

TOWARDS A LEGAL REGIME FOR THE RIGHTS OF PERSONS WITH DISABILITIES IN BANGLADESH

Arif Jamil*
Md. Shamsuddin Masum*

1. Introduction

Equality of every citizen in all spheres of life is a well recognized fundamental right. The persons who are differently able commonly known as persons with disability deserves equal right and treatment that a normal person without disability enjoys. More than the physical sufferings persons with disability may suffer social inequality and stigma which may make their life difficult and therefore, disability is not a fact of sufferings rather an issue of social inequality. According to the latest survey of World Health Organisation (WHO) about forty five million people of the world are persons with disability. Most of them dwell in the developing countries. According to WHO estimate, 10% of any given population constitutes persons with disabilities. The number is increasing at a high rate day-by-day. Diseases, malnutrition, accidents and some other reasons arising in the womb, during birth and after birth are the main reasons of disability.¹ In Bangladesh 14 million people are persons with different forms of disability, among them 28% are physically impaired, 32% are visually impaired, 22% with hearing and speech disability, 7% are intellectually disable and 11% have one or more than one disability.²

Although disability is as old as the human race, the issue of disability and the experiences of persons with disabilities have received little attention in general academic arena. These issues have often been ignored, and only in the disciplines of medicine and psychology, has disability been given an important place. Persons with disabilities remain at the margins of society as one of the impoverished groups. The overall low levels of development and inadequate health and social welfare services have all contributed to the

* Lecturer, Department of Law, University of Dhaka.

** Senior Judicial Magistrate, Sylhet.

1 Dewan, Dr. Sojol , 'Manus Manuser Jonno' in Mohiuddin Ahmed (ed.) *We shall overcome*, CDL, Dhaka, 2007, p. 42.

2 Khan, A.H.M Noman 'Totto Praptir Odhikar: Protibondi Manusher Obosta o Koroniyo' in *Protibhas*, Dhaka, 2008, Vol.1, p. 1.

persistence of poor quality of life among the disabled people in developing countries, particularly in Bangladesh. It is generally agreed that more information on the extent of the impact of disabilities is required to formulate future policies aiming at improving the quality of life of disabled people.³

The disability rights debate is not just about the enjoyment of specific rights. Rather, it is about ensuring equal and effective enjoyment of all human rights, without discrimination by persons with disabilities. The non-discrimination principle helps make human rights relevant in the specific context of disability, just as it does in the contexts of women and children. Non-discrimination and the equal effective enjoyment of all human rights by people with disabilities are, therefore, the dominant theme of the long-overdue reform in the way disability and persons with disabilities are viewed throughout the world. This article aims to promote the rights of persons with disability and help them to be recognized as differently able persons capable to contribute in the achievements of their family, society and country.

The article has tried to explore the national and international laws and policies regarding the rights of persons with disability. The objective of the present exercise is to examine the laws, policies and practices in protecting the rights of persons with disabilities, the efficacy of the present system, and finally to achieve a near ideal legal framework for the persons with disabilities. The article has five sections. Section 1 gives a brief introduction to the interface. Section 2 examines the definition of the concepts of disability and persons with disabilities in the light of legislations of different countries and from the existing literature and also shows how the issue of disability has become a human rights issue. International laws that specifically target the rights of the persons with disabilities have been discussed in section 3. Section 4 deals with the progress of disability movement in Bangladesh by State and Non State actors and tries to identify the shortfalls in securing the rights of persons with disabilities in Bangladesh. Whether there is any need of learning from the international legal instruments and practices, in particular, from the Biwako Millennium

3 Hosain, GMM, '*Disability problem in a rural area of Bangladesh*' Bangladesh, 1995, pp 21, 24-31.

Framework and the United Nation Convention on the Rights of Persons with Disability 2006 and the necessity of adopting in our national laws has also been discussed in this section. Lastly, section 5 outlines the findings and recommendations for enhancing the effectiveness of the present system, both in policy and practice.

Different books, articles, journals, websites and newspapers have been consulted for the completion of this article. Many activists of disability movement and different stakeholders have also been interviewed. Authors' personal experiences in dealing with this issue have also been used for the achievement of this article.

2. Conceptualizing Disability and Persons with Disabilities

The term disability has been defined, in most cases, from a clinical perspective and so the persons with disabilities are treated as an infirm person, and this expression itself is very much unethical. In fact, it is the success of the worldwide disability movement to turn the definition into rights based approach, which argues that disability is rather an issue of social inequality that illustrates the unequal power-relations between the disabled and the non-disabled of the community and it is about a relationship of the disabled people and the environment, which is already designed by the non-disabled people to hinder the participation of disabled persons in the society on an equal basis with others.⁴

The most commonly cited definition given by the World Health Organisation (WHO) in 1976, which draws a three-fold distinction between impairment, disability and handicap as 'An *impairment* is any loss or abnormality of psychological, physiological or anatomical structure or function; a *disability* is any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being; a *handicap* is a disadvantage for a given individual, resulting from an impairment or a disability, that prevents the fulfillment of a role that is considered normal (depending on age, sex and social and cultural factors) for that individual'.⁵

According to the disability rights movement, WHO has confused between the terms 'disability' and 'impairment'. They maintain that impairment refers

4 See Article 1 to the United Nations Convention on the Rights of Persons with Disabilities 2006.

5 Deborah, Kaplan, 'The definition of Disability', The Center for an Accessible Society. [See [http://www. Accessiblesociety.org](http://www.Accessiblesociety.org) accessed on May 19, 2009].

to physical or cognitive limitations that an individual may have, such as the inability to walk or speak. In contrast, disability refers to socially imposed restrictions, that is, the system of social constraints that are imposed on those with impairments by the discriminatory practices of society.

