



**EAST WEST UNIVERSITY**

**DISSERTATION**  
**ON**  
**VIOLATION OF RIGHT TO LIBERTY BY INVOLUNTARY**  
**MENTAL HEALTH TREATMENT IN BANGLADESH: A**  
**LEGAL ANALYSIS ON MENTAL HEALTH ACT 2018**

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## Consent Form

The Dissertation titled — **Violation of Right to Liberty by Involuntary Mental Health Treatment in Bangladesh: A Legal Analysis on Mental Health Act 2018** prepared by **Nowshin Mustafa, ID: 2019-1-66-026** submitted to **Adity Rahman Shah, Senior Lecturer of Department of Law, East West University** for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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## **Declaration**

I, **Nowshin Mustafa**, bearing student ID: **2019-1-66-026**, hereby declared that, this thesis paper titled “**Violation of Right to Liberty by Involuntary Mental Health Treatment in Bangladesh: A Legal Analysis on Mental Health Act 2018**” was entirely prepared by me under the supervision of **Adity Rahman Shah, Senior Lecturer, Department of Law, East West University** for my graduation requirement. I further declare that the content of this thesis paper has not been submitted or published by any journal, newspaper, or article. The content and materials used for this thesis paper are acknowledged duly and recognized in the references and properly cited.

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## List of Abbreviation

CRPD	Convention on the Right of Persons with Disabilities 2006
ICESCR	International Covenant on Economic, Social and Cultural Right
ICCPR	International Covenant on Civil and Political Rights
MHA	Mental Health Act 2018
MI Principle	Principles for the protection of persons with mental illness and the improvement of mental health care
UDHR	Universal Declaration of Human Right

## **Abstract**

The right to mental health is well established as an important human right, yet Bangladesh is still overflowing with social stigmas concerning the concept of mental health. The treatment for mental health problems are mostly ignored by an individual facing mental health problems or their family. Most of the people think of mental health hospitals as nothing but a prison to detain patient. Involuntary admission and treatment to a mental health patient is a common practice in worldwide. Most of the countries adopted their legislation regarding the involuntary admission in compliance with United Nation Standards to ensure a human right based management. Bangladesh has also recently enacted the Mental Health Act 2018 to provide a right based healthcare services. This paper primarily seeks to determine whether the right to liberty of an individual is ensured under the provision of involuntary admission in Bangladesh. It critically analyses the national legal frameworks concerning the right to liberty by involuntary admission and present notable incompatibilities with international legal standards. There are remaining some gaps into the provision of involuntary admission which are the barriers to the enjoyment of right to liberty of a mental health patient. Bangladesh needs more comprehensive legislation with effective enforcement mechanisms to effectively implement the rights of the people with mental health problems. Thus the purpose of the research is to identify the loopholes of the provision and recommend possible solution by analyzing the current legal framework.



# Chapter 1

## Introduction

### 1.1. Background of the Study:

The right to liberty of an individual with mental health problems are crucial matter to discuss. The concern about right to liberty arises when patients with ordinary mental health conditions are forcefully admitted to a mental health care institution for their treatment. Such involuntary placement of a mental health patient is a debating issue in the context of contemporary human right laws. Hence everyone is entitled to live with dignity and rights<sup>1</sup> and patients with mental health conditions are no exception from it.<sup>2</sup> The definition of ‘health’ is not limited within the mere physical health of a person, rather it correspondingly includes an individual’s mental and emotional well-being.<sup>3</sup> The right to the highest attainable standard of both physical and mental health of a person is a fundamental human right<sup>4</sup> which is vital for exercising of other human rights as well. However, the right to mental health does not mean a mere absence of illness or diseases. It rather includes the wellness of the mental health along with the absence of illness.<sup>5</sup> Therefore, the wellbeing of an individual is questioned during involuntary placement in a mental health institute.

Although the right to mental health is well established as an important human right, yet a developing country like Bangladesh is still overflowing with social stigmas concerning the concept of mental health. Mental health problems are one of the most ignored topic in Bangladesh. It’s a densely populated country where 14% of children (Age of 7 to 17) and 16.8% of adults of its total population are suffering from mental health conditions.<sup>6</sup> Among them, 92.3% of adults and 94.5% of children have treatment gaps and are unable to get effective treatment for their mental disorder.<sup>7</sup>

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<sup>1</sup> Universal Declaration of Human Rights 1948 [UDHR] Art. 1.

<sup>2</sup> UDHR. Art. 2

<sup>3</sup> UN General Assembly, Entry into force of the constitution of the World Health Organization, 17 November 1947, A/RES/131 [WHO Constitution]

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights, 1966 [ICESCR] Art. 12(1)

<sup>5</sup> UN Human Rights Council, *Mental health and human rights*, 31 January 2017, A/HRC/34/32 [Hereinafter referred Mental Health and Human Rights]

<sup>6</sup> WHO Bangladesh. 2019. National Mental Health Survey of Bangladesh, 2018-2019: Provisional Fact Sheet. <[https://www.who.int/docs/default-source/searo/bangladesh/pdf-reports/cat-2/nimh-fact-sheet-5-11-19.pdf?sfvrsn=3e62d4b0\\_2](https://www.who.int/docs/default-source/searo/bangladesh/pdf-reports/cat-2/nimh-fact-sheet-5-11-19.pdf?sfvrsn=3e62d4b0_2)> [NIMH Fact Sheet] Accessed on 25 March, 2023

