

The background of the cover features a close-up, high-angle view of several books and stacks of papers. The books have various colored spines, including blue and black. The pages are mostly off-white or light beige, showing some signs of age. The lighting is dramatic, with strong highlights and deep shadows, creating a sense of depth and texture. The overall composition is centered and balanced, with the text overlaid on a dark, semi-transparent rectangular area.

2019

VOLUME 2 ISSUE 1 & 2
APRIL & NOVEMBER

FIMT
LAW JOURNAL

**THE RIGHT TO EDUCATION OF PERSONS WITH DISABILITIES IN
BANGLADESH: A CRITICAL REVIEW****Nour Mohammad***

This article explores the different issues associated with the human rights of persons with disabilities to find out the needs and ways to protect and promote the human rights of disabled persons in Bangladesh. The central purpose of this article is to analyze the United Nations' concerns and activities for the promotion and protection of inclusive educational rights of disabled persons, with special reference to the Constitutional and legislative arrangement of the country. It also considers highlighting cross-cultural perception, including the right to health care, right to education, right to employment, and opportunity. The article will try to provide an overall situation of the rights of a disabled person in mainstream society. The article also focuses on the national and global problems of disabilities in viewpoint of right-based models and recommends suggestions to improve the legal gap to ensure the rights of persons with disabilities.

INTRODUCTION

All human beings are equal and are entitled to equal protection from the law. Everybody wants to lead a healthy and prosperous life. This may not have happened with everyone; some of them are naturally born with a disability, and some acquire a disability through illness or accidents. However, these obstacles may be overcome with the support of family, neighborhood, and state. In the absence of this support, disabled persons have to face many problems in society. They are not entitled to enjoy their basic rights like an able person.¹ Persons with disabilities (hereinafter referred to as PWDs) are often the most vulnerable and marginalized segment of society all over the world and discriminated against in every sphere of life. Presently PWDs are regarded as the largest minority group in the world, and it is widely estimated that more than 650 million people, approximately 15% of the world population suffer a form of disability. This scenario is much more the case in developing countries, at least 1 out of 10 persons has suffered any kind of disabilities and

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¹ SK Salma Nargis, 'Education Right of Impaired Children in Bangladesh: An Overview' (2003) 21 Journal of Asiatic Society of Bangladesh.

at least 25% of the whole population is adversely affected by the concomitance of disabilities.²

In case of rights, PWDs are deprived of their fundamental rights around the world, and they may be considered as a burden and unproductive human being.³ In historical context, persons with disabilities have not only been discriminated against in societal activities but have also been excluded from their basic human rights and are often denied to get fair and equitable justice as a normal human being would receive.⁴ They are considered to be the burden of society, and many in society have a negative attitude towards them. Most of the disabled persons are isolated from mainstream society, family, and institutions because of their inability to contribute to society.

In Bangladesh, persons with disabilities are discriminated against on various grounds such as education, access to health care, housing, employment, and transportation.⁵ Therefore PWDs have been treated as a subject of compassion and are frequently denied the right to enjoy their fundamental rights. The other forms of discrimination, such as voting and political participation, are also a common phenomenon for PWDS in Bangladesh. In many ways, disabled people can contribute to the national economy of a country. The widespread discrimination and societal exclusion of persons with disabilities will lead to economic hardship and loss of their productive capacity to society.⁶ This paper will explore the right to education of persons with disabilities in Bangladesh and find out the needs and ways for protection and promotion of human rights of disabled persons. The primary objective of this paper is to analyze the national laws, international obligations, and government and NGOs activities for promoting the special and inclusive education of disabled persons, with special reference to the Constitutional legal framework Bangladesh. The paper will also examine the national educational policy and planning to explore the status of the educational rights of persons with disabilities.

² World Health Organization, *The World health report: 2001: Mental health: new understanding, new hope* (2001).

³ Amartya Sen, *The Idea of Justice* (1st edn, Penguin Books Allen Lane 2009).

⁴ Payel Rai Chowdhury, 'Human Rights of Persons with Disabilities: A Conceptual Discourse' in Manik Chakaraborty (ed) *Human Rights in Twenty First century--An Anthology* (1st edn, R. Cambray and Co. Private Limited 2014).