However, disability is a condition or function judged to be significantly impaired in comparison with the usual standard of an individual or their group. The term is often used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment or mental health issue.⁶

The Americans with Disabilities Act of 1990 (ADA) defines in an inclusive way that tends to capture both the largest and broadest estimate of people with disabilities. It describes the disability as a condition which limits a person's ability to function in major life activities – including communication, walking, and self-care such as feeding and dressing oneself and which is likely to continue indefinitely, resulting in the need for supportive services.⁷ Again the Disability Discrimination Act (DDA) 1995 of UK says that a disabled person is someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.⁸ Under these definitions two types of disability has been addressed. Within the words physical disability, it has covered other forms of disability i.e. hearing impairment, speech impairment or visual impairment. The definition also concentrated on the consequences of impairments. The impairment must not be of temporary or of insignificant nature, but that disability should have a substantial and long-term adverse effect and that will create a barrier on his or her normal life.

Bangladesh Disability Welfare Act 2001⁹ gave a vast definition and categorised the different types of disability. Unlike the DDA of the UK, it has specified the causes of physical disability, which may be as a result of disease, accident, improper or maltreatment. Following the medical definition, the Act specifically enumerated the elements of hearing, speech, visual impairment or mental disability, which is, of course, comprehensive. Again like the DDA it has admitted that a disabled person will be unable to lead a 'normal life'. Besides the definition of specific kinds, the Act includes any other type of impairment to be defined and declared by the National

6 [See <http://en.wikipedia.org/wiki>, accessed on May 20, 2008].

7 Title I of the ADA 1990.

8 Section 1 of the Disability Discrimination Act 1995.

9 Section 3 of Bangladesh Disability Welfare Act 2001.

Coordination Committee (NCC) to be within the purview of disability. But it has to be mentioned that Bangladesh Disability Welfare Act 2001 gave a clinical definition of disability and persons with disabilities. The definition ignored the right of the persons with disability to sustain as a normal citizen of the state. A bench of *Justices S B Sinha and H S Bedi* of the Indian Supreme Court has ruled that there cannot be caste-based reservations in special benefits provided to physically challenged persons. The Court observed "A disabled is a disabled. The question of making any further reservation on the basis of caste, creed or religion ordinarily may not arise. They constitute as a special class."¹⁰

The definition¹¹ given by the 1975 UN Declaration on the Rights of Disabled Persons¹² was backdated whereas the UN Convention on the Rights of Persons with Disabilities (CRPD) 2006 gave a liberal definition based on the human rights approach. The Convention defines persons with disabilities which include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹³

In fact most of the above stated definitions are given from medical perspective. The definitions carry the message that the persons with disabilities are infirm or patients. As they are physically 'impaired', they are the subjects of medical treatment. Addressing the issues of persons with disabilities from a clinical perspective is a global phenomenon, which has been rejected by the disability rights movement and they suggest perceiving them from a social and human rights perspective.

2.1 Disability as a Human Rights Issue

Previously, persons with disabilities were viewed as 'objects' of protection, treatment and assistance rather than subjects of rights. Persons with disabilities were excluded from mainstream society and provided with special schools, sheltered workshops, and separate housing and

10 Deccan Herald , New Delhi, September 3, 2007.

11 Article 1 of the UN Declaration on the Rights of Disabled Persons 1975. Under this article the term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.

12 UN General Assembly resolution 3447 (XXX) of 9 December 1975.

13 Art. 1 of the CRPD.

transportation on the assumption that they were incapable of coping with either society at large or all or most major life activities. They were also denied equal access to those basic rights and fundamental freedoms like health care, employment, education, vote, and participation in cultural activities. In the last two decades, the approach towards persons with disabilities has changed and they have started to be viewed as holders of rights. The shift to a rights-based approach has been authoritatively endorsed by the United Nations and is reflected in several developments which have taken place at the international and national level since the proclamation by the General Assembly in the year 1981 as the 'International Year of the Disabled' under the slogan 'Full Participation and Equality'.¹⁴

3. International Laws Specifically Targeting the Rights of Persons with Disability

The effort to establish, maintain and secure the right of persons with disability is a continuing process the objective of which is to protect their inherent rights. This chapter will try to identify different international binding and non binding instruments which specifically deal with the protection of the rights of persons with disability. Bangladesh follows the norms and principles of some of these instruments in the national implementation process.

The United Nations is contributing by enacting necessary laws, principles, declarations and organising different programs for the protection of the rights of persons with disability. In addition to the above mentioned conventions, the General Assembly has adopted several non-binding resolutions and declarations specifically related to the issue of disability which have greatly contributed to increasing attention or awareness to the human rights dimension of disability issues. These instruments include: the Principles for the protection of persons with mental illness and the improvement of mental health care, often referred to as 'MI Principles',¹⁵ the World Program of Action concerning Disabled Persons (WPA),¹⁶ and the

¹⁴ General Assembly resolution 36/77 of 8 December 1981[See <http://www2.ohchr.org/english/issues/disability/intro.htm#un>, accessed on May 1, 2010].

¹⁵ General Assembly resolution 46/119 of 17 December 1991.

¹⁶ General Assembly resolution 37/52 of 3 December 1982.

Standard Rules on the Equalization of Opportunities for Persons with Disabilities.¹⁷

In 1971, for the first time, the Declaration on the Rights of Mentally Retarded Persons¹⁸ on the part of the UN was adopted to protect the rights of persons with intellectual disability. This instrument was adopted, inter alia, for assisting the intellectually challenged persons to develop them in various fields of activities and for promoting their integration as far as possible in normal social life.¹⁹ In 1975 the United Nations adopted the Declaration on the Rights of Disabled Persons.²⁰ This instrument for the first time enumerated some legal arguments in favour of the disabled persons to protect their rights. The rights set forth in the Declaration shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.²¹

In 1991 the UN adopted Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.²² For the best available mental health care, for the protection of right from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment and for ensuring their treatment with humanity and respect for the inherent dignity of the human person, the Principles enumerated some important provisions.

The UN adopted Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1995. The aim of these Rules were that girls, boys, men and women with disabilities, as members of their societies, may exercise the same rights and obligations as others. The documents also require States to remove obstacles to equal participation.²³

17 General Assembly resolution 48/96 of 20 December 1993.

18 General Assembly resolution 2856 (XXVI) of 20 December 1971.

19 See Preamble to the Declaration on the Rights of Mentally Retarded Persons 1971.

20 General Assembly resolution 3447 (XXX) of 9 December 1975.

21 Article 2 of the Declaration.

22 General Assembly resolution 46/19 of 17 December 1991.

23 [See <http://www2.ohchr.org/english/issues/disability/intro.htm#un>, accessed on May 1, 2010].