<sup>7</sup> Ibid

After the independence in 1971, Bangladesh inherited only a single mental health hospital along with The Lunacy Act 1912.<sup>8</sup> This particular Act was long being criticized, as it mostly focused on forced treatment by way of isolating and detaining the people with mental health conditions. It did not look after their well-being and fully ignored the concept rehabilitation within the society.<sup>9</sup> Thus such action resulted to the violation of right to liberty along with other human rights violation to an individual suffering with mental health problems.<sup>10</sup> Therefore, after a long demand for the enactment of a new mental health law, the Mental Health Act 2018 was enacted by the government.<sup>11</sup> The aim of this Mental Health Act 2018 is to provide a right based healthcare services. It also has an aim to protect the right to property of people with mental health problems and ensure their rehabilitation and the overall welfare.<sup>12</sup> Four major issues have been covered by this Act of 2018. Firstly, it included the provisions regarding the establishment of mental health hospitals, clinic and rehabilitation centers and also addressed about the supervision of these places; secondly, provisions regarding the assessment, admission and treatment of mental health patients has been mentioned; thirdly, the judicial examination of mental health and determination of mental capacity; and lastly the guardianship of the person and property of such patients.<sup>13</sup> It also tied to safeguard the human rights of the patients.<sup>14</sup> Although the new law has brought some effective provisions to ensure the well-being of the patients yet some provisions of the statute fail to ensure a complete human right-based legislation. It has some major flaws among which, the provision regarding involuntary admission of people with mental health problems is one. The said provision is very loosely described which left a wide scope to create barriers to enjoy one's right to liberty.

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<sup>8</sup> Mohammad Ershadul Karim and Sabuj Shaikh, Newly enacted mental health law in Bangladesh. (2021) 18(4) *BJPsych International* 85 [Hereby referred Newly enacted mental health law in Bangladesh]

<sup>9</sup> Ibid.

<sup>10</sup> Rayhanul Islam, 'Rights and sufferings of an unsound mind under "Lunacy Act 1912"' (*LAW HELP BD* 23 May 2018) <<https://lawhelpbd.com/special-law/rights-and-sufferings-of-an-unsound-mind-under-lunacy-act-1912/>> Accessed April 05, 2023

<sup>11</sup> Newly enacted mental health law in Bangladesh.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Mental Health Act 2018 [MHA 2018] s 6

## **1.2. Objective:**

The major goal of this paper is to identify the effectiveness of the existing legal provisions regarding involuntary patient in Bangladesh and how it might cause deprivation of an individual's right to liberty. Further the research paper also tried to suggest some recommendation regarding this issue.

The objectives of this research paper are-

1. To specify the right to liberty of a person with mental health problems in the context of involuntary admission;
2. To understand the notion of involuntary admission of a patient with mental health problems under international and national standards;
3. To identify the significant loopholes of the existing national laws regarding involuntary admission and how it might result to a violation of right to liberty;
4. To suggest some recommendations to reduce the gaps and can tailor more human right based legislation.

## **Research Question:**

- A. Is Mental Health Act 2018 effective in protecting individual's right to liberty in case of involuntary admission of mental health of a mental health patient?

## **Research Methodology:**

To achieve the purpose of this dissertation, this research is conducted using the qualitative research method. This study is focused on both primary sources and secondary sources. International laws, domestic laws, regulation and statutes are referred as the primary sources whereas secondary sources are collected from national and international journals, newspaper articles, online journals, websites, and blogs for exploring relevant knowledge about the right to liberty of person with mental health conditions. However, the footnotes and bibliography have been referred to in the OSCOLA referencing system.

**Scope:**

The research only deals with the right to liberty of people who are admitted in a mental health facility without their own consent. The right and the concept of involuntary admission has been discussed in the context of human right aspect considering the international laws and national legislation. The research critically analyzes the provisions of Mental Health Act 2018 of Bangladesh which deals with involuntary admission of patient with mental health disorders.

**Limitation:**

The purpose of this research paper was to finding the loopholes in the existing laws regarding involuntary admission of a mental health patient. Although the research paper has carefully drafted yet the author of the research paper was aware of its limitations and weakness. Reliable arguments regarding the topic of involuntary admission in Bangladesh is hard to find as the legislations are very recently enacted. Therefore, the paper is based several journals, newspapers articles and website blogs as because of the lack of access to relevant materials and the limitation of time.

## Chapter 2

### Definitions and Legal Background

Before moving into the legal concept of the right to liberty of people with mental health problems, we need to be clear about some definitions. Among them a clear definition of mental health, is the first important element which we need to understand. Moreover, we need to be more clear about the different stages of mental health problems, which is interchangeably used as mental health conditions. People with mental health problems can includes mental health illnesses, mental health disorder and mental health disabilities. Therefore, before moving forward to analyze the right to liberty of people with mental problems, these three characterization must need to be known. Afterwards, the two key points which need to be recognize are the implications of the right to liberty of people with mental illness and the legal background regarding the right to mental health along with the right to liberty of mental health patients.

