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An Analysis of the Mental Health Act, 2018 of Bangladesh: The Relationship between International Treaties and State Laws

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ABSTRACT

Every nation deals with distinct challenges, and deciding how to address or accept them can be complex. Mental health problems are particularly significant among these challenges. Despite increasing global awareness of mental health issues, there remains a notable lack of discussion about the immediate and long-term physical and emotional impacts experienced by individuals with mental health conditions. In Bangladesh, these issues are increasingly prevalent in families, communities, and workplaces, contributing to rising discrimination against people with mental disorders and making it challenging for them to protect their rights in society. The UDHR, ICCPR, ICESCR and CRPD, which advocates for mental health protections, questions how well domestic laws such as the Bangladesh Mental Health Act 2018 meet international standards. Efforts are underway to fully comply with this law, which, like any legislation, has both strengths and weaknesses. Consequently, this paper critically examines both perspectives, focusing on Bangladesh's current struggles to ensure the rights of those affected by mental health issues. The authors assess the broader implications of the Bangladesh Health Act 2018, scrutinizing its objectives, implementation strategies, and its effectiveness in addressing mental health concerns to ensure equitable treatment and uphold the essential legal rights within the country.

Keywords: *Mental health issues, Mental disable people's human Rights, Strong State policy, Mental Health Review Tribunal.*



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INTRODUCTION

Despite infrastructure improvements over the years, population growth and infection rates continue. Currently, the budget allocated for mental health management in Bangladesh is very low, only 0.44 percent. There is only one postgraduate institution in Dhaka, the National Institute of Mental Health (NIMH), and a psychiatric hospital in Pabna.¹ There have been allegations of malpractice and wrongful treatment against mental health care providers and physicians. According to a survey, only 16 percent of patients go directly to professional mental health care, the rest of the patients rely on exorcisms, tantra-mantra.²

In rural areas, the delay in seeking treatment after mental health problems ranges from three months to several years, and in urban areas the average delay is 10 weeks. Lack of awareness about the seriousness of the problem and unavailability of services are the main reasons for this delay. Access to services has become more difficult in the coronavirus situation. Even in developed countries, 35-55 percent of patients suffering from severe mental illness do not receive proper care.³ On the other hand, considering the miserable condition of mental health in Bangladesh can be stated as: 18% people of total population are suffering from different mental distresses and 49% of suicide victims were between 20 and 35 years of age. Moreover, we have only 270 psychiatrists been available to treat 22.5 million people that are inadequate.⁴

¹ Faruq Alam et al., "Stressors and Mental Health in Bangladesh: Current Situation and Future Hopes," *BJPsych International* 18, no. 4 (2021): 91-94, <https://doi.org/10.1192/bji.2020.57>.

² Turya Nicholas Mandal Hossain Mohammad Omar Khayyam, Mrinmoy Samddar, "Physical Health Review of Mental Health Management in Bangladesh and Prospects of Telecare," *Bonikbarta*, July 2024, https://bonikbarta.net/home/news_description/270491/.

³ Md. Kamrul Hasan and Zaziratul Zannat, "Mental Health Challenges in Bangladesh and the Way Forwards," *Annals of Medicine and Surgery*, 2022, <https://doi.org/10.1016/j.amsu.2022.104342>.

⁴ Hasan and Zannat.

Although more implementation is required for improvement, the recent replacement of Bangladesh's Lunacy Act 1912 with the Mental Health Act 2018 is a positive step in resolving legal inadequacies pertaining to mental health.⁵ The current state of affairs in Bangladesh highlights the lack of legislation addressing the infringement of patients' rights during the treatment of mental illness, especially in difficult social settings. Additional law is required to protect the rights of those who do not come into the disability category, even if the Disability Rights and Protections Act of 2013 recognizes the rights of those with mental disabilities.⁶ Effective social reintegration is further hampered by the absence of comprehensive laws governing patient confidentiality and the acceptance of community-based treatment. In order to protect the fundamental rights protected by Bangladesh's Constitution, it is imperative that the criminal justice system take into account the mental health of mentally ill people.⁷

An important legislative provision that is being adopted in many different countries across the world is the recognition of the mental health of women and children who are victims of abuse within their homes and other forms of violence. However, in other situations, this clause might discourage psychiatrists from doing essential assessments and treatments, preventing patients from receiving mental health services because they are afraid of facing legal consequences. This is a legitimate concern, especially for a nation where it is easy to fabricate certificates, which might have major consequences for guardianship, property rights, inheritance, custody, criminal responsibility, and other related issues.⁸

⁵ Lunacy ACT 1912 has been repealed by Mental health Act, 2018

⁶ Disability Rights and Protections Act 2013, in this act is mentioned all equal rights to every citizen including fundamental basic human rights.

⁷ Richard M. Duffy and Brendan D. Kelly, "The Right to Mental Healthcare: India Moves Forward," *British Journal of Psychiatry* 214, no. 2 (2019): 59–60, <https://doi.org/10.1192/bjp.2018.250>; Erin Nelson* and this, "Alberta's Mental Health Review Panels: Accountable, Transparent Adjudicator," no. July (2020): 1–23.

⁸ Cohen Avital Alfandari, Magnezi Racheli, and Weinstein Orly, "Review and Analysis of Mental Health Reforms in Several Countries: Implementation, Comparison

METHOD

It would be a *thematic*⁹ and *doctrinal*¹⁰ research. A logical framework shall be developed on the basis of various ways of data analysis such as frequency distribution, the statutes, news and cases shall be studied, factor analysis and other statistical tools of analysis. In this sort of research work data collection is pretty important, due to that I'd like to critically analyze the study relevant sources and data. In order to give complete shape to the study, a range of research methods would be used: review of primary and secondary sources, literature, books, journal, relevant public records, research papers, available statistical data or reports published in both indigenous and extraneous scope; analysis of both prior existing (complementary and concentrated) legal instruments on mental health and case law (if any) relating to concerned issues in Bangladesh; besides that concerned International documents, conventions.

UNDERSTANDING MENTAL HEALTH

Mental health encompasses social, emotional, and psychological well-being, influencing our thoughts, feelings, and responses, as well as our stress management, interpersonal relationships, and decision-making. Each life stage, from childhood to adulthood, plays a vital role in mental health. If individuals

and Future Challenges," *Annals of Psychiatry and Treatment* 4, no. 1 (2020): 013–024, <https://doi.org/10.17352/apt.000015>; Akinyinka Omigbodun Syed A K Shifat Ahmed, Motunrayo Ajisola, Kehkashan Azeem, Pauline Bakibinga, Yen-Fu Chen © Nazratun Nayeem Choudhury, Olufunke Fayeun, Frances Griffiths Bronwyn Harris 5 Peter Kibe Ric hard J Lilford, "Impact of the Societal Response to COVID-19 on Access to Healthcare for Non-COVID-19 Health Issues in Slum Communities of Bangladesh, Kenya, Nigeria and Pakistan: Results of Pre-COVID and COVID-19 Lockdown Stakeholder Engagements," *BMJ Global Health*, 2020, <https://doi.org/doi:10.1136/bmjgh-2020-003042>.