⁵ Convention on the Rights of Persons with Disabilities (adopted on 13 December 2006, entered into force 3 may 2008) 2515 UNTS 3 (CRPD) art 2.

⁶ World Bank <<https://www.worldbank.org>> accessed 14 April 2015.

DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS STANDARDS FOR PWDS

The Universal Declaration of Human Rights 1948 provides all human beings inherent dignity and equality. The Universal Declaration of Human rights does not distinguish between people with a disability and those who are able-bodied. It also recognizes “the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in the circumstances beyond its control”⁷. The Declaration has provided a list of non-discriminatory grounds, which include race, sex, national, political, social origin, other opinions, religion, and another status.⁸ It is assumed that the term ‘other status’ necessarily indicates disabilities.

The International Covenant on Civil and Political Rights 1966 (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, both prohibits discrimination on the same grounds as the Declaration. None of the above three instruments specifically mention any rights as a protected category for persons with disabilities.

The Convention on the Rights of the Child 1989(CRC) contains the term ‘mentally and physically’ disabled person in Article 23. This article provides for a variety of obligations designed to include children with a disability. It emphasizes ‘special care’.

In 1971 the United Nations finally adopted the Declaration on the Rights of Mentally Retarded Persons, which exclusively addressed the right of persons with mental disabilities.⁹ Nevertheless, the declaration has not been operated as a human rights approach model, instead it continues as a medical model.

The General Assembly adopted the Declaration of Rights of Disabled Persons in 1975. The purpose of this declaration is to promote “the dignity and worth of the human person and the necessity of assisting persons with disabilities to develop their abilities in most varied fields of activities and promoting in so far as possible of their integration into normal

⁷ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 25(1).

⁸ Ibid art 2.

⁹ Declaration on the Rights of Mentally Retarded Persons, UNGA Res 2856 (XXVI) (20 December 1971).

life.”¹⁰ However, this declaration recognized that persons with disabilities enjoy the same civil and political rights as other human beings.¹¹

Similarly, the United Nations adopted the Standard Rules on Equalization of People with Disabilities affirming some conditions for equal rights and protection of persons with disabilities in society.¹² The Standard Rules stated that a state party should provide equal educational opportunities for persons with disabilities in an integrated setting and provide adequate accessibility and support, which meet the needs of their learning. Although the Rules are not mandatory, they provide standard guidelines by which a country’s behavior towards people with disabilities can be measured.

The Committee on Economic, Social, and Cultural Rights in 1994 released its General Comment No-5. In it, the Committee recognized that although the ICESCR does not overtly refer to people with disability,¹³ the Convention provides that “right enshrined be exercised without discrimination of any kind whether based on certain specified grounds or another status.”¹⁴ The Committee’s view is that it is comprised of discrimination on the ground of disability. This is the first UN document in which disability discrimination has been interpreted broadly, and this General Comment is based on a human rights approach rather than a medical model. The change to a human approach implies the need for anti-discrimination laws for the better protection of rights of persons with disabilities.¹⁵

However, the development of disability jurisprudence in the international arena has been non-binding ‘soft law’, which may be used as a guideline for enacting law and policies relating to persons with disabilities. The above instruments have a limited impact on the issue of disabled people. So, a binding ‘hard law’ international instrument is necessary for the promotion and protection of the PWD. Later in 2006, the UN adopted a comprehensive international treaty, Convention on the Rights of Persons with Disabilities

¹⁰ Ibid.

¹¹ Declaration on the Rights of Disabled Persons, UNGA Res 3447 (XXX) (9 December 1975) para 4.

¹² UNGA Res 48/96 (20 December 1993).

¹³ CESCR ‘General Comment No. 5: Persons with Disabilities’ (1994) UN Doc E/1995/22.

¹⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993UNTS 3 (ICESCR) art 2(2).

¹⁵ Abdullah Al Faruque, *International Human Rights Law: Protection Mechanism and Contemporary Issue* (1st edn, New Warsi Book Corporation 2012).

to address the rights of persons with disabilities.¹⁶ The author will analyze this convention in detail in a later chapter.