#### 2.1. Mental Health:

According to the Oxford dictionary, mental health is a state of health of somebody's mind.<sup>15</sup> Other than this definition, World Health Organization(WHO) has well-defined mental health as a state of mental well-being in which an individual can compresence to their abilities, learn and work productively, make contribution to his or her community and can manage with the normal stresses of life.<sup>16</sup> A good mental health is not merely an absence of a mental disorder and is more than the absence of any mental illnesses or mental disorders. It means a full state of mental well-being.<sup>17</sup> However, mental health conditions or mental health problems refers to not only an individual's mental disability but also one's mental states associated with distress, facing problems in

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<sup>15</sup> Oxford Learner's Dictionary <<https://www.oxfordlearnersdictionaries.com/definition/english/mental-health#:~:text=mental%20health-,noun,of%20health%20of%20somebody's%20mind>>

<sup>16</sup> "Mental Health" (World Health Organization) <<https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response&gt>> Accessed 4 April 2023 [Hereinafter refer WHO Mental Health Fact Sheets]

<sup>17</sup> Laurie A Manwell 'What is mental health? Evidence towards a new definition from a mixed methods multidisciplinary international survey' (2015) 5:6 *BMJ open*

functioning social or professional activities, risk of self-harm and etc.<sup>18</sup> Such range mental health conditions are referred below-

### **2.1.1. Mental Illness and Mental Disorder:**

When it comes to identify about the concept of mental health, the differences between mental illness and mental disorder are an often asked question.<sup>19</sup> Mostly ‘Mental Illness’ and ‘Mental Disorder’ are used interchangeably but however it has a slight difference.<sup>20</sup> A mental disorder refers to a disturbance of the normal physical or mental health of the mind, whereas mental illness refers to a range of health conditions that affect your mood, thinking and behavior.<sup>21</sup>

However, apart from the medical definition, mental illness and mental disorder is defined separately in domestic laws. The Mental Health Act, 2018 (MHA) has also defined these two condition of mental health in its own concept. According to this Act of 2018, ‘Mental disorder’ is defined as conditions, including mental disability, drug addiction and any other clinically recognized mental conditions, that, being connected with a person’s body or mind, hinder their normal living.<sup>22</sup> Whereas, ‘Mental illness’ is defined under this Act, as a form of mental illness other than mental disability or drug addiction.<sup>23</sup>

### **2.1.2. Mental Disability:**

The definition of ‘Disability’ is not clearly mentioned in the Convention on the Rights of the Person with Disability (CRPD).<sup>24</sup> It allowed individual states parties in an extensive way to define disability in their own domestic laws.<sup>25</sup> Thus our national legislation has provided a detailed expiation of disability. Rights and Protection of Persons with Disabilities Act 2013 (RPPDA) refers to disability as social barriers to someone who physically, psychologically or mentally is

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<sup>18</sup> WHO Mental Health Fact Sheets

<sup>19</sup> ‘Mental Illness vs Mental Disorder: Understanding Mental Health’ (*Modern Psychiatry and Wellness* October 27 2021) <<https://mpwhealth.com/mental-illness-vs-mental-disorder/>> Accessed 4 April 2023

<sup>20</sup> Natasha Tracy, ‘Difference between Mental Illness and Mental Disorder’ (*HealthyPlace* October 23 2019) <<https://www.healthyplace.com/other-info/mental-illness-overview/difference-between-mental-illness-and-mental-disorder/>> Accessed 4 April 2023

<sup>21</sup> ‘Mental Illness vs Mental Disorder: Understanding Mental Health’ (*Modern Psychiatry and Wellness* October 27, 2021) <<https://mpwhealth.com/mental-illness-vs-mental-disorder/>> Accessed 4 April 2023

<sup>22</sup> MHA 2018, s 2(15)

<sup>23</sup> *Ibid*, s 2(16)

<sup>24</sup> George Szmukler ‘Mental health law and the UN Convention on the rights of Persons with Disabilities’ (2014) 37(3) *International journal of law and psychiatry* 245–252.

<sup>25</sup> *Ibid*.

incapable to function properly.<sup>26</sup> Further, it specifically defined the term ‘mental illness leading to disability’ which is also used as the term ‘psychosocial’.<sup>27</sup> Psychosocial refers to any person with schizophrenia or other similar kinds of mental problems such as clinical depression, bipolar disorder, post-traumatic stress, anxiety or phobic disorders that prevent them from engaging in daily activities.<sup>28</sup> However, under the MHA 2018, mental disability is included under the definition of mental disorder.<sup>29</sup>

## **2.2. Legal Background of Right to Mental Health:**

The concept of right to mental health is as old as the international bill of rights. Though the Universal Declaration of Human Rights does not include the right to mental health directly, but it ensure Everyone’s right to a standard of living adequate for the health and well-being of himself and of his family.<sup>30</sup> Whereas, the Constitution of the World Health Organization defines health as the complete state of physical, mental and social well-being.<sup>31</sup> Therefore, it’s clear that the right to health mention under the UDHR includes both physical health and mental health. Moreover, The International Covenant on Economic, Social and Cultural Right (ICESCR) directly includes the right to mental health under its Article. It ensures everyone’s highest attributable standard of physical and mental health.<sup>32</sup> The United Nation Committee on Economic, Social and Cultural Rights adopted its general comment on right to health back in 2000 and over these last two decades, mental health has recognized as one of the vital components of the right to health.<sup>33</sup> Later on, the UN Human Right Council had adopted resolutions on Mental Health and Human Right<sup>34</sup> which emphasizes that mental health is an integral part of the right to health.<sup>35</sup>