3.1 The Biwako Millennium Framework (BMF)

For the purpose of promoting an inclusive, barrier free and rights based society for people with disabilities in the Asian and Pacific region the Economic and Social Commission for Asia and the Pacific (ESCAP) adopted Resolution 58/4 in the city of Otsu, Japan in May 2002. The Biwako Millennium Framework is policy guidelines and not a legal document and effective until 2012.

The BMF clearly states its primary vision of promoting rights based approach in disability issues from a charity based approach, and it is reflected in the decades defining theme, towards an inclusive, barrier free and rights based society.²⁴ It also contains strategies to promote rights based approach to disability issues by adopting specific convention and developing domestic rights based legislation.

The BMF emphasised on the promotion of development action for the realisations of rights. It BMF also incorporates two of the Millennium Development Goals (MDGs), universal primary education and eradication of extreme poverty and hunger, as applicable to the disability sector and expresses them as its policy and program targets. This draws attention to the need to include disability concerns in the attainment of the MDGs. In this regard, the BMF establishes itself as a linkage between the global development mandate and the global disability-specific human rights instrument.

The BMF has more detailed description of issues and, has recommended more policy and program actions than the Convention. It provides 21 detailed time-bound policy and program targets under the seven priority areas, namely 1) Self-help organizations of persons with disabilities and related family and parent associations; 2) Women with disabilities; 3) Early detection, early intervention and education; 4) Training and employment, including self-employment; 5) Access to built environments and public transport; 6) Access to information and communications, including information, communication and assistive technologies and 7) Poverty alleviation through capacity-building, social security and sustainable livelihood program.

24 Biwako Millennium Framework(BMF) for Action towards an Inclusive, Barrier-free and Rights-based Society, United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) Para 9. [See <http://www.unescap.org.esid.psis.disability.bmf.bmf.html> accessed on May 20, 2009].

For the disability statistics and data collection, the BMF, on the other hand, provides a situation analysis in which the lack of data on disability prevalence, economic, social indicators of people with disabilities, and under-reporting of the prevalence were raised as issues. It encourages Governments to take more action on the data collection, applying the international standard.

3.2 The UN Convention on the Rights of Persons with Disability (CRPD) 2006

On 13th December 2006, in the sixty-first session of the General Assembly of the United Nations, the International Convention on the Rights of Persons with Disability was adopted. The convention is both reactive and proactive. It is comprehensive and encompassing civil, political, social, economic and cultural rights of persons with disabilities which not only prohibits discrimination but also calls for positive action and development activities to realise the rights of persons with disabilities.

One of the salient characteristics of the Convention is the inclusion of the concept that disability results from the interaction between individuals with impairments and attitudinal and environmental barriers. The Preamble and the Article 1 clearly negates the concept of disability as an individual pathology and draws attention to another dimension, in which the onus is on society that includes Governments and other stakeholders to remove barriers for persons with disabilities.

Another distinctive characteristic is the inclusion of a concept of reasonable accommodation. It refers to necessary and appropriate modification and adjustment needed to ensure the enjoyment of all rights by persons with disabilities on equal basis with others. It should be provided in response to individual needs. In implementing this concept, reasonableness of the accommodation will have to be judged in an individual context with the consideration of not imposing too much burden on companies or government institutions. For the disability statistics and data collection, the Convention calls for appropriate data collection and respects the privacy of persons with disabilities.²⁵ It also calls for dissemination of the statistics and data to be made accessible for persons with different disabilities.

For many resource-deprived countries, the Convention might imply much greater expenditure and use of resources. However, the inclusion of the

25 Article 31 of the CRPD.

article on international cooperation²⁶ responds to those concerns. Though each party fundamentally has to fulfill obligations under the Convention, the importance of partnership with international and regional organisations and civil society in the realisation of the rights of persons with disabilities is given importance in article 32. In operational terms, the article calls for making general development activities more disability inclusive, with emphasis on capacity building, cooperation in research and technology transfer, and economic assistance as appropriate.

The Optional Protocol²⁷ to the CRPD establishes two procedures aimed at strengthening the implementation and monitoring of the Convention. The first is an individual communications procedure allowing individuals to bring petitions to the Committee claiming breaches of their rights; the second is an inquiry procedure giving the Committee authority to undertake inquiries of grave or systematic violations of the Convention. The Optional Protocol to the Convention recognised the competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals. Bangladesh ratified the protocol on May 12, 2008.

4. Disability Movement in Bangladesh by State and Non State Actors and Need for the Reflection of International Standard in Domestic Legislation

Disability is a social issue and it can affect the lives of people with disabilities in any society. To bring a positive social change, there is need of conscious and organized people with disabilities who will participate spontaneously in the social mobilization work. To ensure their effective participation in the process of social change they need to form their very own organization and strong leadership skills. These organizations should be evolved with social and political commitment. If people with disabilities are stimulated, they can take control of their lives. They could bring change in the society for their inclusion and equal rights. The rights of people with disabilities get established when they are empowered and their participation is ensured.²⁸

26 Article 32, *Ibid*.

27 The Protocol was adopted in 2007.

28 Hossain, ASM Mosharraf, 'Participation of People with Disabilities Through Self-help Organizations', Action on Disability and Development(ADD) [See <http://www.dccd.n.data.ESCAP.doc> accessed on January 19, 2008].

In fact, state has the major role for an effective movement and hence can bring remarkable changes. Bangladesh, despite all the constraints of being a developing country took some initiatives for the protection of the rights of persons with disability. But that is not so significant. Again it must have to be acknowledged that in the disability movement of Bangladesh, the Non Government Organisations have a great contribution. In fact the NGO's are the pathfinder and the government plays the role of coordinator in the movement for the protection of rights of persons with disability.