EXISTING NATIONAL LAWS AND POLICY CONCERNING THE RIGHTS OF PERSONS WITH DISABILITIES IN BANGLADESH

Constitutional Safeguard for the Protection of Persons with Disability: The Constitution of Bangladesh has contained numerous provisions regarding the issue of equality, dignity, and non-discrimination. However, no article in the Constitution specifically mentions the term ‘disability’. Article 15 provides for the necessities, including the right to food, shelter, clothing education and medical care are equally applicable to all citizens.¹⁷ This provision was put in place in Part II of the Constitution heading as a Fundamental Principle of State Policy (FPSP). The implementation process of this provision is dependent on the state’s availability of resources. As a citizen, a disabled person has the right to the opportunity of education in the same way as an able person. Article 17 of the Constitution explicitly mentioned the state’s obligation to adopt measures to “establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all ----- determined by law.”¹⁸ This provision has given ample opportunities to the government to adopt law and policies framework for the improvement and ensure the rights of persons with disabilities in the country.¹⁹

National Policies: The Bangladeshi government has adopted a good number of national policies and legislation consistent with the Convention on the Rights of PWD. They are often treated as inferior human beings in society and discriminated against in every aspect by their families, society, and communities because they are not able to function as normal people. Most of the laws did not specifically recognize their rights. To give legal protections to disabled persons, there needs to be a specific law for the protection of their rights.²⁰ Bangladesh adopted its first National Policy for Persons with Disabilities in 1995, focusing on “mainstreamed disability into the country’s development agenda.”²¹ It also deals with

¹⁶ Ibid 263.

¹⁷ Constitution of Peoples’ Republic of Bangladesh (1972), art 15(a).

¹⁸ Constitution of Peoples’ Republic of Bangladesh (1972), art 17(a).

¹⁹ Jahurul Alam Khandaker, 'Bangladesh Person with Disabilities' (2009) 55 Asia Pacific Human Rights Information Centre.

²⁰ Mohammad Tariq Ahsan and Lindsay Burnip, 'Inclusive Education in Bangladesh' (2007) 31 Australasian Journal of Special Education.

²¹ The United Nations Children’s Fund (UNICEF) *The State of the World’s Children – Girls Education and*

other issues such as educational rights, identification of persons with disabilities, research, rehabilitation, accessibility, and recreation coordination, and implementation of national programs for PWDs. Apart from this, the government has framed an education policy known as the National Education Policy, 2010 which provides for inclusive education of persons with disabilities for creating a congenial room for the enrollment of more disabled children in mainstream educational institutions.²² However, there is still a vacuum for the realization of the requirement of disability rights in practice.

National Laws: The government of Bangladesh adopted the Disability Welfare Act in 2001, which was pioneering in the wellbeing of disabled persons at the time, but still has some deficiencies. The law also emphasized different issues such as the identification of disabled persons, equal opportunity, ensuring other benefits and privileges of disabled persons. The Act was framed based on welfare instead of a rights-based approach. The Act also has some deficiencies in terms of immunity from suit, lack of accountability, excessive arbitrary power, weakness of institutional mechanism, etcetera. The major weakness of the legislation is that it fails to comply with the provisions of CRPD and other international instruments.²³ For that reason, the legislation was repealed and replaced the Persons with Disabilities Rights and Protection Act in 2013.

The National Action Plan for Persons with Disability was proclaimed in 2006 as a directive ordered by the Prime Minister's office. The plan was a comprehensive one, consisting of forty-six ministries and divisions to provide specific assistance and cooperation for disabled persons relating to birth registration, special schooling, and other logistical support. The government also appointed a person who is a divisional head to deal with the disability issue and provide services to disabled persons.²⁴

Recently the government of Bangladesh has enacted a comprehensive new legislation in 2013²⁵ replacing the previous Disability Welfare Act 2001, to implement the national policy, and to comply with the provisions of international conventions. The new legislation has given extensive rights, and equal opportunities to PWD. It also emphasizes the barriers

Development, 2004) 106.

²² Khandaker (n 19).

²³ Faruque (n 15).

²⁴ Khandaker (n 19).

²⁵ *Rights and Protection of Persons with Disabilities Act 2013*.

faced by disabled persons such as equal access to education and full participation in economic, social and cultural activities of the state. The new Act combines both, right based and welfare-based approaches, this is necessary for a democratic society in ensuring the rights of PWDs and also provides for facilities for their full participation and inclusion in mainstream education.

