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What Persons with Psychosocial Disabilities Need to Access Justice in the Global South Countries Including Bangladesh?

Access to justice means the right of a person to participate on an equal basis with others in all legal proceedings, including filing a complaint, investigation, giving testimony, investigation and trial, with procedural and age-appropriate accommodations.

Access to justice is human right and is a prerequisite for enjoying and realizing all human rights, while a number of barriers prevent people with psychosocial disabilities from doing so on an equal basis with others. Compared to other disability constituencies, persons with psychosocial disabilities face multiple barriers to access justice, and state-sponsored actions frequently exacerbate these barriers in the Global South countries including Bangladesh.

People with psychosocial disabilities—especially women and teenage girls with psychosocial disabilities—are survivors of several heinous crimes including, sexual assault, sexual exploitation, unsafe abortion, human trafficking, and domestic violence based on their disability identity. Human rights violations, such as those pertaining to marriage, forming a family, and deciding whether or not to have children, are now widespread. They encounter multidimensional discrimination at work, in the medical field, and in educational institutions. People with psychosocial disabilities are more likely than other people with disabilities to experience human rights violations and violence, mainly because potential perpetrators believe they won't be held accountable for their actions.

Access to justice is a fundamental human right of people with disabilities in Bangladesh, and is defined under the Rights and Protection of Persons with Disabilities Act, 2013 (RPPDA). Violating this right will be considered disability discrimination, which is liable by any amount of compensation. In order to ensure that people with disabilities have access to justice, this law has been followed by a comprehensive action plan that includes important government activities such as raising awareness, providing legal aid, setting up disability desks at police stations, expediting trials, training actors in the justice sector, providing support services in prisons, and many more.

However, people with psychosocial disabilities face substantial discrimination in both, practice and legislation, despite the fact that all people with disabilities are recognized as having equal legal capacity and access to justice. In Bangladesh, persons with psychosocial disabilities are completely left out and hardly get the opportunity to participate in the legal systems.

This article will discuss the situation of Bangladeshi people with psychosocial disabilities when it comes to access to justice, and the required steps/actions that must be taken to ensure this right in line with the Convention on the Rights of Persons with Disabilities (CRPD) and International Principles and Guidelines on Access to Justice for Persons with Disabilities (UNOHCHR 2020).

This article could be helpful to many countries in the Global South to design, develop, modify and implement justice systems that provide equal access to justice for all, particularly persons with psychosocial disabilities regardless their roles in the process, even though it has been drafted in the context of Bangladesh.

What are the prerequisites for accessing justice?

For justice seekers, legal protection, legal awareness, adequate legal aid, accessibility, skilled personnel, and proper execution of verdicts are the prerequisites of accessing justice. Legal protection is the first step toward obtaining justice. People with psychosocial disabilities will continue to be trapped at this entry point if laws are not amended or harmonized in accordance with the CRPD. Then, the concerns of awareness, legal aid, accessibility, training, and verdict execution will be confronted one after the other in order to finish the course of securing justice. Any interruption during the course of action could lead to a miscarriage of justice.

In collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Special Rapporteur on the Rights of Persons with Disabilities prepared International Principles and Guidelines on Access to Justice for Persons with Disabilities[1]. This document outlines ten principles and an extensive set of guidelines for guaranteeing access to justice for people with disabilities. The Principles and Guidelines are intended to support justice stakeholders in ensuring that the rights of people with disabilities are respected and that they are better represented and involved in proceedings. Additionally, they offer a framework for the inclusion and participation of people with disabilities in a variety of roles within the administration of justice (such as judge, juror, and witness) as a democratic imperative that involves and reflects all facets of society.

Following paragraphs present the International Principles along with the implementation status of right to access to justice for Bangladeshi people with psychosocial disabilities and proposed actions to protect their rights in line with the CRPD & International guidelines.

[1] https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

Principle 1: All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.