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<sup>26</sup> Rights and Protection of Persons with Disabilities Act 2013, s 2(9)

<sup>27</sup> RPPDA 2013, s 6

<sup>28</sup> RPPDA 2013, s 6

<sup>29</sup> MHA 2018, s 2(16)

<sup>30</sup> UDHR, Article 25(1)

<sup>31</sup> WHO Constitution

<sup>32</sup> ICESCR 1966 Article 12(1)

<sup>33</sup> Brock Chisholm, ‘Outline for a study group on World Health and the survival of the human race: Material drawn from articles and speeches’ (*Geneva: World Health Organization* 1951)

<<https://apps.who.int/iris/bitstream/handle/10665/330666/MH.276.51-eng.pdf>> Accessed 4 April 2023

<sup>34</sup> Mental health and human rights.

<sup>35</sup> Ibid

Thus, such right is not only limited to a mere health issue but the realization of all other human rights to enjoy the mental health as a right.<sup>36</sup>

### **2.3. Legal Concept of Right to Liberty of people with Mental Health Conditions:**

The right to liberty is one of the oldest human rights norms which has been constantly protected and enhanced by international bill of rights and UN treaties.<sup>37</sup> International Bill of Right, including UDHR and ICCPR are some of the prominent conventions to guarantee the right to liberty.<sup>38</sup> It ensures that every person has the right to liberty and no one shall be subjected to any arbitrary detention.<sup>39</sup> Nonetheless, the right to one's personal liberty is also guaranteed as a fundamental right under the Constitution of Bangladesh.<sup>40</sup> It ensures that no one shall be deprived of personal liberty save in accordance with law<sup>41</sup> and a person cannot be detained except in accordance with law.<sup>42</sup> However, the Human Rights Committee had acknowledged under its general comments that the assurance of right to liberty under ICCPR applies against the deprivation of liberty of person with mental health problems as well.<sup>43</sup> The right to liberty of a person with mental health problem is specifically related in the context of involuntary admission of patient and involuntary treatments.<sup>44</sup> Involuntary treatment refers as to the medical or therapeutic process where an individual did not give any consent about it.<sup>45</sup> Deprivation of liberty of persons with mental problem occurs when they admitted to an institute without their will for the reason of their mental status.<sup>46</sup> Article 9 of the ICCPR specifies involuntary hospitalization and arbitrary detention in the

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<sup>36</sup> Ibid.

<sup>37</sup> European Agency for Fundamental Rights, *Involuntary placement and involuntary treatment of persons with mental health problems* (Luxembourg 2012). [Hereinafter referred Involuntary placement and involuntary treatment of persons with mental health problems]

<sup>38</sup> Ibid

<sup>39</sup> ICCPR, Article 9(1)

<sup>40</sup> Moin Ghani, Right to Liberty (*Ain o Shalish Kendra*) <<https://www.askbd.org/ask/right-liberty/>> Accessed 5 April 2023

<sup>41</sup> The Constitution of the People's Republic of Bangladesh, Article 32 [Hereinafter referred as Constitution of Bangladesh]

<sup>42</sup> Moin Ghani, Right to Liberty, (*Ain o Shalish Kendra*) <<https://www.askbd.org/ask/right-liberty/>> Accessed 5 April 2023

<sup>43</sup> UN Human Right Committee (HRC) *General comment no. 35, Article 9 (Liberty and security of person)* 16 Dec 2014, CCPR/C/GC/35 Para 5 [Hereinafter referred ICCPR General comment no. 35]

<sup>44</sup> Involuntary placement and involuntary treatment of persons with mental health problems.

<sup>45</sup> Mental health and human rights.

<sup>46</sup> Involuntary placement and involuntary treatment of persons with mental health problems.



field of mental health as a clear deprivation of personal liberty as it force an individual to commit to hospitalization without their own consent.<sup>47</sup>

#### **2.4. Current Scenario of Right to Liberty of people with mental health problems in Bangladesh:**

The South Asian region have a history of British Colonial rule. During that time, it had inherited 19th century British Lunacy Act. After the division of British India into Pakistan and India, both of the countries adopted a new version of Lunacy Act in 1912. After the independence in 1971, Bangladesh inherited only a single mental health hospital along with this 1912 version of The Lunacy Act.<sup>48</sup> This particular Act was long being criticized, as it mostly focused on forceful treatment without consent, isolating and detaining the people with mental illness and ignored their well-being and rehabilitation within the society.<sup>49</sup> Like any other old legislation, this Lunacy Act is also not informed by modern day human rights law and the good psychiatric practice. Thus it declared as 'archaic and obsolete'.<sup>50</sup> Therefore, after a long demand for the enactment of a new mental health law, the Mental Health Act 2018 was enacted by the government to ensure the right to mental health and other rights of the mental health patients.<sup>51</sup> However, this modern Act still contains some provisions regarding involuntary admission of patients with mental disorder.<sup>52</sup> In reality such provision ends up with forceful admission and causing the violation of patients right to liberty.<sup>53</sup> An average patient with mental health conditions had to spend 137 days detained in the mental health institution for sake of treatment.<sup>54</sup>

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<sup>47</sup> General comment no. 35 of Article 9, para 19

<sup>48</sup> Sangeeta Dey 'Comparing legislation for involuntary admission and treatment of mental illness in four South Asian countries' (2019) 13:67 International journal of mental health systems 1

<sup>49</sup> Newly enacted mental health law in Bangladesh.