Under this Act, PWDs can file criminal proceedings for the violation of their rights enunciated in the Act, and procedural law will be applied for the trial of these cases. The Act also provides the guideline for the formation of different committees from the village to the national level to provide assistance and maintain the legal rights of the person with disabilities.²⁶ The government will take responsibility to make sure education, vocational training, and reasonable accommodation in educational institutions are available to PWDs and ensure participation in all activities including, recreation tourism and sports. It will also ensure the safety and security of PWDs in an instance of natural calamities, humanitarian crises, and violence etcetera.²⁷

It seems that the new Act is an exhaustive piece of legislation to protect the rights of PWDs in Bangladesh. However, there are significant obstacles, including the proper implementation of the Act. It essentially depends on the willingness of the government and the availability of resources. Government has to allocate resources in the national budget for persons with disabilities to assist with and support ensuring their rights that are not sufficient to fulfill the requirement of their demand.

Finally, the government established in 2013 the 'Centre for Neurodevelopment and Autism (CNAC) in Children. This center aims to provide research, training, and related management of autism. It also established a 'daycare center' in a 'healing and autism-friendly environment 'for providing high-quality training and research for doctors and therapists. So, the Centre tried to establish disability and autism issues at the mainstream level of the country.²⁸

²⁶ *Rights and Protection of Persons with Disabilities Act*, 2013, s 17-24.

²⁷ Khandaker (n 19).

²⁸ Nasima Begum, 'Rights of Persons with Disabilities, Autism, Religious and Ethnic Minorities, Dalit's And Refugee' (2012).

CURRENT DISABILITY SITUATION IN BANGLADESH

The current situation for disabled people in Bangladesh is very alarming and deplorable. They have been discriminated against and overlooked in mainstream society. The principle of equality enunciated in the Constitution of Bangladesh, unfortunately, does not apply in the same way towards them. PWDs are marginalized and vulnerable due to discriminatory approaches, lack of awareness, social stigma, illiteracy, and inadequate health care. There are no comprehensive statistics for establishing the numbers of PWDs in Bangladesh. Bangladesh is a country of 167 million of which 44.3% of people live under or below the poverty line. It is estimated that 10% of the total population, approximately 16 million people, are disabled in Bangladesh.²⁹

The surveys were conducted by the Bangladesh government in 1982, 1986, and 1998 and estimated the rate of disability 0.64%, 0.5%, and 1.60% respectively.³⁰ Local NGOs and an International NGO identified the figure of 7.8% and 9% respectively. So there is no consistent data to figure out the numbers of disabled persons in Bangladesh. In 2011, the National census was conducted in which the figure of disabled persons had not been mentioned. The Government should take the initiative to survey to find out how many people are disabled in Bangladesh and provide adequate assistance towards them.

The National Coordination Committee was formed under the Persons with Disabilities Rights and Protection Act, 2013 and to comply with Article 33 of the CRPD to coordinate the different activities of the PWDs such as identification, prevention, accessibility, vocational training, and inclusive education.

The National Building Code 2008 replacing 1992 mentions the requirement for accessibility of disabled persons to buildings explicitly. However, the guidelines and rules are not followed for constructing buildings by the government or private companies.³¹ In the case of the transport system, persons with disabilities are discriminated against because of no arrangement of a reserved seat for PWDs. The existing law provides for access to public transportation, but the companies do not follow the law for keeping a reserved seat

²⁹ Bangladesh Bureau of Statistics, 'Monthly Statistics Bulletin' (Dhaka, Bangladesh 2002).

³⁰ Ibid.

³¹ UNHRC (Sixteenth session) 'Situation of Persons with Disabilities in Bangladesh' (Universal Periodic Review of Bangladesh, Geneva 22 April-3 May 2013).

for PWDs.³² Bangladesh has made progress on the issue of disabilities by adopting law and policies to provide support and give assistance in the field of education, medical care, and vocational training. However, it falls short in supporting disabled persons when it comes to practice; many of the disabled people do not get proper treatment or facilities from the government or appropriate authority.

INTERNATIONAL LEGAL FRAMEWORK ON EDUCATION OF PERSONS WITH DISABILITIES

Bangladesh has an international commitment to protect, respect, and fulfil the rights of disabled people. Bangladesh has endorsed most of the major international Convention, Treaty and Declaration, which require Bangladesh to frame legislation for the better protection of PWDs in its territory.

