laws will be repealed to prevent the denial of inheritance by the PWDs<sup>132</sup>(especially those with intellectual disabilities).

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<sup>130</sup> CRPD report, "Current status of Rights of Persons with Disabilities in Bangladesh: Legal and Grassroots Perspectives, < <https://www.blast.org.bd/content/publications/crpd-report.pdf> >

<sup>131</sup> Code of Criminal Procedure, 1898, chapter V

<sup>132</sup> Rights of Persons with Disabilities Act, 2013, section 1

- e. Protection of PWDs can be provided through the implementation of Schedule 12 of the RPPDA to protect PWDs who are victims of violence<sup>133</sup>. Effectively implements Section 31 of the Suppression of Violence Against Women and Children Act 2000<sup>134</sup> to better protect victims of violence through safe custody. PWDs who have been subjected to domestic violence should properly apply section 14 of the Domestic Violence (Prevention and Protection) Act 2010<sup>135</sup> and section 6 of the Act should be more effectively enforced to enable law enforcement officials to fulfill their responsibilities in dealing with domestic violence.<sup>136</sup>
- f. The full activation of section 31 of RPPDA which provides for registration of PWDs and issuance of identity cards<sup>137</sup> and section 36 of RPPDA which prohibits discrimination based on disability and providing compensation<sup>138</sup> need to be entered into force.
- g. By amending the RPPDA, priority should be given to victims and witnesses of PWDs. In order to better compensate witnesses, section 544 of the CRPC should be amended to require the state to reimburse witnesses for related expenses<sup>139</sup> (travel, accommodation). To improve witness protection, amend section 545 of the CRPC, on injuries sustained by PWDs in the performance of witness duties,<sup>140</sup> either through compensation or through free medical care in public or private hospitals or clinics.
- h. Section 119 of the Evidence Act, 1872 needs to be followed for the solution of problems encountered by persons with speech and hearing impairments<sup>141</sup>. Compliance with the rules contained in chapter XVIII of the CPC (trials and hearing of witnesses) reduces the practical barriers for PWDs in the civil suits.<sup>142</sup>
- i. Section 118 of the Evidence Act needs to be amended to allow persons with intellectual disabilities to testify in court.<sup>143</sup> Different provisions for these victims need to be included

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<sup>133</sup> Ibid, schedule 12

<sup>134</sup> The Suppression of Violence Against Women and Children Act, 2000, sec 31

<sup>135</sup> The Domestic Violence (Prevention and Protection) Act, 2010, sec 10

<sup>136</sup> Ibid, sec 6

<sup>137</sup> The Rights of Persons with Disabilities Act, 2013, sec 31

<sup>138</sup> Ibid, sec 36

<sup>139</sup> The Code of Criminal Procedure, 1898, sec 544

<sup>140</sup> Ibid, sec 545

<sup>141</sup> The Evidence Act, 1972, sec 119

<sup>142</sup> The Code of Civil Procedure, 1908. Chapter XVIII

<sup>143</sup> The Evidence Act, 1972, Sec 118

and the appointment of counselors to allow individuals with intellectual disabilities to testify in a less intimidating environment.

- j. Amend the Contract Act, 1872, so that the PWDs could not be disqualified because of their not having legal capacity to sign to execute a contract.<sup>144</sup> Furthermore, develop provisions to punish and prohibit the neglect of children with disabilities.
- k. As soon as possible, the anti discrimination law need to be enacted.
- l. The HCD should apply judicious mind, especially in terms of securing substantive and procedural equivalence and the law should contain provisions that could serve as a guidelines for legislators when adopting appropriate laws for PWDs.<sup>145</sup>
- m. There should be police officers who are trained to cater to the special needs of PWD, being a victim or accused.<sup>146</sup> Additionally there need to be a separate set of guidelines for dealing with custodial issues of PWDs along with the CRPC.
- n. In addition to all of the above, a Case Coordinating Committee (CCC) can be formed to prioritize cases involving PWDs to ensure that cases are resolved quickly.<sup>147</sup>

Based on these recommendations, the Justice system of Bangladesh can be changed systematically to provide access to justice for PWDs in order to bridge the gap between policy and practice. It is important for PWDs to know about their rights and current practices. The first step is to create awareness of their rights, spread information effectively and create a good environment for PWDs in the society. The goal of establishing the rights of PWDs in the context of Bangladesh can be achieved if international provisions are incorporated into the national law.