In this section the Article will focus on the laws and policies and also on the specific sectors where the disability movement is undertaken by the state and non state actors, along with the major shortfalls in the process. The chapter will try to find out if there is any scope of reflecting international standard in domestic policies and practice and how far it is necessary to incorporate the provisions of international legal framework into the domestic one.

4.1 Laws and Policies Relating to the Rights of Persons with Disability

This sub-section has discussed some of the most relevant legislations and policies regarding disability issues. It also attempts to find out the adequacy of existing legal framework by revisiting them and by interviewing different stakeholders.

4.1.1 Constitution of the People's Republic of Bangladesh

The Constitution of the People's Republic of Bangladesh, as a supreme law of land protects the rights of persons with disability. The Constitution says all citizens are equal before law and shall be entitled to equal protection of law.²⁹ From its literal meaning it can be concluded that this fundamental right may be violated when a person is deprived of his/her legal capacity on account of an actual or perceived disability.

The Constitution states that no citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to any access to any public place of entertainment or resort or admission to any educational institution.³⁰ This is the fundamental right of every citizen and the state is bound to ensure this right to all citizens. Therefore, when in any public place there is no scope of accessibility in terms of infrastructure of the persons with disability and

29 Art. 27 of the Constitution of Bangladesh.

30 Art. 28(3) of the Constitution of Bangladesh.

there is a bar with respect to admission in the mainstream educational institutions, it would be considered to be the violation of the fundamental rights of the Constitution. Many other provisions are of particular relevance for the persons with disabilities, including, the right to life³¹, which may be violated when life-saving treatment is denied on the account of disability; right to freedom from torture and other cruel, inhuman or degrading treatment and punishment³², which may be violated when the persons with disabilities are placed in an inappropriate environment. However, forced institutionalisation of persons with mental or psychiatric disabilities may constitute arbitrary détention in breach of the right to liberty and security of a person.

To ensure the employment of disabled persons there is a remarkable judgment of the Indian Supreme Court. A Writ petition was filed against discrimination of visually impaired in competing for the coveted civil services of the country, and for the government to be directed to permit otherwise qualified blind candidates to appear in the selection examination. The Supreme Court not only allowed the petition, but also directed the Government to allow them to write the examination in Braille or with the help of a scribe.³³

4.1.2 The National Policy for the Persons with Disabilities 1995

This is the first Government initiative by which the fact of disability got the national recognition. It was not adopted taking the clinical view of the fact of disability rather it was placed in the mainstream development agenda. For the purpose of adopting the policy, a National Coordination Committee (NCC) on disability concerns was set up to consolidate the activities of different Government and Non Government Organisations to promote equal access to basic rights and fundamental freedoms. Though the policy was adopted, it was never notified in the government gazette.

4.1.3 Bangladesh Disability Welfare Act 2001

Bangladesh Disability Welfare Act was adopted with the objectives to protect and safeguard the rights and dignity of the persons with disability, ensure their participation in the national and social programs and their general welfare and also for matters connected therewith or incidental thereto.³⁴ The law lists 10 specific priority areas: (1) Disability prevention,

31 Article 32 Ibid.

32 Article 35(5) Ibid.

33 *National Federation of Blind vs. Union Public Service Commission (1993) 2 SCC 411: AIR 1993 SC 1916.*

34 See Preamble to Bangladesh Disability Welfare Act 2001.

(2) Identification, (3) Curative treatment, (4) Education, (5) Health care, (6) Rehabilitation, (7) Transport and Communication, (8) Culture, (9) Social security and (10) Self help Organisations. Bangladesh Disability Welfare Act has established National Coordination Committee (NCC) and National Executive committee (NEC) at national level and the District Disability Welfare Committee (DDWC) in each district of Bangladesh. The law specifically delegates the functions of these committees.

Though the law was supposed to secure and protect the rights of persons with disabilities, it fails to enumerate specific provisions regarding its enforceability. Again the name of the Act is itself discriminatory for the persons with disability. The word “welfare” seems that the State looks at the persons with disability in the eye of mercy. The Act has not identified any action as offence and has left the jurisdiction of the government to be exercised under the rule making power given in section 21. The law also restrained any legal action on grounds of public interest by inserting section 22.³⁵

There is a problem with respect to the hierarchy of appointment between the NCC and the DDWC. In the NCC the member secretary is the Managing Director of National Foundation for Development of the Disabled Persons whereas the Deputy Director of the District Social Services office acts as a member secretary for the DDWC. The Managing Director of National Foundation for Development of the Disabled Persons is not the controlling authority of the Deputy Director of the District Social Services office. So the NCC is not in a position to take any action against the District Committee, if it acts in violation of law or does not comply with the rules and orders.

According to the schedule of the Act, the DDWC should meet at least after every two months. On February 2007, the National Forum of Organizations Working with the Disabled (NFOWD) conducted a country wide survey through its network members to find out the recent activity status of DDWC. The survey shows that 36% of DDWC held meeting within last three months, 28% of DDWC held no meeting within last one year and 4% of

35 Section 22 of Bangladesh Disability Welfare Act 2001.

“Freeing from personal liabilities/ Protection against being sued: No suit or prosecution shall lie in any civil or criminal courts against the Government, or any member of the Coordination Committee, or the Executive Committee or the District Committee or any officer, employee or any other person, so authorized or assigned, for his actions in discharging the assigned duties so done in good faith under this Act or at the order of the competent authority to that effect even if such act has either caused; or has reasons to be caused that happen, damages to any one in the process.”

DDWC had never arranged any meeting.³⁶ Rojob Ali³⁷ told the author that in the district of Sylhet, after the interval of three years, the last meeting was held in November 2008. He being a member of the Committee is to be invited in the meeting. The fact is that the DDWC meets only if he along with the NGO workers takes the initiative.³⁸ Again, there is an obligation on the part of each DDWC to submit an activity report to the NEC on an annual basis³⁹ but it does not maintain regularity. Anowara Begum,⁴⁰ the Deputy Director of the Department of Social Welfare told⁴¹ that due to some problem, the meeting of the DDWC is not generally held on a regular basis. She also mentioned that they never provided any activity report to the NEC. In this respect she stated that if any report is called for from the centre, then only they comply with such requirements.