Convention on the Rights of Persons with Disabilities-2006: This is the first global binding treaty adopted by the United Nations in 2006, which gave a concrete shape for the protection of disabled people's rights. The Convention was framed to standardize the protection mechanism, and adopt remedial measures for violations of the rights of disabled people, and comprehensively addressing the rights of persons with disabilities.³³ Bangladesh ratified the Convention and its Protocol in 2007 and 2008 respectively. By ratifying this Convention, Bangladesh must respect, protect and fulfill the rights of PWDs and to ensure the rights of "persons with disabilities can access an inclusive quality and free primary education and secondary education on an equal basis with others in the communities in which they live."³⁴

Salamanca Declaration, 1994: The Government of Spain in collaboration with UNESCO organized the World Conference on Special Needs Education in 1994 from this conference the Salamanca Declaration and Framework for Action was developed for focusing on the inclusive education of the children. The declaration also highlights that disabled children have access to education in regular schools and should be adjusted within favorable instruction, which meets the needs of those children.

³² Abdullah Al Faruque, *International Human Rights Law: Protection Mechanism and Contemporary Issue* (1st edn, New Warsi Book Corporation 2012).

³³ Ibid 271.

³⁴ CRPD (n 5) art 24(2)(b).

Article 53 of the Declaration provides for the education of early childhood of children with disabilities

[t]he success of the inclusive school depends considerably on early intervention, assessment, and stimulation of the very young child with special educational needs. Early childhood care and education programs for children aged up to six years ought to be developed and/or reoriented to promote physical, intellectual, and social development and school readiness. Programs at this level should recognize the principle of inclusion and be developed comprehensively by combining preschool activities and early childhood health care.³⁵

The United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993 (hereinafter referred to as the *Standard Rules*): The United Nations adopted the Standard Rules to promote and protect the equal rights of persons with disabilities. The Standard Rules aim to support the government on making political, economic, social, and legal changes to allow persons with disabilities to become “full and equal citizens of their countries”. However, the Standard Rules are not mandatory but set out a standard framework on how the country treats persons with disabilities. Bangladesh adopted the rules in 1993.

The Convention on the Rights of the Child, 1989: The UN General Assembly adopted the Convention on the Rights of the Child in 1989 to ensure for every child a minimum standard of living; this includes the right to education. The underlying targets for education are to make primary education free and compulsory for all.³⁶ Article 23 provides for the special needs and care for the protection of rights of the disabled children and “to ensure that the disabled child has effective access to and receives an education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development”.³⁷

³⁵ The Salamanca Declaration and Framework for Action (1994), art 53.

³⁶ Convention on the Rights of the Child (adopted on 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 28 (a).

³⁷ Ibid art 23(3).

Bangladesh is a signatory to the above-mentioned international convention and declaration and should ensure the education of persons with disabilities and provide the technical support to ensure the accessibility in all public places and transportation. However, in practice, persons with disabilities are not getting facilities from the government to enjoy their rights as equally as abled persons.

RIGHT TO EDUCATION OF PERSONS WITH DISABILITIES IN BANGLADESH

The right to education is a basic human right of every citizen. In Bangladesh, access to education for PWD is minimal. The main obstacle for promoting education of PWDs is that of poverty, lack of awareness, social stigma, school environment, unskilled teachers, and school curriculum. Under the limited resources, the Ministry of Social Welfare under the Ministry of Education has tried to ensure the education of disabled persons by taking the initiative for establishing the inclusive school at the mainstream level.³⁸ Subsequently, GoB has formed a 'Committee for Inclusive Education' under the Ministry of Education with the representation of the Ministry of Social Welfare, Ministry of primary and Mass Education to encourage education of the children with disabilities in the regular schools. Under this project, many disabled children are getting support and enrolled in the school for inclusive education. It is estimated that approximately 5% of disabled children are enrolled in existing schools at the mainstream level. The concerned Ministry and NGOs are conducting the following educational program in the country.