⁹*Thematic analysis* is a method of analyzing qualitative data. It emphasizes identifying, analyzing, and interpreting patterns of meaning (or "themes") within qualitative data

¹⁰*Doctrinal research* asks what the law is in a particular case and is concerned with the analysis of the legal doctrine and how it was developed and applied.

experience mental health issues, these may have lasting effects on their cognition, mood, and behavior throughout their lives. Section 2, Subsections (15, 16) of the Mental Health Act 2018 in Bangladesh define "mental illness" as a form of mental disease excluding drug addiction and mental retardation, as determined by the responsible Medical Officer. "Mental disorder" is defined as a clinically recognized set of symptoms or behaviors, including mental retardation and drug addiction, which interfere with an individual's normal life and are associated with various physical and mental conditions, as stated by the law.¹¹ The World Health Organization (WHO) in 1948 emphasized the critical factors of mental health.^{12 13}

International Legal Instruments on the Right to Mental Health

International legal instruments on the right to mental health based on mental disabled people: Some of International and universal instruments that is basically focused on the right to mental health for individuals with mental disabilities such as:

Universal Declaration of Human Rights, UDHR (1948): Article 25 of the Universal Declaration of Human Rights asserts that everyone has the right to a standard of living adequate for the health and well-being of themselves and their families, including essential necessities like food, clothing, housing, and medical care, as well as access to essential social services. Furthermore, the article emphasizes the right to security in the event of unemployment or sickness.¹⁴ On the other hand, the International Covenant on Economic, Social and Cultural Rights, "ICESCR " (1966) under Article 12 mentioned, recognized by the States Parties the right of everyone to enjoy the

¹¹ Mental Health Act ,2018, Bangladesh sec 2Sub section 15,16

¹² World Health Organization,1948

¹³ World health Organization, "Comprehensive Mental Health Action Plan," 2021; Amar Shah, "Is the Mental Health Review Tribunal Inherently Unfair to Patients?," *Psychiatry, Psychology and Law* 17, no. 1 (2010): 25-31, <https://doi.org/10.1080/13218710903092133>.

¹⁴ Universal Declaration of Human Rights, UDHR (1948) In Article 25

maximum standard of physical and mental health rights for their betterment.

This highlights the commitment to ensuring not just physical health but also mental well-being, emphasizing the importance of mental health as an integral part of overall health and well-being. It underscores the obligation of governments to promote and protect the mental health of their citizens as a fundamental human right. The general comment no 14 of ICESCR¹⁵ mentioned in 34 of legal obligations that, it emphasizes the need to adhere to best practices and international standards, including those outlined in the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. This serves as a commitment to ensuring that individuals with mental illnesses receive appropriate and ethical treatment, respecting their rights and dignity.¹⁶¹⁷

Moreover, Article 5(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁸ implies that the right to public health, medical care, social security, and social services should be provided without discrimination based on race,

¹⁵ Article 12,14 International Covenant on Economic, Social and Cultural Rights, "ICESCR" (1966)

¹⁶ Office of the High Commissioner for Human Rights, "CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)," *Adopted at the Twenty-Second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4)*, vol. 2000, 2000, <https://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC14.pdf>.

¹⁷ General comment 14(34) of ICESCR, "In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs. Furthermore, obligations to respect include a state's obligation to refrain from prohibiting or impeding traditional preventive care, healing practices and medicines, from marketing unsafe drugs and from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases". <https://www.refworld.org/pdfid/4538838d0.pdf>, <https://www.degruyter.com/document/doi/10.9783/9780812205381.359/html?lang=en>

¹⁸ Article 5(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

color, descent, or national or ethnic origin. This includes individuals with mental disabilities, as they should not face any discrimination in accessing these essential services. The provision underscores the importance of ensuring that individuals with mental disabilities, regardless of their racial or ethnic background, have equal access to public health services, medical care, social security, and social services.

On the contrary, in accordance with Article 7 of the International Covenant on Civil and Political Rights (ICCPR) 1966¹⁹ prohibits the use of torture or cruel, inhuman, or degrading treatment or punishment under any circumstances. This provision is relevant to individuals with mental disabilities as it emphasizes the need to protect them from any form of abuse or mistreatment, whether in medical settings, care facilities, or within the criminal justice system. This article underscores the obligation of states to ensure that individuals with mental disabilities are treated with dignity and respect, and that their rights to humane treatment are upheld. In general comment no. 20²⁰ it serves as a crucial safeguard against any form of discrimination, neglect, or abuse that individuals with mental disabilities might be vulnerable to, reaffirming the principle of their inherent dignity and the importance of protecting their well-being.²¹²²

Convention on the Rights of Persons with Disabilities (CRPD), 2006: The Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, contains several articles directly relevant to

¹⁹ International Covenant on Civil and Political Rights (ICCPR) 1966, Article 7

²⁰ Duffy and Kelly, "The Right to Mental Healthcare: India Moves Forward."

²¹ pp. 171 - 217 Human Rights Committee's Monitoring of ICCPR Rights, "A Commentary on the International Covenant on Civil and Political Rights The UN," Cambridge University Press, 2020, <https://doi.org/DOI:https://doi.org/10.1017/9781108689458.010>.

²² General comment 20 mentioned, "In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end." <https://www.refworld.org/docid/453883fb0.html>

the rights of individuals with mental illnesses. Some of the key articles include: Article 12²³ also added the general comment no 12²⁴ emphasizes the right of individuals with mental illnesses to enjoy legal capacity on an equal basis with others, promoting their autonomy and decision-making in all aspects of life, including medical treatment and care.²⁵ Article 25 highlights the right of individuals with disabilities, including those with mental illnesses, to attain the highest standard of health without discrimination. It emphasizes the importance of ensuring access to necessary health services, including mental health care and rehabilitation. This article 26 underscores the right of individuals with disabilities, including those with mental illnesses, to access rehabilitation services and support that enable them to achieve maximum independence and participation in all aspects of life. These articles within the CRPD emphasize the importance of protecting the rights of individuals with mental illnesses, ensuring their equal treatment, access to health services, and support for their full participation in society.²⁶

World Health Organization (WHO), 1948 and mental health action plan 2020-2030: On April 7, 1948, the United Nations. Officially formed the World Health Organization (WHO) as a specialized organization. Although its early focus was on more general global health issues, the WHO has now emerged as a major force in advancing study, advocacy, and awareness of mental health²⁷. It has

²³ Stephen P. Marks et al., "12 - Mental Health and Human Rights from Part III - Contemporary Issues in Psychology and Human Rights," *Cambridge University Press*, 2020, 183–96, <https://doi.org/https://doi.org/10.1017/9781108348607.013>.

²⁴ Ellionior flynn Anna arstien kersaleke, "The General Comment on Article 12 of the Convention on the Rights of Persons with Disabilities: A Roadmap for Equality before the Law," *The International Journal of Human Rights*, 2015, 1–20, <https://doi.org/http://dx.doi.org/10.1080/13642987.2015.1107052>.

²⁵ CRPD/C/GC/1, "United Nations 1 Convention on the Rights of Persons with Disabilities" (n.d.), http://foundationnet.info/wp-content/uploads/2016/02/UNCRPD_General_Comment_Engl.pdf.

²⁶ Article 12, 25 and 26 of The Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

²⁷ Organization, "Comprehensive Mental Health Action Plan."

taken a leading role in developing policies, programs, and initiatives to address the problems that people with mental illness experience across all around the world. The WHO has made a substantial contribution to bettering the awareness and management of mental illnesses as well as decreasing the negative perceptions attached to them through a wide range of initiatives, research, and collaborations.

WHO has developed several action plans and guidelines aimed at improving mental health services and reducing the stigma associated with mental disabilities. In order to improve mental health and well-being, avert mental illness, and guarantee the provision of quality care for people with mental impairments, the Comprehensive Mental Health Action Plan (2013-2030) is a strategic framework that includes specific targets and activities.²⁸The importance of a comprehensive approach to mental well-being, including multiple facets covering knowledge, safeguarding, treatment, and support, is probably emphasized by this plan.