<sup>50</sup> Sangeeta Dey 'Comparing legislation for involuntary admission and treatment of mental illness in four South Asian countries' (2019) 13:67 International journal of mental health systems 1

<sup>51</sup> Newly enacted mental health law in Bangladesh.

<sup>52</sup> MHA 2018, 2018 sec

<sup>53</sup> Tasfiah Rahman, 'We must protect the rights of mental health patients' (*The Daily Star* 2021)

<<https://www.thedailystar.net/views/opinion/news/we-must-protect-the-rights-mental-health-patients-2124761>>

Accessed 11 April 2023

<sup>54</sup> Ibid.

## Chapter Three

### The International Legal Framework Regarding Involuntary Admission for People with Mental Health Problems

Right to Mental health and other rights of people with mental health problems are both nationally and internationally a growing concern around the world. International laws had recognized the right to mental health under many conventions along with a comprehensive set of human rights for people with mental health problems. Among them, the right to liberty of the people with mental health problems are also guaranteed. Apart from UDHR, ICCPR and ICESCR, forming MI Principles and UNCRPD are the primary step to includes rights for people with mental health problems. Hence CRPD directly inserted the right to liberty of a mentally disable person, whereas MI Principles indirectly ensures the right to liberty of a person with mental problems by giving some comprehensive guidelines for treatment of involuntary patient. The provisions of these conventions dealing with right to liberty of people with mental illnesses are briefly discussed in this existing chapter of this paper.

#### 3.1. International Conventions and Regulations which ensure Right to Liberty:

##### 3.1.1. Universal Declaration on Human Rights-

UDHR was the first stage to legally formulate the right to liberty and security of the person.<sup>55</sup> It had enumerated the right under Art. 3 and Art. 9 of the Declaration.<sup>56</sup> It declared that Everyone has the right to life, liberty and security of person<sup>57</sup> and no one shall be subjected to arbitrary arrest, detention

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<sup>55</sup> 'The right to liberty' (*Icelandic Human Rights Centre*) <<https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-liberty>> Accessed 18 April 2023

<sup>56</sup> Ibid

<sup>57</sup> UDHR, Art. 3

or exile.<sup>58</sup> Since then this right is further elaborated by numbers of international human rights instruments in international level as well as in national level.<sup>59</sup>

### **3.1.2. International Covenant on Civil and Political Rights-**

ICCPR guarantees the right to liberty under Article 9 of its Convention.<sup>60</sup> It states that every person has the right to liberty and no one shall be subjected to any arbitrary detention.<sup>61</sup> Article 9 of this Convention guarantees this right to everyone and here, “Everyone” includes persons with mental health problems<sup>62</sup> since the Human Rights Committee had recognized that the deprivation of liberty under ICCPR includes involuntary hospitalization of persons with mental health problems.<sup>63</sup> However, It acknowledged the harms that may result in situations of involuntary hospitalization.<sup>64</sup> States parties have the duty to take appropriate measures and must protect individuals against wrongful deprivation of liberty by lawful organizations, such as hospitals.<sup>65</sup> The Committee further indicated that in order to avoid arbitrary detention in the field of mental health care the state should revise its outdated laws and practices.<sup>66</sup>

### **3.1.3. Convention on the Rights of Persons with Disabilities-**

The United Nation General Assembly adopted the CRPD in 2006 for the purpose to protect and ensure the full and equal enjoyment of all human rights to the persons with disabilities, and to recognize their inherent dignity.<sup>67</sup> Hereinafter the Convention ensured the right to liberty of persons with disabilities under Art 14. All persons with disabilities, especially persons with psychosocial disabilities and intellectual disabilities are entitled to have the right to liberty.<sup>68</sup> The Convention clearly states that the existence of a disability to a person shall not be justified in any

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<sup>58</sup> UDHR, Art 9

<sup>59</sup> ‘The right to liberty’ (*Icelandic Human Rights Centre*) <<https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-liberty>> Accessed 18 April 2023

<sup>60</sup> ICCPR, Art 9(1)

<sup>61</sup> ICCPR, Art 9(1)

<sup>62</sup> ICCPR General comment no. 35

<sup>63</sup> *Ibid*, para 5

<sup>64</sup> *Ibid*, Para 19

<sup>65</sup> *Ibid*, para 7

<sup>66</sup> *Ibid*, para 19

<sup>67</sup> Convention on the Right of Persons with Disabilities 2006, Art 1(1)