## 5.2 Conclusion :

PWDs are that segment of the society who are the most disadvantage and vulnerable and bears many social and economic disadvantages. The legal proposition relating to the access to justice

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<sup>144</sup> The Contract Act, 1872, sec 11

<sup>145</sup> Khandakar Kohinur Akter, ' Revisiting Laws on Disability Rights in Bangladesh,' [https://www.academia.edu/25435204/Revisiting\\_Laws\\_on\\_Disability\\_Rights\\_in\\_Bangladesh](https://www.academia.edu/25435204/Revisiting_Laws_on_Disability_Rights_in_Bangladesh)

<sup>146</sup> for Peace and Justice, BRAC University and Advocacy for Social Change, BRAC, "Study on the Rights and Protection of the Persons with Disabilities Act 2013" Adaptation, Application and Recommendation, 5th of August 2018, < [http://www.brac.net/program/wp-content/uploads/reports/Final%20Report\\_CPJ\\_ASC\\_Disability%205th%20August%202018.pdf](http://www.brac.net/program/wp-content/uploads/reports/Final%20Report_CPJ_ASC_Disability%205th%20August%202018.pdf)>

<sup>147</sup> CRPD report, "Current status of Rights of Persons with Disabilities in Bangladesh: Legal and Grassroots Perspectives < <https://www.blast.org.bd/content/publications/crpd-report.pdf> >



of the PWDs has been discussed in the paper. The object of the paper was to find out the gaps in the disability laws of Bangladesh regarding access to justice.

Disability is not only a health problem, but also a complex phenomenon that reflects the relationship between the physical characteristics of a person and the characteristics of the society. The UNCRPD mentions a number of general obligations that states parties must comply with. States parties must fully implement these rights, ensure laws and practices that do not discriminate against PWDs and ensure that relevant laws are amended. Many UNCRPD countries are working to improve the justice system for PWDs by enacting laws in compliance with UNCRPD. At the same time, Bangladesh agreed to implement government measures in accordance with the provisions of the Convention to ensure access to justice to the PWDs. But it's hard to see how friendly our judicial system is.

All people are equal before the law and are entitled to the same protection and benefits of the law without any discrimination. Both aspects are recognized by the UNCRPD and the Constitution of Bangladesh. Bangladesh has a number of substantive and procedural laws relating to the rights and protection of PWDs. Although both the law and the legal protection of disabled people are improving, there are still many loopholes and gaps in laws that prevent PWDs from accessing justice. For that reason, they are often deprived of access to justice on an equal footing with others in Bangladesh.

Despite the existence of many substantive and procedural laws relating to the protection of the rights of PWDs in Bangladesh, there is still no effective legal mechanism. Efforts are ongoing to recognize, promote and protect the rights of PWDs in Bangladesh. However, the existence of a law and its application do not always go hand in hand. Therefore, although various laws and policies in Bangladesh contain many provisions for PWDs, it can be said that they are not sufficiently in line with the interests of PWDs. They are often denied access to justice due to their isolation from mainstream society. Although the RPPDA seems very positive to us, it is difficult to judge its effectiveness without proper implementation. So it can be said that, the existing laws of Bangladesh are not effective enough to ensure access to justice for the PWD.

Progress in access to justice for the PWDs are encouraging, but much remains to be done. This paper demonstrates that PWDs can also have equal access to justice, if the national laws dealing with the disability rights are properly implemented and amended to ensure access to Justice to the

PWDs. This paper focuses on the effective implementation of existing national access to justice policies in line with the UNCRPD and RPPDA, and its recommendations call to action to ensure effective implementation.<sup>148</sup>

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