This Action plan has six motions to improve and a maximum target of reducing mental health issues. For this reason, it probably targets the unique difficulties that people with mental disorders encounter, seeking to give them all-inclusive, and integrated support services. Initiatives aimed at removing negative perceptions, boosting accessibility to mental health services, encouraging community-based treatment, and preserving the rights and dignity of people with mental disabilities may fall under this category. The strategy is essential in promoting the rights and wellbeing of people with mental disabilities and creating a welcoming and encouraging environment for their medical care.

Declaration of the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, 1992: Mental health difficulties are not particularly covered in the 1992 Declaration of the Rights of Persons Belonging to National or Ethnic, Religious, and

²⁸ World health Organization, *Mental Health Action Plan*, 2021.

Linguistic Minorities. However, those with mental health disorders who are members of minority groups may inadvertently benefit from its overriding ideals of equality for all, respect for culture, and protection of minority rights. The right of people from minority populations for enjoying their own culture, practicing their own religion, and speaking their own language is emphasized in Articles (1-9). Although it does not specifically address mental health issues, it does encourage an inclusive and non-discriminatory workplace, which can be essential in supporting people who are also members of minority communities and have mental health challenges. The values emphasized in the declaration stress the significance of respecting the rights and dignity of all people, particularly those in minority groups who have mental health difficulties.²⁹

Enclosed are the chart listing binding³⁰ and non-binding³¹ international instruments of human rights related to mental health Act, 2018 in Bangladesh which are given below:

TABLE I Binding and non-binding International Legal Instrument

Binding	non-Binding
Convention on the Rights of Persons with Disabilities (CRPD) (2006)	UN Declaration of Human Rights (1948)
	UN Declaration on the Rights of Mentally Retarded Persons (1971)
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)	UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991)
	UN Standard Rules for Equalization of Opportunities for Persons with Disabilities (1993)

²⁹ Article (1-9) of Declaration of the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities.1992

³⁰ M. Tasdik Hasan et al., "The Current State of Mental Healthcare in Bangladesh: Part 1 - an Updated Country Profile," *BJPsych International* 18, no. 4 (2021): 78-82, <https://doi.org/10.1192/bji.2021.41>.

³¹ Clara A .Arena Ventura, "International Law, Mental Health And Human Rights," *Center For Civil And Human Rights*, 2014.

Convention on the Rights of the Child (CRC) (1989)	General Comments 5 (1996) and 14 (2000) of the International Covenant on Economic Social and Cultural Rights
	WHO's Mental Health Care Law: ten basic principles (1996)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)	WHO Guidelines for the Promotion of Human Rights of Persons with Mental Disorders (1996)
	Declaration of Madrid (1996)
International Covenant on Civil and Political Rights (ICCPR) (1966)	UN Resolution 2000/51
	WHO Quality Rights Initiative (2012)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)	UN General Assembly Resolution 46/119 (1991)
	The Ljubljana Charter on Reforming Mental Health (1996)
	World Psychiatric Association's Madrid Declaration on Ethical Standards for Psychiatric Practice (1996, revised 2011)
	WHO Mental Health Action Plan 2013-2020
	WHO MH GAP (Mental Health Gap Action Programme) (2008)
	Declaration of the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, 1992

Domestic (Bangladeshi) laws on the right of mental health based on mental disabled people:

The origin of Bangladesh Lunacy Act, 1912 and how it became the Mental Health Act, 2018 Of Bangladesh: The Lunacy Act, 1912 for Bangladesh, which was then part of British India which was enacted during the British colonial period. This Act basically produced British colonial legislation and policies to regulate the treatment and care of individuals who were considered to have mental illnesses. It was part of a broader legal framework that governed various aspects of colonial administration, together with healthcare, social welfare, and the management of individuals with mental disabilities. The Lunacy Act of 1912 provided procedures for the detention, care, and legal

management of individuals deemed to be "lunatics"; it means unsound mind.

It included provisions for inquests and medical certificates to determine the mental state of individuals and to facilitate their fair treatment and duty of care.³² So, it's important to understand that the term "lunacy" used in the Act was a historical and now outdated term called mental illness. The Act showed the understanding and attitudes toward mental health dominant during the colonial era.

Since Bangladesh achieved independence in 1971, it has passed significant legal reforms and changes in the field of mental health. The Lunacy Act of 1912 has been replaced or amended by more modern legislation, including the Mental Health Act of 2018, which has modern principles of mental care and human rights.³³

The Constitution of the People's Republic of Bangladesh, 1972: There are no particular clauses addressing mental health only in the Bangladesh Constitution. It does, however, contain broader concepts of the rights and welfare of every person that may be pertinent to mental health. The right to life and personal liberty is protected by Article 32 of the Constitution. Despite not mentioning it specifically, this clause can be seen to cover the right to mental health and access to mental health care. Then, equal protection under the law is guaranteed by Article 27 of the Constitution, every citizen in Bangladesh has entitled the equal protections before the law.

So, every citizen means it's not only included the common people's right but also it included the mentally disabilities rights. Finally, Article 15 of the Constitution recognizes the government's duty to protect citizens' physical and mental health as parts of comprehensive medical treatment. So, these constitutional clauses imply that as part of comprehensive medical care, the government has a duty to protect the physical and mental health of its citizens. The right to life and personal liberty, equal protection under the law, and

³² The lunacy Act,1912

³³ Lunacy Act 1912

protection of health are just a few of the more general provisions in the Bangladesh Constitution that can be interpreted to cover the rights and well-being of people with mental health problems or disabilities. They establish the foundation for making sure that the government upholds the rights and welfare of everyone, including people who have mental health issues.³⁴

National Mental Health Strategic Plan 2020-2030: Bangladesh's National Mental Health Strategic Plan 2020-2030 aspires to create an all-encompassing framework that fosters mental health, prevents and treats mental illness, and guarantees people's lifetime rehabilitation. The strategy emphasizes the significance of easily available services in nearby areas by using a community-oriented mental health model and a human based on rights strategy.

It also emphasizes the necessity of increasing current government programs in the fields of health and other pertinent areas. In addition, the plan also places a focus on important issues including equity, equality between men and women, empowerment as ourselves, social and family support, resource augmenting, and the participation of people with mental illness and their cares in the planning process. By emphasizing these aspects, the strategic plan not only addresses issues related to mental health but also advances the Sustainable Development Goals (SDGs) and the more general goal of providing universal healthcare to all individuals.³⁵

National Health policy 2011: The requirements of people with mental illnesses are significantly addressed by the National Health Policy of 2011. The strategy shows an obligation to improve mental healthcare services and accessibility for people in need by including nine specific targets intended in order to encourage mental health issues. Additionally, the national health policy's effective and organized distribution of the healthcare budget guarantees that funds

³⁴ The Constitution of the People's Republic of Bangladesh, 1972

³⁵ Government of the republic of Bangladesh, "National Mental Health Strategic Plan" (Dhaka, Bangladesh, 2020).

are directed towards improving mental health services, providing greater support and treatment for people with mental disorders.³⁶

The Disability Rights and Protection Act of 2013: Bangladesh is a comprehensive law aimed at protecting and promoting the rights of persons with disabilities, including those with mental disabilities. While it covers various aspects of disability rights, it includes provisions related to mental health and the rights of individuals with mental disabilities. It consists of 44 Articles. In Article (5-15) mentioned about different types of disabilities. Here are some key points from the Disability Rights and Protection Act of 2013 related to mental health. According to the Act, it is illegal to discriminate against people who have a disability, including a mental illness, in all facets of life, including in work, education, and service access. It emphasizes inclusivity and equal opportunity. Moreover, it acknowledges that people with disabilities, including those who have mental disabilities, have the same rights to receive healthcare services as everyone else services for mental health are included here.³⁷

THE MENTAL HEALTH ACT OF 2018

The Bangladeshi Mental Health Act of 2018 is very pertinent to resolving the difficulties brought on by mental diseases. The Act recognizes the significance of full guidance for those affected by mental diseases by attempting to respect the dignity of people with mental health concerns, ensuring their access to treatment, preserving their property rights, and supporting their recovery. The provisions of the Act 31 sections are essential in regulating and overseeing a variety of areas of mental health care, including the coordination, growth, and expansion of government efforts. The Mental Health Act

³⁶ Government of the republic of Bangladesh, "National Health Policy" (Dhaka, Bangladesh, 2012).