4.1.4 National Action Plan on Disability 2006

The National Action Plan was adopted in 2006 following Bangladesh Disability Welfare Act 2001. It covers the areas of national coordination, disability prevention, training, identification and early detection, education and material development, communication, employment and rehabilitation, human resource development, social security and promoting self-help organizations. Though the Plan was adopted with the coordination of different ministries of the Government of Bangladesh, the Ministry of Social Welfare has the foremost duty to implement the actions taken thereof. But, practically it is indeed very difficult for the Ministry of social welfare alone to manage all the issues and concerned affairs.

4.1.5 Disability Welfare Rules 2008

For the implementation of Bangladesh Disability Welfare Act 2001 the Rules have been adopted on February 20, 2008. Under the rules, the DDWC will take all necessary steps for the identification of the persons with disability within its area.⁴² It has prescribed the functions of DDWC,⁴³ inter

36 WHOSE VOICE WE COUNT? Contextualizing Biwako Millennium Framework (BMF) In Bangladesh: A Reality Check. An alternative report done by Action Aid Bangladesh and Advancing Public Interest Trust (APIT), P.26.

37 Mr. Rojob Ali, who is a visually impaired person, is the Chief Executive of the Green Disable Foundation based in Sylhet. He is also the divisional representative of NFOWD.

38 Mr. Rojob Ali was interviewed on May 11, 2009.

39 Section 13(c) of Bangladesh Disability Welfare Act 2001.

40 She is the member secretary of the DDWC, Sylhet.

41 Interviewed on May 12, 2009.

42 Rule 3 of Disability Welfare Rules 2008.

alia, to take steps for ensuring the absolute participation of the persons with disability in the national and social activities, to provide stipend, scholarship and fellowship for them, to establish research and training activities, to collect different scholastic elements i.e. brail guide, stylus, perkins brailer, brail printer etc, to provide all legal supports for the protection of the legal right of them, to provide economic and other supports for their self-employment, to take steps to reserve seats for them in public transport, to take initiatives to remove discrimination in the case of employment etc.⁴⁴ Disability Welfare Rules 2008 also prescribes that all the public welfare offices must have special means for the accessibility of the persons with disability.⁴⁵ For that purpose it has specifically mentioned the places where special efforts and care have to be taken. 5% places of each residential building should be easily accessible for the persons with disability.⁴⁶ Again the law has specifically enumerated the provisions regarding the implementation of the accessibility of the persons with disability in different public and private buildings.⁴⁷

The priority areas mentioned in Bangladesh Disability Welfare Act 2001 provided only general guidelines.⁴⁸ The notable feature of the Rules of 2008 is that it has concentrated only on the issues of identification and communication of the persons with disability. Regarding the other issues, the law prescribes general guidelines only. The purpose behind the adoption of Rules within the purview of the Act is to enumerate the specific means and ways for assisting the implementation of the targets of the Act. Disability Welfare Rules 2008 does not cover all the issues addressed by the Act of 2001. Again, it has to be admitted that the initiative to ensure the accessibility of the persons with disability in the public offices as required by the Rules⁴⁹ can not be implemented in a day. But it can be reasonably expected that the process for the identification of the persons could be initiated with immediate effect. In some areas a certificate is given to the persons with disability by the Department of Social Welfare. In Sylhet, Anowara Begum, the Deputy Director of the Department of Social Welfare told that from 2005 the persons with disability are being provided with a

43 Rule 13, Ibid.

44 Rule 15, Ibid.

45 Rule 16, Ibid.

46 Rule 17, Ibid.

47 Rule 17 and 18, Ibid.

48 Schedule of Bangladesh Disability Welfare Act 2001.

49 Rule 16,17,18 of Disability Welfare Rules 2008.

certificate. She considers this initiative as the identification of the persons with disability. Till the date of interview⁵⁰ 205 persons were provided with that certificate. With respect to the benefits of this identification, she mentioned that by showing the certificate the persons get disability allowance and loans from the Government. Under the Rules of 2008, the Government has to take initiative for the identification of the persons with disability. The Deputy Director told that the persons have to appear on their own initiative with the medical certificates, nationality certificates and photos. She has identified the lack of manpower as the main problem for the slow functioning of the Department. Under the Rules,⁵¹ the District Committee may delegate the powers and functions of identification upon the chairman, member and secretary of the union parishads, community polices, Commissioners of City Corporations, health workers, NGO representatives working with disabled persons etc. This initiative may reduce the work load of the Department of Social Welfare. More than one year have passed after the Rules were enacted but the District Committee of most of the districts has not taken any initiative for the identification of the persons with disability as prescribed by the Disability Welfare Rules 2008.

4.2 Disability Movement vis-à-vis the Right to Education in Bangladesh

From 1960s the disability movement in Bangladesh was concentrated primarily on the right to education of the children with disability. In those days the Government took the initiative to continue the integrated blind education project. The reason behind was that the blindness was visible and in the matter of intellectuality, these persons were treated as normal persons. After the 1970's, though some private initiatives were taken in the field of disability with respect to hearing and visual intellectuality, initiatives with respect to the education gradually increased.⁵²

The Constitution of Bangladesh offers a uniform, mass oriented and universal system of education, extending free and compulsory education to all children. It has been more than a decade since the United Nations declared the "Education for All" in 1990. Bangladesh government also made a declaration on "Education for All" and introduced Compulsory Primary Education through constitutional means. From the country report of

⁵⁰ Interviewed on May 12, 2009.

⁵¹ Rule 3 of Disability Welfare Rules 2008.

⁵² Zaman, Dr. Sultana Sarwarat Ara 'Disability movement in Bangladesh', *Supra* note 3, pp 15-23.