Education Program for Persons with Hearing Impairments: The government of Bangladesh has established seven schools around the country to provide education, rehabilitation, and training for the hearing-impaired persons. The government has started the program the 'National Complex for Special Education' of persons with disabilities with the support of the Norwegian Agency for Development (NORAD). There are a total of 33 special schools for people with hearing impairment in Bangladesh. Of the seven schools that are under the management of the government, the remaining schools are run by

³⁸ Khandaker (n 19).

different NGOs. The total capacity of seven schools run by the government is 1,500. Most of the schools are elementary level, and only one provides secondary level education.³⁹

Education Program for Persons with Mental Disability: The Department of Social Service was established with the aim of the protection of persons with disabilities, which operates a 'National Centre for Special Education' in Dhaka. They are conducting different training, providing an educational program for people with mental, hearing, and visual disabilities. Some social workers and guardians established the Society for the 'Care and Education of the Mentally Retarded Bangladesh' to provide education to mentally disabled people in 1977. They operate 38 branches of schools around the country, which is presently known as 'Society for the Welfare of the Intellectually Disabled Bangladesh'. Other local NGOs The National Special Education and Bangladesh Protibondhi Foundation run several schools for the education of children with mental disabilities in Bangladesh.

Educational Program for Persons with Visual disability: The term visual impairment is defined as 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.⁴⁰

Integrated Schools for the Visually Impaired: The government of Bangladesh, NGOs, and some voluntary organizations are operating schools for the education of visually impaired individuals. Under the assistance of Helen Keller International, the 'Rotary Club of Dhaka' has established a school for persons with visual impairment in 1957. They provided two types of education systems, one special education and an integrated education system. The government is running an integrated education program for visually impaired students and children in 64 districts throughout the country and NGOs operating five other schools. However, the major problem is that the teaching materials are not available to teach the students such as braille books, braille writing frames and syllabi,

³⁹ Japan International Cooperation Agency Planning and Evolution Department, *Country Profile on Disability People's Republic of Bangladesh* (March 2002).

⁴⁰ Rights and Protection of Persons with Disabilities Act (2013), s 7.

qualitative or standard papers for writing in braille, boards for arithmetical, mathematical teaching, learning, and white canes.⁴¹

Schools for the Visually Impaired: In 1962 the Government established four specialized visually impaired institutions in four divisions in Dhaka, Chittagong, Rajshahi, and Khulna, and later another school was established in Barisal in 1965. The government's approach to providing education for visually impaired children is – praiseworthy. However, in practice, there are many problems, such as a lack of educational materials, sufficient teaching staff, infrastructure, training.⁴²

ADMINISTRATIVE BODY FOR FUNCTIONING OF PERSONS WITH DISABILITIES

In Bangladesh, there are a good number of administrative bodies that are working for persons with disabilities; one is the Ministry of Health and Family Welfare. This Ministry is responsible for dealing with the different issues and administrative matters, which includes the macro-level policy planning and responsible for all governmental activities relating to health and family planning.⁴³ The Ministry of Social Welfare is concerned with the planning and implementation of national programs to developmental, physical, and social capacities of persons with disabilities providing services relating to education, training, and rehabilitation, etcetera .⁴⁴The Department of Social Service also provides the service to marginalized and vulnerable people of society and the mandate is to implement and take the policy for the protection of PWDs in the case of care, education, training, and rehabilitation. The National Foundation for the Development of Disabled is an international NGO operating program for persons with disabilities in Bangladesh to support the government and NGOs. They are currently working in 14 districts in Bangladesh for providing special eye care services to the blind people in partnership with the Bangladesh National Eye Program and Islamia Eye Hospital.

⁴¹ Japan International Cooperation Agency Planning and Evolution Department (n 39).

⁴² Nasima Begum, 'Rights of Persons with Disabilities, Autism, Religious And Ethnic Minorities, Dalit's and Refugee' (2012).

⁴³ Ministry of Health and Family Welfare, Bangladesh <[https:// www.mohfw.gov.bd](https://www.mohfw.gov.bd)> accessed 12 April 2015.

⁴⁴ Ibid.

EQUITY AND INCLUSIVE EDUCATION OF PERSONS WITH DISABILITIES

The term equity in terms of education is not easy to define. Ainscow, highlight the term equity as a ‘notion of fairness’, which not only indicates gender discrimination, access to justice, inclusive education but also indicate the correlation of these factors networking through education.⁴⁵ In a general sense, equity means the access to education equally irrespective of their color, race, sex, language, caste, religion, social, and ethnic group identity in matters of concerning education.