³⁷ The Disability Rights and Protection Act of 2013

of 2018 shows the government's commitment to modernizing mental health treatment, expanding support networks, and establishing a far better and effective system for managing mental diseases by replacing the antiquated Lunacy Act of 1912 in Bangladesh.³⁸

The positive aspects of Mental Health Act, 2018 of Bangladesh: The World Health Organization (WHO) is more concerned about mental health. It appears to be developing quickly these days. It has frequently been used as an initiator for crime, and frequently, criminals commit crimes while taking advantage of the mental health of others. Criminals take advantage of those who are miserable and fixated on. What is happening around them? Moreover, the mentally disabled people do not commit any crimes out of their own free will, but they occasionally find themselves in trouble even when acting in good faith.

In some cases, unlicensed mental hospitals have even resulted in the deaths of innocent people who were treated there. Since the independence of Bangladesh, the entire country was in need of a novel legislation in this regard and therefore, in these past years the government of People's Republic of Bangladesh adopted a new law called Mental Health Act, 2018, to prevent all citizens from these kinds of difficult conditions. It is the first Act to safeguard the rights and guarantee fair justice for people with mental disabilities. Finally, the good news is that, The Lunacy Act of 1912 was repealed and replaced with this new legislation. The newly revised law has shown a lot of new advantageous characteristics³⁹

Through the enactments of the 2018 Mental Health Act, continuous policy creation, and the extensive National Strategic Plan created with input from experts and people with lived experience, Bangladesh has demonstrated a substantial commitment to developing mental health. The Mental Health Act's fundamental

³⁸ MHA, 2018

³⁹ WHO, 1948, MHA ACT 2018

principles center on maintaining the dignity of people with mental health issues, offering them the medical care they require, protecting their rights to property, and assisting in their rehabilitation.⁴⁰

Moreover, The Mental Health Act of Bangladesh, which consists of 31 Sections⁴¹ It is in charge of overseeing the development, regulation, and coordination of issues relating to mental health, including governmental obligations. The National Mental Health Policy 2021, which is about to be approved, intends to create a complete structure for action and coordination that is in line with local knowledge and practices and incorporates global and regional perspectives that are customized to the particular circumstances of Bangladesh. According to this Mental Health Act, 2018 of Bangladesh, it comes with an advantage to protect the mentally people's rights.

So, in section 2 explained that, the Mental Health Act, 2018, 2(14) defines 'Drug addiction' as the detrimental physical and mental changes stemming from regular substance use or sudden cessation of intake. Section 2(15) clarifies 'Mental illness' as a form of mental disease distinct from drug addiction and mental retardation, as determined by the overseeing Medical Officer.

Additionally, section 2(16) defines 'Mental disorder' as any clinically recognized symptom or behavior, including mental retardation and drug addiction, which affects an individual's physical and mental well-being, hindering their regular life. Lastly, section 2(17) specifies a 'Psychiatrist' as a doctor those who are obtaining a Master's degree in Psychiatry from a government-recognized institution, registered by the BMDC⁴²

⁴⁰ Mehadi Hasan, "An Analysis on the Mental Health Act 2018," *The Daily Stars*, February 2021.

⁴¹ Mental health Act, 2018 Of Bangladesh

⁴² Dean A Shepherd Johan Wiklund, Isabella Hatak, Holger Patzelt, "Mental Disorders in the Entrepreneurship Context: When Being Different Can Be an Advantage," *Academy of Management Perspectives* 32, no. 2 (2018), <https://doi.org/https://doi.org/10.5465/amp.2017.0063>; and Susan L. Ettner Sarah A. Friedman, a Francisca Azocar, Haiyong Xu, "The Mental Health Parity and Addiction Equity Act (MHPAEA) Evaluation Study: Did Parity Differentially Affect SUD and Mental

Now, we can understand that these sections define the actual meaning of those who are mentally suffering and also focus on those who expertise those who are actually psychiatrists to identify them, whether he/she is mentally disabled or not. So, it shows us the positive aspects.

Besides, in Section 7 of the Mental Health Act states that the government is required to approve the establishment of mental hospitals at various locations with separate departments or units within medical college hospitals or district hospitals for the treatment and management of mental illness patients. Each psychiatric hospital or unit should have separate arrangements for the treatment of drug-addicted and under-trial or sentenced psychiatric patients, as well as specially designed arrangements for adolescent psychiatric patients. Additionally, specific procedures and supervision related to the determination and supervision of mental hospitals are prescribed by the relevant rules. In this section it helps the mentally disabled people who are drug addicted. So, this section helps to get rid of these situations to become a normal human being.

Furthermore, In Bangladesh's incident occurred many times ago. Which Oishi was a murderer of her parents? But when we look into the fact that Oishi was a drug addicted person and also as a mentally traumatized. But the court verdict that she was accused and she got life imprisonment instead of death penalty. Because she was a drug addicted person. But she did the occurrence intentionally so the court decided to punish her because she was checked who is a mental disabled expert.

So, this section basically focused on protecting the innocent mentally disabled people who are victimized by the mental health hospitals and also punished the accused person those who did the offense intentionally. So, this case was followed by the judicial decision On the other hand in section 12 mentioned the voluntary

Health Benefits Offered by Behavioral Healthcare 'Carve-Out' and 'Carve-In' Plans?," *Drug Alcohol Depends.*, 2018, <https://doi.org/doi:10.1016/j.drugalcdep.2018.06.008>.

treatment which states Consent is required for the admission of adult patients⁴³

Within 24 hours of receiving the application, the responsible medical officer must assess the mental health of the applicant and make a decision based on the prescribed form. Voluntarily admitted patients retain the right to accept discharge or refuse treatment. The in-charge medical officer must inform voluntarily admitted patients about the possibility of a change in their admission status and the potential impact on their rights to discharge or refuse treatment. The Mental Health Review and Monitoring Committee is responsible for evaluating the reasons for patient admission and reviewing the tenure every fifteen days, with a more frequent review of every seven days for minors.

In section 14 mentions the involuntary treatment because of this application itself or consent of the patient's a guardian relative, local jurisdictional law enforcement official, or the physician in charge, using the required form, may be used to begin the admissions procedure for an unwilling patient. According to the length of the admission varies depending on the facts and the recommendations that, they provided urgent care for a maximum of 72 hours, care or evaluation for a maximum of 28 days, treatment or assessment up to 60 days, following therapy up to 120 days, and then every 180 days after that, with the possibility of additional extensions depending on the patient's treatment requirements.