Context	*What Persons with Psychosocial Disabilities Need to Access Justice?*
Bangladeshi laws & policies- • Restrict the equal legal capacity of persons with psychosocial disabilities. • Restrict persons with psychosocial disabilities to participate in legal proceedings. • Restrict the right of persons with psychosocial disabilities to be enrolled as a voter and exercise their voting rights which ultimately restrict them to participate in the policy making processes. • Impose restrictions on fundamental freedoms and equal legal capacity of persons with psychosocial disabilities. • Do not recognize supported decision-making processes. • Promote Institutionalization of persons with psychosocial disabilities • Guardianship for adults with psychosocial disabilities	Repeal or amend all laws, regulations, policies, guidelines and practices that: • Directly or indirectly restrict the legal capacity of persons with disabilities, including those that allow for substituted decision-making and those that require that a person be "of sound mind" to take any action, thereby excluding persons with disabilities from equal access to justice. • Establish and apply doctrines of "unfitness to stand trial" and "incapacity to plead", which prevent persons with psychosocial disabilities from participating in legal processes based on questions about or determinations of their capacity. • Restrict or exclude witnesses with disabilities from presenting testimony based on assessments of their capacity to testify. • Authorize or otherwise empower medical professionals to be the sole or preferred "experts" in determining or opining on a person's capacity to make decisions, to testify or for any other purpose. • Preventing persons with disabilities from initiating and pursuing legal claims.

Principle 2: Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.

Context	*What Persons with Psychosocial Disabilities Need to Access Justice?*
• Police station, court buildings and other public places are NOT physically accessible though Bangladesh laws recognized accessibility as a right of persons with disabilities.	• Ensuring that adequate financial resources are available to make the justice system physically accessible to persons with disabilities in

• Transport systems is very inaccessible, there is no accessible bus. • People with psychosocial disabilities are deterred from utilizing the legal system to protect their rights because they feel insecure in public places, such as courts. Hate crimes, violence, and cruelty frequently target them.	accordance with the principles of universal design. • Guaranteeing the provision of reasonable accommodations when facilities and services fail to ensure access to the existing physical environment, transportation, information and communications for persons with disabilities. • Ensure safe environment for persons with psychosocial disabilities.

Principle 3: Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

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• Children Act, 2013 has provided for appropriate measures but there is a huge gap in the implementation. • There is some reasonable l accommodation for persons with psychosocial disabilities in the existing laws, but those remain only on the papers.	• Adaptation of the venue; Appropriate waiting spaces; Removal of cloaks and wigs; Adjustments to the pace of proceedings; Separate building entrances and waiting rooms and protective screens to separate persons with disabilities from others if necessary due to physical or emotional distress; Modifications to the method of questioning in appropriate circumstances, such as allowing leading questions, avoiding compound questions, finding alternatives to complex hypothetical questions, providing extra time to answer, permitting breaks as needed and using plain language. • Ensuring that all processes in the justice system provide the technical and other support necessary for parties, witnesses, claimants, defendants and jurors to use any form of communication as necessary for full participation of persons with psychosocial disabilities.

Principle 4: Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.

Context	*What Persons with Psychosocial Disabilities Need to Access Justice?*
• There is no separate plans and methods for	• Ensure that notices and information include clear understandable information about how a procedure

serving notices and information to persons with psychosocial disabilities.	works, what to expect during a process, what is expected of a person, where to get help with understanding the process and the person's rights in the process, in language that is not merely a repetition of the statute, regulation, policy or guideline – for example, plain language. • Ensure that support is available in real time for individuals who need assistance to understand notices and information by providing, for instance, interpreters, peer support, guides, readers, intermediaries and facilitators, and other forms of support.

Principle 5: Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

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• Bangladeshi laws guarantee the substantive and procedural safeguards and due process of law recognized in international law including UDHR, ICESCR and CRPD. • In practice, persons with psychosocial disabilities are denied enjoyment of the aforesaid guaranteed rights and safeguards.	• Ensure that all suspects and accused persons with psychosocial disabilities are presumed innocent until proven guilty under the law. • Ensure that suspects or accused persons with psychosocial disabilities are provided with accessible and understandable information about their rights, including the right not to incriminate oneself. • Ensure that health-care and CRPD compliant psychosocial support are available at the request of persons with psychosocial disabilities, based on their free and informed consent, irrespective of the outcome of any police action or judicial proceedings, and not contingent on a plea bargain, confession or conviction.