The Child Policy 2011 has campaigned for equity in education in Bangladesh and not to discriminate against a child with disabilities and disadvantaged groups. GoB has enacted comprehensive legislation Persons with Disability Rights and Protection Act, 2013 in which the government tried to ensure the legal rights of disabled persons to education.⁴⁶ So inclusive education is the most effective tool for ensuring the equity method. Most of the countries have developed the method for access to education for disadvantaged groups of people.

It is a general scenario in most of the developed and developing countries; persons with disabilities are not treated equally to get the education, or they have limited access to quality education at the mainstream level. In a joint report on the disability of the World Health Organization and World Bank, in comparison, the education rate of persons with disabilities is much less than non -disabled persons.⁴⁷ In another report, the Special Rapporteur on the Right to Education highlighted that “persons with disabilities, of both genders and all ages and in most parts of the world, suffer from a pervasive and disproportionate denial of [the] right [to education].⁴⁸” In developing countries where the primary education enrollment rate has been increased at around 86% on the other hand children with disabilities attending school have decreased at less than 5%.⁴⁹

The World Report on Disability 2011 sketches four principal purposes for ensuring the

⁴⁵ Mel Ainscow, *Developing Equitable Education Systems* (Routledge 2012).

⁴⁶ *Rights and Protection of Persons with Disability Act, 2013*.

⁴⁷ World Health Organization and the World Bank, *World Report on Disability* (2011).

⁴⁸ UNHCR ‘Report of the Special Rapporteur on the Right to Education’ (2007) UN Doc A/HRC/4/29/Add.2.

⁴⁹ *Ibid* para 8.

education of children with disabilities and easy access to quality education viz. (a) education is a *sine qua non* for individual well-being as well as human capital formation; (b) Economic and social development is not possible without including the children with disabilities from educational as well as employment opportunities; (c) The goals of education for all and Millennium Development Goals will not be possible without excluding the children with disabilities from education; (d) States are legally bound to provide the education to the children with disabilities under Convention on the Rights of Persons with disabilities and other international human rights instruments.⁵⁰

RIGHT TO EDUCATION OF PERSONS WITH DISABILITIES: INTERNATIONAL STANDARDS

International human rights framework provides for general rights of education, which deal with the education for all and specific rights to education deals with the education of persons with disabilities, which may be summarized as below.

General Right to Education : The primary international human rights instruments did not specially set out the educational rights of persons with disabilities. However, they generalized the equality, dignity and freedom more broadly and generically. The International Covenant on Economic, Social and Cultural Rights⁵¹1966 provides for compulsory free education for all in primary or secondary level as well as higher secondary level.⁵²The right to education has been recognized by the state parties of the ICESCR and undertake to achieve the progressive realization of this right, “fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.⁵³”

Some general provisions regarding the right to education have been contained in various international instruments especially the UDHR 1948 in Article 26, Convention on the Right of the Child-1989 in Article 28-30 and Convention on the Elimination of All Forms of Discrimination against Women, 1979 in Article 10. However, the above-noted instrument has reflected the principle of equality and the right to education of every person

⁵⁰ World Health Organization and the World Bank (n 47).

⁵¹ ICESCR (n 14).

⁵² Ibid art 13 (a)-(c).

⁵³ Ibid art 13(2) (d).

irrespective of their race, color gender and sex. However, it does not mention the terms of persons with disabilities' right to education. UNESCO Convention against Discrimination in Education⁵⁴, 1960 stated that state parties should take the initiative to frame, develop and apply national policy for promoting equal opportunity for all including free and compulsory primary education.

The Committee on Economic, Social and Cultural Rights in General Comment No.13 interpret and clarify the Article 13 of the Covenant providing that “education must be accessible to all, especially the most vulnerable groups, without discrimination on any of the prohibited grounds.⁵⁵”

The World Conference on Education for All⁵⁶1990 has similarly enunciated the right to education of PWDs in Article 3 which provides that “basic education should be provided to all children, youth and adults. To this end, basic education services of quality should be expanded, and consistent measures must be taken to reduce disparity.⁵⁷” However, the right to education in a general sense has a wide sphere embracing all including the PWDs.