The responsible medical officer must notify the patient's guardian or relative about the potential changes in the patient's admission status or their right to accept discharge or refuse treatment. Prior to admitting an unwilling patient for immediate and prolonged treatment, the responsible medical officer, psychiatrist, or the Mental Health Review and Monitoring Committee must assess the patient's illness severity, tendency of attacks, medication reluctance, suicidal

⁴³ Bari Dhali, "From Murder to Religion ; How Is Oishee Spending Her Days in Jail," *Dhaka Tribune*, 2021.

tendencies, inclination to wander, and the potential risks to the patient's health, safety, and public safety⁴⁴

So, these two Sections, 12 and 14 emphasized, the Mental Health Act of Bangladesh, 2018, significantly contributes to protecting the rights of mentally disabled individuals. Section 12 ensures that adult patients have the right to provide consent for their admission and treatment, with the option to refuse treatment if they are voluntarily admitted. Additionally, the section highlights the importance of regular review to ensure the well-being and rights of the patients.⁴⁵

In addition to, section 14, the Act emphasizes the need to balance the rights of mentally ill individuals with the necessity of providing necessary treatment, outlining a structured process for involuntary patient admission that takes into account the patient's welfare and safety. This serves to protect the rights of both the mentally disabled individuals and the public.

As stated in Section 15, the procedure for admitting mental patients accused of criminal offenses generally involves the steps you mentioned, such that a reception order, issued by the magistrate, serves as the legal basis for admitting the patient to a mental health facility. This order recognizes the need for psychiatric evaluation and treatment due to the individual's mental state related to the alleged criminal offense. Moreover, while acceptance of admission orders and related matters are governed by rules and regulations established in particular jurisdictions, these rules outline admission criteria and provide guidance on the procedures to be followed during the evaluation and treatment of such patients.

If a person commits a criminal offense and if that person is mentally ill, then until such time as his intention and motive can be proved by examination, the magistrate shall order reception and he shall be admitted to a mental hospital and shall be protected under

⁴⁴ * Moin Ghani, "Right to Liberty," *Ain o Salish Kendra (ASK) A Legal Aid & Human Rights Organisation*, 2006, <https://www.askbd.org/ask/right-liberty/%0A%0A>.

⁴⁵ MHA ACT, 2018 SEC 12, 14, 15

the Mental Health Act, 2018. His case goes on when he recovers. So, it's another positive sides to protect mentally disabled people. ⁴⁶

According to section 17 mentions, the local government representative in charge of the relevant area is responsible for transferring individuals suffering from mental illness, without having any guardian, relative, or known address, to the nearest Government Mental Hospital Superintendent.

If there are grounds to suspect that an individual is afflicted with a mental illness and poses a danger due to this condition, the local police officer has the authority to detain the person and send them to the closest mental hospital for appropriate assessment and treatment. These regulations emphasize the roles of the local government and law enforcement in ensuring the appropriate care and safety of individuals affected by mental illness, especially those without proper guardianship or who may pose a risk to themselves or others.

When observing patients with mental imbalance, they can be divided into two groups. The first group are those who are mentally unbalanced; but they have homes and guardians. They hang out all day. He returns home at night. The second group is the mentally unstable class who have no residence and have or have no relatives. Very helpless this class of unbalanced mental patients wanders everywhere. He eats on the streets, on the roads, sleeps wherever he gets a chance at the station.

Wherever there is an opportunity, he responds to the call of nature. If they are sick, they lie on the street, there is no one to look after them. Many even died on the streets. For this reason, In section 18 and 19 mentioned that, to establish a rehabilitation center for mentally disabled people. In this section emphasized that, when the mentally person is in mental health hospitals and got the clearance certificates from the doctors after that he/she is getting recover as a

⁴⁶ Caroline Bersch, "The State of Mental Health in Bangladesh," *The Borgen Project*, 2021

normal human being but they do not have any guardian, relatives to stay with them, then the government transferring them in the rehabilitation center through Directorate of Social Services.

It's called post recovery transfer center. Furthermore, these rehabilitation centers aimed at facilitating the rehabilitation of individuals suffering from mental illness must be established and operated with the prior approval of the Government. This requirement ensures that the rights of persons with mental illness are protected and upheld during the rehabilitation process. So, not Only government hospitals but also some non-governmental institutions have been provided the treatment. The National Institute of Mental health and hospital which is based on mental disabled people.⁴⁷

On the other hand, there are rehabilitation centers which deal with mentally disabled people. Such as: Ahsania Hena Ahmed Care Center, Niramoy hospital, white swan Foundation rehabilitation center, shradda rehabilitation, Addiction Management & Integrated Care (AMIC) and so on. So, this Rehabilitation centers ambitions are to provide treatment to the mentally disabled people and also those who are affected the drug issues. so all of this organizations helping out how to recovery the mental health disabilities and also reduced the mental health issues in our country.

So, it shows position sides again.⁴⁸ Section 20 provides the scope for judicial inquiry regarding mental status. It allows relatives or guardians of the affected person to comment in court on a person's mental illness. If this application is granted, the court directs a responsible medical officer to ascertain the mental incapacity of the accused and compels him to submit the report within a prescribed period.

⁴⁷ Kamrun Nahar Koly et al., "Mental Health and Community-Based Rehabilitation: A Qualitative Description of the Experiences and Perspectives of Service Users and Carers in Bangladesh," *Community Mental Health Journal* 58, no. 1 (2022): 52-66, <https://doi.org/10.1007/s10597-021-00790-0>.

⁴⁸ Koly et al.

Furthermore, the provision outlined in this section facilitates a judicial investigation into an individual's mental condition. It empowers the relatives or guardians of the affected person to present their perspectives in court concerning the individual's mental illness. If the application is approved, the court does by suo moto or instructs a competent medical officer to determine the mental incapacity of the accused and mandates the submission of a report within a specified time frame. This process ensures fair consideration of mental health issues within legal proceedings and promotes the protection of the rights and well-being of individuals with mental illness. so it's once again showing the bright side.

On the other hand, Section 21 implies, the parenting and guardianship of people with mental illnesses are covered by this Act. It specifies that, in the absence of any other applicable laws, the mentally ill person's parent or mother shall serve as their guardian. If the parents are unable to care for the child, the court will appoint an appropriate guardian to play a role as a receiver after taking the child's welfare into account.

The law will specify the guardian's obligations, and if they are not met or there is reason to believe they have been neglected, the local police officer or public representative is required to notify the magistrate in writing. One positive aspect of this Act is that it prioritizes the well-being of mentally ill individuals by outlining clear procedures for parenting and guardianship. Specifically, in the absence of other relevant laws, the Act designates the mentally ill person's parent or mother as the primary guardian.

However, if the parents are unable to fulfill this role, the court appoints a suitable guardian after carefully considering the individual's welfare. Moreover, the Act mandates the definition of the guardian's responsibilities, and any potential neglect is required to be reported in writing to the magistrate by the local police officer or public representative. This framework aims to safeguard the rights

and interests of mentally disabled individuals within the legal system.⁴⁹

Procedures for maintaining the property of those with mental illnesses are outlined in Section 22 of the statute. It states that the medical officer must alert a person's guardian or relative of the possibility of property loss if they are unable to handle their possessions owing to mental impairment. The medical officer is compelled to Ask the court to appoint a manager to look after the property if the guardian or relative pauses to take action.

The court must appoint an administrator for a maximum term of three years in situations when the person's parents are deceased and it is proven that the person is incapable of managing their property. Within six months of accepting the position, the appointed manager must provide the court with a thorough report on the assets and obligations of a mentally-ill person. The individual's financial condition, including all assets and obligations, must be fully outlined in this report.