Bangladesh⁵³ we find that in every district under the Department of Social Services (DSS), Government of Bangladesh operates 5 special schools for blind children, 7 for deaf children, 1 for intellectually disabled children. The DSS also operates a total of 64 integrated schools (special classes in the mainstream schools) for blind children in 64 districts. The Ministry of Social Welfare established a National Centre for Special Education (NCSE) in Dhaka in the year 1992. But the reality is that around 4% children with disabilities get enrolled in the Government educational institutions.⁵⁴

The University of Dhaka offers a Masters course and graduation on Special Education under the Institute of Education and Research (IER). The courses have 3 disciplines: i) Education of Persons with Visual Impairment; ii) Education of Persons with Hearing & Speech Impairment; and iii) Education of Persons with Intellectual Impairment. Recently a disability officer has been appointed in Teachers and Students Centre (TSC) to look after the affairs of the students with disability. On August 16, 2007 the first ever 'Resource Centre' for visually impaired students was launched at the Central Library of the Dhaka University.⁵⁵ 15 post-graduate teachers are trained every year by the Department of Special Education under the Dhaka University. Several other teachers' training programs are also being offered by other private voluntary organizations. The second phase of the national Primary Education Development Program (PEDP-II) has included the issue on inclusive education program. Along with the formal education program, Bangladesh has a very strong and vast non-formal education structure, mostly operated by the NGOs, where the inclusion of learners with disabilities has been initiated.⁵⁶

Bangladesh National Federation of the Deaf (BNFD) runs nine special schools for the sign language users. The Deaf High School is located within the premises of the BNFD in Dhaka and provides residential facilities to the students. The school was approved by the Government in 1990 and follows the mainstream national curriculum. But the completion rate of high school

53 COUNTRY REPORT BANGLADESH, The 26th Asia-pacific International Seminar on Education for Individuals with Special Needs, The National Institute of Special Education (NISE), Yokohama City, Japan, December 4 – 7, 2006.

54 *Supra* note 38, p.12.

55 The Daily Star, August 17, 2007.

56 BANGLADESH & BIWAKO: ACHIEVEMENTS & CHALLENGES, Country report of Bangladesh presented at High Level Inter-Governmental meeting on the mid-point Review of the Asian and Pacific Decade of Disabled Person 2003-2012, 19-21 September 2007, Bangkok, p. 4.

by the deaf students is below 50%, which is indicative of the dismal condition and quality of academic services. Baptist Mission Integrated School (BMIS), situated in Mirpur, Dhaka, is the only school in Bangladesh that provides education and accommodation to visually impaired girls from kindergarten to the secondary level. Now there are 100 visually challenged students studying at different classes in the school.⁵⁷ The Society for the Welfare of the Intellectually Disabled (SWID), established in 1985 in Shalgaria, Pabna, has 48 academic branches all over the country where a total of 7516 children and adult with disabilities are provided with life skill training.⁵⁸

The Convention on the Rights of Persons with Disability 2006⁵⁹ says that states are to ensure equal access to primary and secondary education, vocational training, adult education and lifelong learning to the persons with disability. Education for the persons with different forms of disability is to employ the appropriate materials, techniques and forms of communication. Pupils with support needs are to receive support measures, and pupils who are blind, deaf and deaf-blind are to receive their education in the most appropriate modes of communication from teachers who are fluent in sign language and braille. The BMF also stresses on education issues and recommended to establish a national action plan. The accomplishments of Bangladesh has been so far-National Action Plan on Disability 2006; Institutional Programs by Department of Social Services for Persons with Disabilities relating to education and training; Poverty Reduction Strategy Paper (PRSP); National Education Policy 2000; Primary Education Development Program (PEDP)-II; Teaching Quality Improvement in Secondary Education Project under the Department of Secondary and Higher Education, Ministry of Education and National Plan of Action (NPA) for Children (2004 – 2009). Education issue of individuals of special needs is, however, included in all the above policies, legislations, plan/projects etc.

Although we have abundant policies and laws, the striking feature of our existing system is that only 8% of the children with disability have received any form of education.⁶⁰ Inclusive education is included in National Plan of Action for Education for All but it seems that there is a great need for more operational inclusion strategies. The social attitude i.e. the attitude of

57 [See <http://bmsworldmission.org/> accessed on April 15, 2010].

58 *Supra* note 38, p. 42.

59 Article 24 of CRPD.

60 *Examples of Inclusive Education Bangladesh*, UNICEF Regional Office for South Asia, 2003, p.6.

parents, communities, peers and teachers towards the children with disability must be changed. More children would be able to follow classes in public schools if there are minor adaptations on mobility, daylight, noise levels, seating, toilets etc. Evidence suggests that inclusive education is more cost effective than specialised school.⁶¹

There exists certain amount of lack of coordination between the Ministry of Education and the Ministry of Social Welfare. A demand was raised for education and inclusion of the Visually Impaired (VI) children in the mainstream education by the Ministry of Social Welfare but Ministry of Education does not pay heed to the need by believing that it was Ministry of Social Welfare's responsibility to render education facilities to the VI children. As a result the teachers in the primary and secondary schools refuse to admit VI children in a plea that they have no resources or training to teach VI children in the mainstream educational institutions.⁶²

4.3 Remarkable Changes in the Right to Employment and Rehabilitation of Persons with Disability

Unemployment always can make the life of a person with disability vulnerable, critical and unbearable. Though the Government has adopted some policies regarding the employment of the persons with disability, there is no significant achievement in the private sector. There are many employment sectors where these persons may be appropriately employed and given the opportunity they can prove their potentialities. It can be rightly said that persons with disability are not burden to society; rather they can contribute to the development of it. Again it is the duty of the employing institutions to ensure a decent working environment for the persons with disability.

The BMF set targets for the member states that at least 30 percent of the signatories will have to ratify the International Labour Organization Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983, by 2012. By 2012, at least 30 per cent of all vocational training programs in signatory countries will be inclusive of persons with disabilities and will provide appropriate support and job placement or business

61 *Disability in Bangladesh, A Situation Analysis*, The Danish Bilharziasis Laboratory, 2004.

[See <http://www.siteresources.worldbank.org/Disability/Resources> accessed on May 21, 2009].

62 Islam, Md. Shafiqul 'Education for Visually Impaired Persons', *Supra* note 3, p. 280.

development services for them. As a signatory state,⁶³ Bangladesh has the responsibility to ensure the decent working conditions for the persons with disability as set by the BMF action plan.