<sup>68</sup> UN General Assembly, Report of the Committee on the Rights of Persons with Disabilities, 2nd September 2016, A/72/55

case for a deprivation of his or her liberty.<sup>69</sup> The state parties shall ensure the right to liberty and security of them<sup>70</sup> and if they deprived of their liberty through any process, they shall be treated in compliance with the objectives and principles of this Convention.<sup>71</sup> There are total eight guiding principles under this Convention that underlie its purpose.<sup>72</sup> These principles indicate to the purpose of the Convention whereby Article 14 directly relates to this purpose.<sup>73</sup> Among these eight principles, it includes respect for their inherent dignity, individual independence including the freedom to make their own choices.<sup>74</sup> It further includes non-discrimination,<sup>75</sup> participation and inclusion in society,<sup>76</sup> accessibility<sup>77</sup> and equality of opportunity.<sup>78</sup> However, the CRPD Committee recommended the states to review the laws that allow for the deprivation of liberty by authorize involuntary placement on the basis of an apparent or diagnosed disability, including a psychosocial or intellectual disabilities.<sup>79</sup> These steps underline the realization of right to liberty in Article 14 of the CRPD. Their recommendations support calls for prohibiting involuntary placement or at least extensive alterations in the mental health legislation for persons with mental health problems.<sup>80</sup>

### **3.1.4. UN Resolution on Mental Health and Human Right-**

The Human Rights Council adopted resolution on mental health and human rights in 2016.<sup>81</sup> In the report, the High Commissioner recommended some policy moves, which will help to support the full realization of the human rights of those populations, who faces mental health conditions and of persons with psychosocial disabilities.<sup>82</sup> Its goal is to suggest the changes which will work

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<sup>69</sup> CRPD, Art 14(2)

<sup>70</sup> Ibid, Art 14(1)

<sup>71</sup> Ibid, Art 14(2)

<sup>72</sup> Ibid, Art 3

<sup>73</sup> UN General Assembly, Report of the Committee on the Rights of Persons with Disabilities, 2nd September 2016, A/72/55

<sup>74</sup> CRPD Article 3(a)

<sup>75</sup> Ibid, Article 3(b)

<sup>76</sup> Ibid, Article 3(c)

<sup>77</sup> Ibid, Article 3(f)

<sup>78</sup> Ibid, Article 3(e)

<sup>79</sup> Involuntary placement and involuntary treatment of persons with mental health problems.

<sup>80</sup> Ibid, 15

<sup>81</sup> Stephen P. Marks, “Mental Health and Human Rights” in Neal S Rubin and Roseanne L Flores (eds), *The Cambridge Handbook of Psychology and Human Rights* (Cambridge University Press 2020)

<sup>82</sup> Ibid.

as the measures to improve the quality of mental health service delivery and fulfill the aim to put an end to the involuntary treatment and institutionalization.<sup>83</sup> According to the resolution adopted, everyone has the right to enjoy the highest attainable standard of mental health with a voluntary informed consent.<sup>84</sup> Guaranteeing the right of an informed consent is one of a fundamental features to recognize one's autonomy, self-determination and human dignity.<sup>85</sup> The consent becomes valid consent only when it is voluntarily and an informed decision on the basis of full knowledge regarding the nature, benefits, risks or consequences of the treatment and on the availability of other alternatives.<sup>86</sup> Thus the administration of medical procedure without the informed consent of an individual is mentioned as the involuntary admission and treatment.<sup>87</sup> Thus such the forced and involuntary institutionalization without one's consent is the violation of the right to personal liberty.<sup>88</sup> Therefore, the resolution guided the state parties to repeal such legislation and policies which allow involuntary placement of patient with mental health conditions and should provide alternatives.<sup>89</sup>

### **3.2. What International Law underlines regarding Involuntary Treatment of harmful mental health patient?**

It is a matter of debate in present human right era that whether it is justified to treat patient against their consent or not. Although the CRPD provides an absolute prohibition of compulsory treatment of PWD, including mental disabilities. Hence it completely ignored to the matter of psychotic patient who are violent in nature and likely to harm themselves or others.<sup>90</sup> It is important to provide treatment to patient, who are unable to give consent so far bears a risk of being harmful to themselves and to the society as well.<sup>91</sup> Indeed the autonomy of patients are respected in both legal and medical ethics yet it has been argued that involuntary treatment can be justified to restore one's

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<sup>83</sup> Mental health and human rights.

<sup>84</sup> Ibid, para 17

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid, para 31

<sup>89</sup> Ibid.

<sup>90</sup> Ibid,

<sup>91</sup> Hans Joachim Salize, 'Compulsory admission and involuntary treatment of mentally ill patients-legislation and practice in EU-member states' (2002) Central Institute of Mental Health Research Project Final Report, Mannheim, Germany.

autonomy.<sup>92</sup> Therefore, the strict human right based approach refers to the acceptance of an individual's admission without their consent when there is a threat for imminent harm to others or himself.<sup>93</sup> The application of involuntary treatment in mental health facilities must ensure balance among three interests. Firstly, the basic human rights of the concerned who lack giving his consent; secondly the public safety and thirdly the immediate need of treatment for the concerned person.<sup>94</sup> Thus some international documents on human rights refers to some points for the state legislation to ensure the balance.<sup>95</sup> Such documents are Principles for the Protection of Persons with Mental Illness (MI Principles, 1991) and the Ten Basic Principles for Mental Health Law published by the World Health Organization (WHO).<sup>96</sup> The right to liberty protected under Article 9 of the ICCPR is supplemented by the MI principle which outline the substantive criteria and due process to protect against the violation of right to liberty in mental health facility.<sup>97</sup>