We can say that, one significant positive aspect of these regulations is the legal protection they provide for the property and financial well-being of mentally disabled individuals. By mandating that the medical officer notifies the concerned guardian or relative about the potential risks to the individual's property, the law ensures that necessary precautions are taken to safeguard their assets.

The provision for the appointment of a manager or administrator by the court in cases of inaction by the guardian further ensures the responsible management of the individual's property. Additionally, the requirement for a detailed report within six months of assuming responsibility helps in maintaining transparency and accountability, thereby protecting the rights and interests of mentally disabled individuals. This framework strives to ensure fair treatment

⁴⁹ Hasan *et al.*, "The Current State of Mental Healthcare in Bangladesh: Part 1 - an Updated Country Profile."

and prevent the exploitation of the property of those suffering from mental illnesses.

On the other hand, another major positive side is that, Section 25 of the statute empowers the Government, under sections 9 and 10, to designate one or more mobile courts in specified conditions or areas as per the regulations. This power is granted despite any contradictory provisions within the Act. The utilization of this authority is subject to the guidelines outlined in the Mobile Courts Act, 2009.

This provision shows us, this mobile court is dealing with petty cases. So, this Mobile court is actually utilized when in Section 9 and 10 which describes Section 9 of the statute enables the government to conduct various actions concerning the inspection, search, and seizure of mental hospitals. It permits the government to enter, inspect, and seize relevant materials related to the treatment of patients.

However, any information pertaining to a patient's condition should not be disclosed to the public without the explicit permission of the patient or their guardian. The section also authorizes the government to issue orders for compliance with necessary conditions and to take necessary actions, such as the immediate suspension of the license of a private mental hospital if its services are detrimental to public health or do not meet required standards. In such cases, the managing authority of the private hospital must promptly transfer the patients under treatment to another facility with adequate medical provisions. The detailed procedures for inspection, search, and seizure are further defined by the rules.

On the contrary, Section 10 of the statute deals with the power to impose fines related to the operation of mental hospitals. It stipulates that any individual operating a mental hospital without a license may be fined up to five lakh takas after being given a fair chance to present their case. For repeat offenses, the fine may extend up to twenty lakh takas. Additionally, the government reserves the

right to order the immediate cessation of all activities at the hospital and seize its assets.

Furthermore, if a mental health professional knowingly provides services at an unlicensed mental hospital, they may be fined up to one lakh taka. Any fines collected under this section are to be deposited in the Government Treasury. The procedures for imposing penalties and the appeals process fall under the notion of the rules as specified.

As we know that, we know that mobile courts try petty or small cases. So, when they considered the mental health hospitals in terms of Sections 9 and 10, the Mobile Court imposed fines which were mentioned in Section 10. But an unlicensed or licensed mental hospital or unlicensed or unlicensed hospital gives false certificates stating that if he/she is mentally disabled person but he/she is a sane person. If he commits this intentionally wrongful act, then the criminal case under Section 23. Since, mentions that this offense is non-cognizable, complex billable. So, these criminal cases go to court.⁵⁰

SCRUTINIZING THE EXISTENTIAL GAPS WITHIN MENTAL HEALTH ACT, 2018 OF BANGLADESH

According to the data, there are still difficulties in successfully treating mental health concerns in Bangladesh, despite the country having made significant progress by ratifying the UNCRPD and

⁵⁰ Syed A K Shifat Ahmed, Motunrayo Ajisola , Kehkashan Azeem, Pauline Bakibinga , Yen-Fu Chen © Nazratun Nayeem Choudhury, ¹ Olufunke Fayehun, Frances Griffiths Bronwyn Harris 5 Peter Kibe Ric hard J Lilford, "Impact of the Societal Response to COVID-19 on Access to Healthcare for Non-COVID-19 Health Issues in Slum Communities of Bangladesh, Kenya, Nigeria and Pakistan: Results of Pre-COVID and COVID-19 Lockdown Stakeholder Engagements"; Agumasie Semahegn and Bezatu Mengistie, "Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review," *Reproductive Health* 12, no. 1 (2015), <https://doi.org/10.1186/s12978-015-0072-1>.

adopting the Mental Health Act of 2018 into effect.⁵¹ In Bangladesh, mental health disorders still affect 16.8% of adults and 13.6% of children, for a total prevalence of 21.5 percent, according to the National Mental Health Survey of Bangladesh 2018-2019.⁵² The lack of awareness and stigma around mental health remain major barriers to providing sufficient care for people with mental health illnesses, even after the National Mental Health Policy was introduced in 2022. The restrictions or inadequacies in the Mental Health Act of 2018's protection of the rights and wellbeing of persons who are afflicted with mental diseases may be cited as one of the law's deficiencies.⁵³

In this Act, we can observe that it has been written by a lot of researchers. Such as, they are talking about the legal rights, the economic burdens, rehabilitations, then there is not adequate training center for protecting the mentally disabled people's rights, and also the budget which is allocated. 0.5% for health care. But when we can see the Act that, in section 2 which is basically, general definitions. It doesn't contain the actual mentally disabled people's definitions. What is mental illness, different types of illness or disabilities? It doesn't exemplify it.

As we know that everyone is born free and there are three moral obligations which are i) respect ii) protect and iii) fulfill. So, the relationship between health and human rights is deeply intertwined. Health is a fundamental human right, and everyone has the right to the highest attainable standard of physical and mental health. This includes ensuring access to non-discriminatory, timely, and affordable healthcare. Availability, accessibility, acceptability and quality of health services are ensured by respecting human rights. In addition, human rights protection addresses the underlying determinants of health, such as clean water, nutritious food and safe

⁵¹ United Nations Convention on the According to, Rights of Persons with Disabilities (UNCRPD), 2006

⁵² Hasan et al., "The Current State of Mental Healthcare in Bangladesh: Part 1 - an Updated Country Profile."

⁵³ Fatema zahra ahshan Raisa, "Reshaping Mental Health Legislation in Bangladesh," *The Daily Stars*, September 15, 2023.

housing. Promoting human rights improves health outcomes and health equity, and it is essential to hold governments accountable for meeting these obligations.⁵⁴

Moreover, in sector 6 of MHA, 2018⁵⁵ mentioned the rights of mentally disabled persons in a nutshell. But when we look at the other countries Mental Health Act such as India, they mentioned it with clarifications. In addition to, Section 6 of MHA 2018, stated that, the rights of patients to health, property, dignity, education etc. shall be ensured and this shall be done by making rules. In the absence of such regulations, important concerns such as privacy and accountability as well as the fundamental human rights of persons with mental disabilities have not been elaborated. The WHO-AIMS report on Bangladesh's mental health system noted that there is no human rights review commission in Bangladesh to monitor regular violations of the human rights of people with mental illness. It would not be wrong to say that people with mental illness face discrimination in every aspect of life including food, housing, healthcare and education. Additionally, while the Act mentions community support and rehabilitation, it lacks a robust long-term review process and community allowances.⁵⁶

The fact that the Mental Health Act of 2018 is the newest but goes lacking in addressing people's human rights when they have a mental illness is another cause for concern. In every aspect of life, including access to food, shelter, healthcare, and education, people with mental health disorders constantly experience human rights abuses and discrimination. In the case laws, *Kalandiar Kabir v. Bangladesh and others* (54 DLR 258),⁵⁷ the court recognized that those

⁵⁴ Mustafa Nowshin, "Violation of Right to Liberty by Involuntary Mental Health Treatment in Bangladesh: A Legal Analysis on Mental Health Act, 2018," *EWU Institutional Repository*, 2023, <http://dspace.ewubd.edu:8080/handle/123456789/4021%0A>.