Specific Right to Education of PWDs: There are number of international human rights instruments in which the right to education is specially mentioned in the United Nations Convention on the Rights of the Child⁵⁸ provides for specific rights for education to children with disabilities. The state parties of the Convention have the responsibility to

“protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent, treatment, maltreatment or exploitation----⁵⁹”

So, state parties are obliged to treat all disabled people in an equal manner without any discrimination on the grounds of race, color, sex, etc. The Convention further stated that “the special needs of a disabled child, assistance extended under paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial

⁵⁴ Convention Against Discrimination in Education (adopted on 14 December 1960, entered into force 22 May 1962) 429 UNTS 93.

⁵⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999 para 6 (b) (i).

⁵⁶ W Haddad, N Colletta, N Fisher, M Lakin and R Rinaldi, 'Final Report World Conference for All' (The World Conference for ALL, Jomtien, March 1990).

⁵⁷ Ibid; CRPD (n 5) art 3.

⁵⁸ CRC (n 36).

⁵⁹ Ibid art 19(1).

resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.”⁶⁰

In 1975 the United Nation Declaration of the Rights of Disabled Persons was affirmed for the first time under international law to,

“the dignity and worth of the human person and the necessity -----of assisting disabled persons to develop their abilities in most varied fields of activities and promoting in so far as possible --- their integration into ---their normal life.”⁶¹

The Convention further stated that persons with disabilities are entitled to enjoy the same civil and political rights as other human beings.⁶²

RECOMMENDATIONS

After analyzing the overall situation of a PWD in Bangladesh, the author suggests the following recommendations, which may be taken into consideration for improving the conditions of PWDs.

- a) To revised and modify the existing laws and policies in complying with CRPD to ensure non-discriminatory approach toward the PWDs and to achieve the goals of inclusive education
- b) Allocate more financial resources in the national budget to improve the education sector for PWDs
- c) To introduce a national data census and conduct it every five years to identify the literacy rank of the PWDs
- d) To strengthen the implementation and monitoring mechanism for better protection of PWDs in line with CPRD requirements.
- e) To make easy access to reading materials such as braille books, sign language, etc. and revise the existing curriculum to suit PWDs better.

⁶⁰ Ibid art 23(3).

⁶¹ Declaration on the Rights of Disabled Persons (n 11)

⁶² Ibid para 4.

- f) To introduce a comprehensive mass-oriented awareness to ensure the education of disabled people.

CONCLUSION

Bangladesh has an international commitment to protect the rights of the person with disabilities and also framed a good number of national policies and plans to provide equal opportunities to exercise their rights. Despite having laws and obligations, the disabled people are treated as a charitable or humanitarian one. According to Louise Arbor, UN High Commissioner for Human Rights emphasizes that “attitude, rather than resource constraints, often create the strongest barriers to the enjoyment of rights by persons with disabilities.” The government should take the initiative to establish adequate inclusive educational institutions to provide equal education of persons with disabilities. Legislative arrangement and awareness programs should be increased, and the elimination of the negative attitude towards PWDs should be a goal. The alarming situation is that still now there is no comprehensive data of literacy of disabled people in Bangladesh. It is estimated that only 4% of disabled children have access to education in Bangladesh. The government of Bangladesh has not taken any initiative to introduce the inclusive education system for persons with disabilities. Some of the NGOs are operating inclusive educational institutions, which is more costly and cannot accommodate every disabled person.

Most countries around the world have introduced an inclusive education system for ensuring the education rights of disabled people. Right to education is basic human rights for every human being. It would be inhuman and degrading if PWDs were segregated from mainstream education due to any form of disabilities. Inclusive education ensures the human rights of disabled persons and is regarded as a human rights approach.⁶³ The existing laws and policies are adequate to give effective protection of PWDs in Bangladesh if the enforcement authorities have the keenness and intention to implement the existing laws in the country. Therefore, government response would be positive and develop the approach to apply the national laws effectively so that all disabled people are able to enjoy the equal protection of laws in the country. It is also imperative that the government should

⁶³Walter Eigner, ‘Inclusive Education: A Human Rights Issue’ (13th Asian Conferences on Mental Retardation Asian Federation for the Mentally Retarded (AFMR) Dhaka, April 1997).

fulfill the international commitment and obligations to ensure the rights of PWDs by implementing the laws and policies effectively.