In employment, the government has declared a 10% quota for the persons with disabilities in the government sector.⁶⁴ Again, under Disability Welfare Rules 2008, the Government will take necessary steps to ensure employment of persons with disability within the quota system in the public, private and autonomous institutions.⁶⁵ In reality, due to loopholes in the employment policies and a lack of proper monitoring, the declared quota system for persons with disabilities has not adequately been implemented. For an instance, Bangladesh Public Service Commission (PSC) failed to provide admit cards to the visually challenged candidate for Bangladesh Civil Service (BCS) examination and denied scribe support for a visually challenged candidate for the preliminary test of 28th BCS examination.⁶⁶

The Government has initiated micro-credit provision for persons with disabilities under soft terms and conditions. The Ministry of Social Welfare through Department of Social Services is operating micro-credit program for persons with disabilities while four national banks also initiated special micro-credit program to support self-employment of persons with disabilities.⁶⁷

In Tongi there is a Vocational Training Centre for persons with disability. There persons with hearing and visual impairment are trained with vocational training. There is a 'hearing' centre for the training of persons with visual impairment. The hearing and speech specialist from Sweden, with modern machineries are engaged to train these persons about the art of using the hearing instrument.

Some of the NGOs run many specialised rehabilitation center, often located in urban areas. The Center for the Rehabilitation of the Paralyzed, commonly known as CRP is doing a significant job in rehabilitating the disabled persons. The Government has established institutions for the treatment of the children and adult with disability. CRP Savar entertains both in-patients (100 beds) and out-patients. The IMPACT Foundation Bangladesh runs a floating

63 Bangladesh signed the Convention in 1993.

64 Clause 8(f) of the National Policy for the Disabled in 1995.

65 Rule 13(Jha) of Disability Welfare Rules 2008.

66 Deprived visually challenged candidates demand opportunities to PSC in press conference, *Ittefaq*, November 21, 2008.

67 *Supra* note 58, p.4.

hospital which provides general treatment and rehabilitative surgery to people with disabilities living in remote areas. The *Bangladesh Protibondhi Kollyan Somitee* (BPKS), a non-governmental and self-help organization for persons with disabilities, runs computer training for orthopaedically disabled and one job placement program covering both public and private sector. Based in Dhaka, the BPKS operates in 32 districts of the country. There are many other NGOs which render service for the employment and rehabilitation of the persons with disability.

4.4 Condition in Respect of Early Identification and Intervention Process

The BMF specified that Governments should ensure detection of disabilities at as early age as possible. Again by 2012, all infants and young children from birth to four years old will have access to and receive community based early intervention services which ensure survival with support and training for their families.

Disability Welfare Rules 2008 has specifically enumerated provisions regarding the identification and registration of persons with disability and for that purpose the District Committees will take necessary steps prescribed in the Rules. But the identification activities complying with the Rules of 2008 has not yet started in most of the areas of the country. Rojob Ali⁶⁸ stated that in Sylhet division i.e. in the districts of Habiganj, Moulvibazar, Sunamganj and Sylhet no DDWC has taken any initiative for the identification and registration of the persons with disability.

Regarding the early intervention the law seems to have no specific goal. Again, the national health policy appears to have no comprehensive approach to address the issue of disability. The Health, Nutrition and Population Sector Program (HNPS) run by the Ministry of Health and Family Welfare do not have any substantive strategy or action plan for rehabilitation and early detection.⁶⁹

4.5 Self Help Organizations (SHOs) and Position of Bangladesh

In order to ensure self representation, participation, equality of opportunities and overcome common difficulties there is no alternative to promote Self Help Organisations for the persons with disabilities. According to BMF

68 Supra note 40.

69 Supra note 38, p. 47.

Governments, international funding agencies and NGOs should establish policies with the requisite resource allocations to support the development and formation of self help organisations of persons with disabilities in all areas.

Bangladesh Disability Welfare Act 2001 provides⁷⁰ state will take steps to organize training programs in sub-district, district and division level for the progress of leadership of the persons with disability. Similar view was also expressed in the National Policy for the Persons with Disabilities 1995.⁷¹ Disability Welfare Rules 2008 is absolutely silent on this issue. Despite the issue been addressed by many policy instruments and active initiatives taken by the NGOs, the Government has not been able to take remarkable initiatives in this respect. The Action on Disability and Development (ADD) and the Action Aid Bangladesh have a significant contribution in organizing the leadership of the persons with disability. In Sylhet, the Disable Citizen Council, a SHO, was formed in July, 2008 under the auspices of Green Disable Foundation. Currently, the organization is running Candle Training and Manufacture Program under which the members are manufacturing different types of candles for commercial purposes. The Council also organizes different workshops to make the persons with disability aware of the laws and policies relating to their right to education, employment, accessibility etc.⁷² However, there is no such initiative on the part of the Government.

4.6 Necessity of Access to Friendly Public Transport System by a Person with Disability and Progress Made in this Respect

In order to improve the living standard of the disabled persons, mobility is often a prerequisite. The CRPD and the BMF gave a stress on the assurance of the mobility or transport facilities for the disabled persons. The CRPD says that personal mobility and independence are to be fostered by facilitating affordable personal mobility, training in mobility skills and access to mobility aids, devices, assistive technologies and live assistance.⁷³ The BMF says that Governments should adopt and enforce accessibility

70 Part 10 of the Act.

71 Section 13 of the Policy.

72 Supra note 40.

73 Article 20 of CRPD.

standards while planning for public facilities, infrastructure and transport, including those in rural contexts. All new and renovated public transport systems, including road, water, light and heavy mass railway and air transport systems should be made fully accessible to persons with disabilities.

Under Bangladesh Disability Welfare Act 2001 the president of the district bus owners organization is the member of the DDWC. The purpose behind this inclusion was to ensure the suitable transport system for the persons with disability. But in most of the cases the president of the district bus owner's organization is not at all informed about his inclusion in the committee. Azizur Rahman Ambia is the President of the District Bus Owners Association of Sylhet and assumed the post from June 27, 1994. He does not know that he is a member of the DDWC of Sylhet.⁷⁴ He was never invited to attend any meeting of DDWC.