### **3.2.1 Principles for the protection of persons with mental illness and the improvement of mental health care (MI Principle)-**

The MI Principles had provided detailed guidelines regarding the deprivation of the liberty of persons with mental health problems.<sup>98</sup> Apart from being a non-binding documents, it can be refer as to understand the standards of legal developments under UN level.<sup>99</sup> The principle guided that No treatment shall be given to a patient without his or her informed consent, except the patient is, at the relevant time, held as an involuntary patient and satisfied by an independent authority, that the patient lacks the capacity to give or withhold informed consent to the treatment at the relevant time.<sup>100</sup> Initially the principle led to give every effort to avoid involuntary admission<sup>101</sup>

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Anna Saya 'Criteria, Procedures, and Future Prospects of Involuntary Treatment in Psychiatry Around the World: A Narrative Review' (2019) 10(271) Front. Psychiatry

<sup>96</sup> Ibid.

<sup>97</sup> UN General Assembly, *Progress of efforts to ensure the full recognition and enjoyment of the human rights of persons with disabilities – Report of the Secretary-General* [A/58/181]

<sup>98</sup> E Rosenthal 'International human rights advocacy under the "Principles for the Protection of Persons with Mental Illness."' (1993) 16(3-4) International Journal of Law and Psychiatry, 257–300.

<sup>99</sup> Ibid.

<sup>100</sup> Principles for the protection of persons with mental illness and the improvement of mental health care (MI Principle) principle 11(6)(a) & (b),

<sup>101</sup> Ibid, principle 15

and shall provide the right to be treated in least restrictive alternative,<sup>102</sup> when it comes for a treatment for a person in mental health. Nevertheless, a mental health institute can take involuntary patient only if, a qualified mental health practitioner authorized by law determines that person has a mental illness. Besides, it must be considered that because of this mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons.<sup>103</sup> After setting out these criteria by the qualified mental health practitioner, a person can be admitted under involuntary capacity but the MI principles correspondingly provided numbers of guideline which should be followed during the time being. However, the involuntary admission and placement to the medical institute shall be for a short period in accordance with domestic laws.<sup>104</sup> The admission of an involuntary patient need to be reviewed by a reviewing body before it take place<sup>105</sup> and shall periodically review the cases within reasonable intervals.<sup>106</sup> Further, MI Principles specified that the review body shall be a judicial or other independent and impartial body established by domestic law.<sup>107</sup>

### **3.2.2. Ten Basic Principles for Mental Health Law by WHO-**

The WHO basic principles for mental health law refers to the self –determination of patient where consent is required before any type of interference,<sup>108</sup> including the interference of liberty.<sup>109</sup> Such consent must be free<sup>110</sup> and informed consent which is sufficient for one to decide risks, side-effects and etc.<sup>111</sup> However, if any person lack giving consent for their treatment, then there should be a surrogate decision maker to decide on the best interest of them.<sup>112</sup> The principle recommended mental health care provider to not systemically have the practice, rather consider it occasionally.<sup>113</sup> Moreover, the principle guided to have a review procedure for any decision made by the surrogate decision maker and the health care provider<sup>114</sup> and when the decision affecting the liberty with a

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<sup>102</sup> Ibid, principle 9,

<sup>103</sup> Ibid, principle 16(1)(a)

<sup>104</sup> Ibid, principle 16(2)

<sup>105</sup> Ibid

<sup>106</sup> Ibid, principle 17(3)

<sup>107</sup> Ibid, principle 17(1)

<sup>108</sup> Ten Basic Principle of Mental Health Law by WHO, principle 5,

<sup>109</sup> Ibid, principle 5(1)

<sup>110</sup> Ibid, principle 5(2)(b)

<sup>111</sup> Ibid, principle 5(2)(c)

<sup>112</sup> Ibid, principle 5(3)

<sup>113</sup> Ibid, principle 5.

<sup>114</sup> Ibid, principle 7

long term impact then an periodical review shall be conducted automatically.<sup>115</sup> The implementation guideline recommends that such periodical review shall not compose of same person and should not unduly influence by its previous decisions.<sup>116</sup> Lastly, if the body members fails to do its responsibility, then state should make accountable for its defaulting body members.<sup>117</sup>

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<sup>115</sup> Ibid, principle 8

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.



## Chapter Four

### The National Legal Framework Protecting Involuntary Admission for People with Mental Health Problems

Mental health issues are yet a stigma around our society. An individual facing mental health problems or their family do not even come out for treatments because of shame and fear of humiliation. Most of the citizens think of mental health hospitals as a prison where patients are mostly detained. Although the reality is not untrue. There are mainly 2 specialized mental hospital in Bangladesh.<sup>118</sup> One is the Pabna Mental Health Hospital which has around 500 beds for their patients and another one is the National Institute of Mental Health and Hospital (NIMH), which has around 200 beds.<sup>119</sup> But both the hospitals have poor facilities for its patients. Patients are often tied up unwillingly even though they are not aggressive in nature and do not have such risk to harm themselves or others.<sup>120</sup> In some cases such involuntary patients get discharge several months after they get cured from their mental disorders.<sup>121</sup> Detaining mental health patients in such way by the specialized mental health hospitals are causing deprivation of their right to liberty.