Principle 6: Persons with disabilities have the right to free or affordable legal assistance.

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• According to the Legal Aid Act, ALL persons with disabilities are entitled to free legal aid without any means test.	• Ensure adequate funding and legal aid to cover litigation cost, transport, support systems, logistics and all necessary expenses. • Repeal or amend all laws, regulations, policies, guidelines and practices that impose substituted

• The costs of accommodation, meals, and logistics are not covered by legal assistance, which deters people with disabilities from using the legal system to protect their rights.	decision-making in legal proceedings, including those that allow for the appointment of decision makers against the will of persons with disabilities (e.g. guardians ad litem, next friends and similar arrangements); or decisions made on the basis of the "best interests" of the persons concerned, as opposed to being based on their own will and preferences.

Principle 7: Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.

Context	*What Persons with Psychosocial Disabilities Need to Access Justice?*
• Bangladesh Judicial Service Recruitment laws are very discriminatory, denies equal opportunities to judicial services. This law requires a candidate to go through extensive medical testes. But the Constitution and the RPPDA guarantees equal legal capacity, equal opportunity to public services irrespective of types of disabilities.	• Remove barriers that prevent or discourage persons with disabilities from entering justice system-related professions by, for instance: providing reasonable accommodations throughout legal and justice-related education programs; providing reasonable accommodations during certification and licensing examinations or processes; prohibiting questions about health and disability in applications for admission to the legal profession and positions in the justice system. • Ensuring that all facilities and structures in the justice system are universally accessible to workers with disabilities. • Remove all disability-related barriers, including laws, that prevent persons with disabilities from being judges or jurors or serving in any other justice- related positions.

Principle 8: Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.

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• The RPPDA has criminalizes the act of preventing persons with disabilities to take shelter of law.	• Remedies should, among other things: be enforceable, individualized and tailored to meet the needs of claimants.

• In practice, police deny registering cases of persons with psychosocial disabilities.	• Ensure that survivors are protected from repeat violations of their human rights. • Be provided on the basis that an individual's free and informed consent is required for any rehabilitative measures. • Address the systemic nature of human rights violations.

Principle 9: Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.

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• Currently the monitoring mechanism for tracking the implementation status is not in place. • National Human Rights Commission, Bangladesh is established but they are not independent, and they do not have any mandate to track data on disability rights violations.	• Ensure the meaningful participation of persons with psychosocial disabilities and their representative organizations in designing and implementing independent monitoring mechanisms. • Include a mandate to actively monitor and identify violations of the rights of persons with psychosocial disabilities, particularly those deprived of liberty and placed in institutional settings. • Include a mandate for the independent monitoring mechanisms to gather and publicly report data on human rights violations, including barriers to access to justice.

Principle 10: All those working in the justice system must be provided with awareness-raising and training programs addressing the rights of persons with disabilities, in particular in the context of access to justice.

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• Judges, lawyers, police and other relevant personnel still perceive disability from welfare and medical perspectives. They do not have necessary skills and understanding about human-rights based approach of disability. All these lead to the miscarriage of justice for	• Government must remove barriers to justice for persons with disabilities by providing training on the rights of persons with disabilities to all justice officials, including the police, judicial officers, lawyers, health professionals, forensic experts, victim service professionals, social workers, and probation, prison and youth detention staff. • Ensure that training programs are comprehensive and address at least the following topics:

persons with psychosocial disabilities. ● The RPPDA has clearly mentioned that the government of Bangladesh will undertake training initiative for the judges, police members. ● The training curriculum of legal professionals still to include disability issues.	- Factors or system features that can result in barriers for persons with psychosocial disabilities; - Removal of barriers to access to justice for persons with psychosocial disabilities; - The Convention on the Rights of Persons with Disabilities and the human rights model of disability; - The acknowledgement that persons with disabilities have the right to recognition as persons before the law, including combating harmful gender and disability stereotypes and prejudices; - The obligation to respect the legal capacity of persons with disabilities, including legal agency and standing; - Procedural accommodations; - Reasonable accommodations.

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