An executive order from the Prime Minister's office has been issued in March 2002 to ensure transport facility to the persons with disabilities. It prescribes installing separate ticket counters at stations, terminals and ports, reserving specific number of seats in buses, trains, launches and steamers, constructing slope ways/ramps at every government office.⁷⁵ In line with the order, some arrangements have been made but too little of it has been found implemented. Consequently, persons with disabilities are debarred from availing themselves of the public services. More importantly, the Ministry of Communication and Bangladesh Road Transport Authority have not adopted any policy in this regard.

4.7 Lack of Initiatives for the Welfare of Women with Disability

One of the priority areas and major concern of the BMF is the women with disability. Again under the UN Convention⁷⁶ the state parties are under an obligation to take measures to ensure the full and equal enjoyment by women with disability of all human rights and fundamental freedoms. Bangladesh does not have any legal framework to protect the rights of women with disabilities.

74 Interviewed on May 13, 2009.

75 *Supra* note 40, p.51.

76 Article 6 of the CRPD.

Though Bangladesh has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), women with disabilities have always been ignored. The Ministry of Women and Children's Affairs also does not address the issues of women with disabilities. There is also no specific anti-discriminatory law that addresses the rights of the women with disabilities. The national women advancement policy of Bangladesh also bypasses the women with disabilities. The mainstream movement for the protection of the rights of women does not raise this issue at national level.

5. Conclusion by Way of Recommendations

The basic human rights of citizens of Bangladesh have been protected by its constitution regardless of gender, class, religion, race etc. It does not discriminate between persons with disabilities and persons without disabilities. The National Policy for Persons with Disabilities, 1995 has actively considered the relevant constitutional provisions dealing with the rights of persons with disabilities. The Government has enacted Bangladesh Disability Welfare Act 2001 to protect and promote the rights of the persons with disabilities following the Disability Policy and the commitments to United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities. Recently the country has adopted the Rules for the implementation of the objectives of the Act.

From 1999, on the first Wednesday of April, the country has been celebrating the "National Disability Day" and October 15 as the "White Cane Day". On the other hand, from 1992, December 3rd is being celebrated as the "International Disability Day". On those days, the print and electronics media of our country publish special features and broadcast special programs, the target of which is to ensure the equality and full participation of persons with disability in all sectors of society. These programs are immensely helpful to aware general people about the rights of persons with disability. As a result of this consciousness, our intellectuals are now thinking, writing, painting and producing different dramas. Even solely based on the life of a disabled girl a full length feature film has been

released in Bangladesh, the message of which was that the disabled persons are not burden of the society.⁷⁷

Again being a ratifying country⁷⁸ of the 2006 UN Convention and an active member of formulating the Biwako Millennium Framework, Bangladesh has initiated implementing activities towards addressing the inclusive, barrier free and rights based society for persons with disability. Although the activity as instructed by the Biwako Millennium Framework is still far behind of implementing in full, the efforts to improve the condition of the Government and the NGOs are noticeable. Around 400 NGOs in the country are working with the mission of equalization of rights of persons with disabilities. These combined efforts of the GO-NGO sector have created a movement towards a paradigm shift from charity to equity towards persons with disabilities. However, following recommendations can be suggested to ensure better protection and enjoyment of the rights of persons with disability:

1. A close coordination and joint effort among all the concerned Government Ministries and Departments is needed to prepare an effective and uniformed action plan to ensure the education, rights and opportunity for children with disabilities and individuals with special needs.
2. Private sector should be more equipped and empowered in serving the persons with disability. There are many areas where they may be employed and the private institutions may initiate quota system for this purpose. More holistic approach of the private sector would definitely strengthen the economic security of persons with disabilities.
3. Necessary actions and policies are needed to be adopted particularly, for women and children following the BMF action plan and the CRPD 2006. However, women with disabilities should be included in the mainstream women's right movement with greater cohesion.
4. Bangladesh Government has to increase budgetary allocation for proper implementation of the recently adopted action plan formulated by the inter-ministerial task force.
5. The role of media is pivotal in building a healthy living environment for the persons with disability. Journalists can publish sensible reports on the living conditions and social harassment of the persons with different types of disability that they face in their day to day life. The electronic media may broadcast special reports and special dramas to sensitize the people for the protection and promotion of the rights of persons with disabilities.

77 *Bihongo*, a feature film, directed by renowned dramatist Abdulla Al Mamun, was released on August 24, 2001.

78 Bangladesh ratified the Convention on November 30, 2007.

6. Efforts should be taken to design, develop and distribute accessible ICT products, e.g., transcriber, interface, software and assistive technology products as well as accessibility techniques for all categories of disabled people including visually and physically challenged, hearing and speech impaired, intellectually disabled, autistic children and others. The existing National Information and Communication Technology (ICT) policy should be transparent on accessibility to the persons with disabilities.
7. Special, integrated and inclusive education systems are practiced in Bangladesh. So there is a definite need for further comprehensive and intensive research to be conducted on how best the existing system can be improved, or how to optimize the benefits considering the socio economic condition of the country. The teachers of these special schools need to be well trained and their salary and benefits should be increased. There should be an uninterrupted and adequate supply of braille books and equipment and other training materials for the persons with specific disabilities who need them most. A uniform curriculum should be developed by the Government for ensuring a standard education for all.
8. Along with the Ministry of Social Welfare, the other ministries of the Government should also express their commitment in specific areas in the protection of the rights of the persons with disability.
9. Whether the quota system for the employment of persons with disability in the Government sector is being implemented properly, needs to be reviewed by the Government.
10. The Government must do a comprehensive exercise to determine the actual number of the persons with disability. This is important for developing any realistic plan for extending the service to the persons with disabilities and for improving the preventive mechanisms. The identification and registration of the existing persons with disability must be started immediately complying with the provisions of the Rules adopted in 2008. The Rules have to efficiently cover all the priority areas addressed by Bangladesh Disability Welfare Act 2001, the Biwako Millennium Framework and the United Nations Convention on the Rights of Persons with Disability 2006.