⁵⁵ Shajedur Rahman Shawon, "New Mental Health Act in Bangladesh," *The Lancet Psychiatry* 6, no. 3 (2019): 199, [https://doi.org/10.1016/S2215-0366\(19\)30028-8](https://doi.org/10.1016/S2215-0366(19)30028-8).

⁵⁶ Eport On, "Mental Health System Ministry of Health," *Health (San Francisco)*, 1882.

⁵⁷ afsana ferdous Mimi, "Mental Health Act, 2018: Vagueness of Provision and Untold Suggesting of the Practice," *Tudies, Society Fpr Critical Legal*, 2020.

who suffer from mental illness frequently endure cruel and inhumane treatment. Most frequently, this led to a direct violation of the right to life. But these essential human rights for people with mental disabilities were not included in the new Act. So, in this MHA, 2018, we should focus on each and every legal right which has been already mentioned in the previous chapter. It basically talks about the India Mental health Act, 2017 which is giving us a good example to utilize these rights. Because they have the equal rights as us.⁵⁸

As part of Bangladesh, the Mental Health Act of 2018 defines the provision for the enforcement of fines under Section 10. This section gives the government has the right to punish anyone who conducts a mental hospital without a license or otherwise breaches the Act's provisions or any rules enacted in accordance with them. For a first offense, the fine shouldn't be more than five lakh takas, and for any consecutive violations of the same kind, it shouldn't be more than twenty lakh takas. This clause emphasizes the significance of preserving the highest standards in the field of mental healthcare while working to ensure that people follow the regulations established in the Act and prevent any unauthorized conduct at mental health facilities. But when we look into our previous incident, ASP Anisur Karim Murad occurred in Mind Aid Hospital. But this hospital wasn't a government approved hospital. So, the ASP Anisur Karim was intentionally murdered by the hospital ⁵⁹. Does it really cover up the limited or imposed fine which is 5 to 20 lakhs taka? Where is the right to life and Human rights violations? This limited fine can ensure ASP Anisur Karim and their family to give them proper justice? So, the power to impose money is not adequate in my point of view.

In addition, when we talk about the ASP Anisur Karim murdered cases, the following important factors are emphasized in

⁵⁸ Anika Nower Suvra, "Legal Remedies Malpractice with Mental Patients," *The New Nation*, 2020, <https://ep.thedailynewnation.com/2020/12/01/index.php>.

⁵⁹ Ahmadul Hassan, "ASP Murder in Hospital: Adabor Police Charges 4 Owners, PBI Acquits Them," *English Prothom Alo*, May 2023.

Section 12 of the Mental Health Act of 2018, which describes the process for voluntary admission. Adult patients must provide their permission before being admitted. The responsible medical officer is required to assess the applicant's mental health within 24 hours of receiving the application and then make a decision using the established procedure and form.

The application for voluntary admission shall not be taken into consideration if the responsible medical official determines that the patient falls under the definition of involuntary admission. The duration of the patients' stay and the appropriateness of their admission must be evaluated by the Mental Health Review and Monitoring Committee. This review happens every fifteen days for adult individuals, but just once every seven days for children. But when we look into the cases, it didn't maintain the voluntary treatment. The ASP went there for mentally treatment but because of the negligence of the hospital's treatment he died. So, in this section 12 and 14 which is mentioned the voluntary and involuntary is not forcible in nature. So, we should focus and bring the mandatory provision based on the Advance directive in this MHA, 2018. Why is it important and how does it work? All of these issues were explained earlier in the previous chapter.⁶⁰ .For this India Mental Health Act, 2017 is the best example for better understanding.

On the other hand, Sections 11 to 15 of the MHA,2018 of Bangladesh outline the procedures for admitting individuals with mental illness to treatment facilities. These sections detail the criteria and steps involved in the voluntary or involuntary admission process, ensuring that individuals receive necessary care and support for their mental health conditions. However, these sections do not cover two critical aspects related to emergency situations¹. This refers to the legal authority to temporarily hold a person who poses an immediate danger to themselves or others due to their mental health condition. In emergency situations, where a person attempts to leave or refuses

⁶⁰ Baroness Hale of Richm, "Mental Capacity and Mental Health," 2005, 17-19.

necessary treatment, procedures may allow for their temporary detention to prevent harm.

Sometimes, medical practitioners face situations where obtaining consent from the patient or their guardian for necessary treatment is not possible. Emergency powers may grant medical professionals the authority to administer urgent treatment or take necessary actions to protect the patient's well-being or that of others, even without explicit consent. These emergency provisions are crucial for addressing urgent mental health crises and ensuring timely intervention when individuals are unable or unwilling to consent to treatment. While sections 11 to 15 focus on admission processes, the Act likely includes separate provisions or sections that detail these emergency procedures to safeguard individuals and manage critical mental health situations effectively.⁶¹

On the contrary, in the Mental Health Act, 2018 mentioned about court procedure and punishment these are: The MHA of the 2018 Section 23 specifies the consequences for certain infractions. These include paying fraudulent certificates of mental illness, failing to manage the care or assets of those with mental illnesses, and facilitating a violation of the Act or its rules, as well as penalties and imprisonment. Penalties might include everything from penalties up to a certain amount to time served in jail.

Moreover, The Mental Health Act of the 2018 Section 24 lays out the processes for dealing with convictions for crimes, trials, and related issues. It states that offenses under Section 23 must be tried by the magistrate and that no magistrate may take cognizance of such offenses unless the government or another authorized officer submits a written report in support of it. These offenses are non-cognizable, compoundable, and bail able, and the legal actions relating to them must follow the Code of Criminal Procedure. The Magistrate also has the power to impose the fine specified in Section 23 of MHA, 2018 in

⁶¹ Sadia Tanjam Hasan, "Envisioning a Mentally Healthy Bangladesh," *Dhaka Tribune*, July 2024

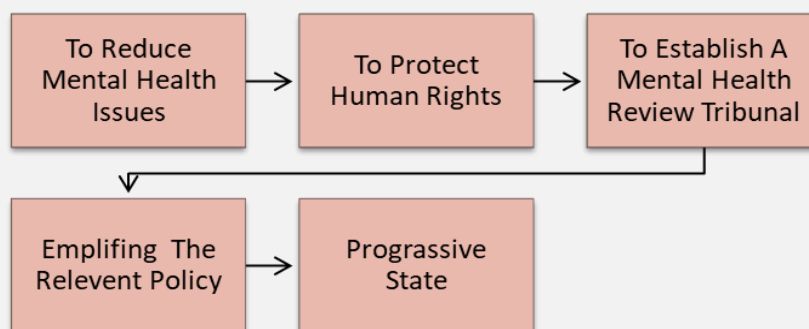
Bangladesh. Besides, the government is able to perform its authority under sections 9 and 10 of the Mental Health Act of 2018 by using Section 25 of the Mobile Courts Act, 2009 of Bangladesh. This means, if a mental hospital is doing illegal work on the mentally challenged without a license, then they can be fined for illegal activities under the Mobile Courts Act, 2009. So, the Mobile Courts deal with petty cases. So, we can hardly say that, if any mentally disabled people died unjust treatment for the doctors, they will get less punishment. So, mentally disabled people's rights have been violated in this scenario.

So, when we see the ASP Anisur Karim's case, still the case position is trial stages not even pre- or post-trial stages. So, when this cases and other cases those who suffered as like as ASP Anisur Karim, they get the Justice in future in long time with long run. Elsewhere, Mobile court is basically focused on very petty or small cause cases. So, the right to life violations with human dignity is not a small cause at all. So, in Bangladesh established a Mental Health Review Tribunal helps to protect and ensure proper justice of the mentally disabled people. So that, if this tribunal established in Bangladesh, they mentally disabled people get the Justice within short time in the future, because of our courts are very much packed full of civil and Criminal litigations. so it's very difficult to continue the medical litigation in the same court. So, we have to focus another Mental Health Review Tribunal to give them fair treatment. Establishment of Mental health review tribunal: There are a lot of countries who have adopted mental health review tribunal in their Mental Health act. UK is one of them. The UK mental Health Act, 2007 is the best example. The land mark case was, *R (East London and the City Mental Health NHS Trust) v Mental Health Review Tribunal (IH as Interested Party) [2001] EWCA Civ 1110*⁶² stated that, the appeal by the East London and the City Mental Health NHS Trust was dismissed. The Court upheld the decision of the Mental Health Review Tribunal to discharge IH,

⁶² R A J Prithivi and Jatin Patil, "Mental Health Laws in India," *International Journal of Health Sciences*, no. May (2022): 9775-86, <https://doi.org/10.53730/ijhs.v6ns1.7288>.

affirming the Tribunal's role in ensuring that detention under the Mental Health Act is justified and lawful. So, the case is often referenced in legal discussions and further cases involving the interpretation of the Mental Health Act 1983 and the role of review tribunals in such matters.⁶³

Figure 1.0 *Becoming a Development State to Ensure This Policy for Mental Disable People*



So, in my point of view, there is a major gap between the real scenario of mental health issues in Bangladesh vs Recently enacted Mental Health Act, 2018 of Bangladesh. In our country, our society cannot be aware of mental disabilities. They literally do not bother about it. Because they believe in superstitions. In fact, in our society, how many people have knowledge about the enacted Mental Health Act, 2018 of Bangladesh, it's a big question. Now-a-days our society thinks that they are unnecessary people for our country or that they should fix it on their own because it is their problem. Such thinking does not change the mindset of people in the society.

That is why in our society mentally disabled people are neglected, isolated and discriminated against for every right and lag behind but still they are fighting. So, it is our duty to accept them as human beings and take the backward society forward. Because, if we

⁶³ Simon Lawton-Smith, "Briefing: Mental Health Act 2007 - Simon Lawton-Smith - The King's Fund, December 2008," *The King's Fund*, 2008.

do not help them, the mentally retarded in the backward society cannot move forward for their improvement in the future but will fall further behind. So, this entire social overview needs to be changed to improve their mental health. We know, "Every human being is born with the right to be born free". So we and society should change the mentality of every person for mentally disabled people, so that they can recover earlier and lead an adequate life.

The Mental Health Act, 2018 of Bangladesh is not exhaustive in nature so there are some drawbacks which have been explained. The government should take the necessary steps to look forward to them.

Mental health is affecting not only in Bangladesh but also in various countries such as: India, Japan, USA, UK *etc.* So, it's one of the major concerns in around the world. As our previous discussion based on previous chapter which has been mentioned about the beneficial role and deficiency of Mental Health Act, 2018 of Bangladesh. Furthermore, the absence of a dedicated mental health authority and inadequate mental health services for the mentally challenged further compound the challenges in accessing mental health services in Bangladesh. So, it can say that there are some findings, recommendations which have been raised here.⁶⁴

Lack of awareness, lack of accountability, social discriminations and social customs; an inadequate availability of mental health care services; lack of education based on mental health issues⁶⁵; domestic abuse ⁶⁶. Mental illness is well known because these victims are neglected and their rights are repeatedly violated. So, based on these

⁶⁴ Eshrat Sharmin, "Contextualizing Mental Health in Bangladesh: The Youth Perspective," *The Daily Star*, 2022, <https://www.thedailystar.net/opinion/views/news/contextualising-mental-health-bangladesh-the-youth-perspective-3073396%3E%0A%0A>.

⁶⁵ Md Manirul Islam, Nasim Jahan, and Md Delwar Hossain, "Violence against Women and Mental Disorder: A Qualitative Study in Bangladesh," *Tropical Medicine and Health* 46, no. 1 (2018): 1–12, <https://doi.org/10.1186/s41182-018-0085-x>.

⁶⁶ Claudia Garcia-Moreno et al., "WHO Multi-Country Study on Women's Health and Domestic Initial Results on Prevalence," *Who* 151, no. 1 (2005): 277–83, <http://www.cabdirect.org/abstracts/20063002089.html>.

issues there are some recommendations to protect their rights from unfair treatment.

Bangladesh faces a critical shortage of psychiatrists and psychologists, with only limited professionals available for a population of over 164.9 million. Most are concentrated in tertiary care institutions, leaving other areas underserved. A multi-sectoral approach is needed to educate the public and improve mental health treatment.

Urban and rural areas lack professional psychiatrists and psychologists. The WHO-recognized Mental Health Gap Action Program trains local doctors and nurses to identify and treat common mental disorders in these areas.⁶⁷ Expanding funding and resources for the mental health sector is essential to reach more people, improve treatment options, provide better facilities, educate more experts, and conduct more research.

Establishing a specialized mental health review tribunal with qualified judges and mental health experts in Bangladesh is suggested to handle mental health-related concerns, including job eligibility for individuals with mental health conditions. Integrating mental health services into primary healthcare facilities ensures timely and efficient care, improving overall health outcomes and reducing barriers to accessing mental health services.

Care and support centers offering various treatments and community support initiatives can aid rehabilitation, reduce stigma, and improve the well-being of individuals with mental health issues. The Mental Health Act and Policy acknowledge the human rights of individuals with mental health conditions but lack a comprehensive list of rights and remedies for violations. A robust framework is needed to explicitly outline these rights and ensure effective measures for addressing violations. Improved implementation, enforcement, monitoring, and assessment are crucial to safeguard the rights of

⁶⁷ <https://www.who.int/publications/i/item/9789241596206>

individuals with mental health conditions and uphold the intended protections in practice.

CONCLUSION

The Mental Health Act, 2018 in Bangladesh, established post-liberation war in 1971, aims to protect individuals with mental disabilities. However, it is not exhaustive and lacks specific human rights perspectives. While it improves on the outdated Lunacy Act, 1912, the Act still has deficiencies and does not fully adhere to international standards. Consequently, mentally disabled individuals often do not receive fair treatment or justice. The government should revise the Act to make it more comprehensive and take steps to raise awareness about mental health. Strong laws, sanctions, and public education are necessary to eliminate stigma and protect the rights of those with mental health issues. Additionally, the government should address wrongful treatment in mental health hospitals to safeguard the rights and lives of mentally disabled people.⁶⁸

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⁶⁸ Kristina Stern and David Hewitt, "Re-Admission under the Mental Health Act Following Discharge by a Mental Health Review Tribunal," *International Journal of Mental Health and Capacity Law*, no. 7 (2014): 169, <https://doi.org/10.19164/ijmhcl.v0i7.358>; Lady Hale, "Is It Time for yet Another Mental Health Act? Royal College of Psychiatrists Annual Conference, Birmingham Lady Hale President of The Supreme Court," no. June (2018): 1-15; Pooja Sharma, Ankita Singh, and Dipanjan Bhattacharjee, "Human Rights of People with Mental Illness: Provisions Made in Mental Healthcare Act 2017," *Indian Journal of Psychiatric Social Work* 11, no. 2 PG-1-8 (2020): 1-8, <https://doi.org/10.29120/IJPSW.2020.v11.i2.209>.

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