Bangladesh has its constitutional obligation to respect the international laws and principles enunciated under UN Charter<sup>122</sup> and ratified the CRPD to ensure the rights of a disable person including the rights of a person with mental illness leading to disability.<sup>123</sup> The state also has its constitutional obligation to protect everyone's right to liberty as a fundamental right.<sup>124</sup> Therefore, it has both substantive laws and procedural laws which deals with the rights of the people with mental health problems. Bangladesh has enacted Right and Protection of Person with Disabilities

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<sup>118</sup> National Mental Health Strategic Plan 2020-2030.

<sup>119</sup> Ibid.

<sup>120</sup> Tasfiah Rahman, 'We must protect the rights of mental health patients' *The Daily Star* (Dhaka 8 July 2021) <<https://www.thedailystar.net/views/opinion/news/we-must-protect-the-rights-mental-health-patients-2124761>> Accessed 05 May 2023

<sup>121</sup> Allison Joyce, 'The state of mental health care in Bangladesh - in pictures' *The Guardian* (Dhaka 10 Oct 2018) <<https://www.theguardian.com/global-development-professionals-network/gallery/2015/oct/10/neglected-mental-health-in-bangladesh-pabna-mental-hospital-in-pictures>> Accessed 05 May 2023

<sup>122</sup> The Constitution of the People's Republic of Bangladesh, Art, 25

<sup>123</sup> Md Asraful Islam, 'Rights and protection of persons with disabilities in Bangladesh: A critical review' (2021) 5:1 *International Journal of Research and Innovation in Social Science*, 331

<sup>124</sup> Constitution of Bangladesh, Art 32

Act, 2013 and Mental Health Act, 2018 to provide a human right based mental health care to the individuals. Moreover, the country has also adopted a National Mental Health Policy 2022 and National Mental Health Strategic Plan 2020-2030. Although the laws and the policies are on its way to ensure an individual's rights but there are still some loopholes to cause the deprivation of right to liberty of people with mental health problems. Such major flaws of the laws and the policies are briefly discussed under this chapter.

## **4.2. Right to Liberty of people with mental health problems ensured under the National Laws:**

### **4.2.1. Constitution of Bangladesh-**

The right to liberty is a curtail fundamental right which is ensured under Part III the Constitution of Bangladesh.<sup>125</sup> The right to liberty of patient with mental health conditions are guaranteed under the Art 32 of the Constitution.<sup>126</sup> It ensures that no one shall be deprived of personal liberty save in accordance with law<sup>127</sup> and a person cannot be detained except in accordance with law.<sup>128</sup> However, this liberty is not limited to an individual's personal locomotion and includes a wide range of scope.<sup>129</sup> It extends to the full range of enjoyment under law where an individual is free to pursue the right and which cannot be restricted except in due process for governmental issue.<sup>130</sup> Therefore, the patient with mental health conditions are also entitled to enjoy the right to liberty and there is no exception on it.<sup>131</sup> Though, in Bangladesh people suffering from mental health problems are often forcibly admitted to the mental health facilities and chained up without proper

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<sup>125</sup> Moin Ghani, 'Right to Liberty' (*Ain o Shalish Kendra*) <<https://www.askbd.org/ask/right-liberty/>> Accessed 05 May 2023

<sup>126</sup> Tasfiah Rahman, 'We must protect the rights of mental health patients' *The Daily Star* (Dhaka 8 July 2021) <<https://www.thedailystar.net/views/opinion/news/we-must-protect-the-rights-mental-health-patients-2124761>> Accessed 05 May 2023

<sup>127</sup> Art. 32, The Constitution of the People's Republic of Bangladesh

<sup>128</sup> Moin Ghani, 'Right to Liberty' (*Ain o Shalish Kendra*) <<https://www.askbd.org/ask/right-liberty/>> Accessed 05 May 2023

<sup>129</sup> Mahmudul Islam, *Constitution of Bangladesh* (3rd edn, 2020) 261

<sup>130</sup> Ibid.

<sup>131</sup> Tasfiah Rahman, 'We must protect the rights of mental health patients' *The Daily Star* (Dhaka 8 July 2021) <<https://www.thedailystar.net/views/opinion/news/we-must-protect-the-rights-mental-health-patients-2124761>> Accessed 05 May 2023

due processes.<sup>132</sup> Thus such actions are the deprivation of their fundamental right mention under Art 32 of the Constitution.<sup>133</sup>

#### **4.2.2. Rights and Protection of Persons with Disabilities Act, 2013-**

The Rights and Protection of Persons with Disabilities Act, 2013 (RPPDA) delivers an enormous amount of rights to the persons with disabilities. It covers more detailed extent of rights including fundamental rights as well as the cultural, social, economic and political rights.<sup>134</sup> The Act was adopted in accordance with the provisions of CRPD, which is the basic international document to ensure protection of the rights to the disable persons.<sup>135</sup> Bangladesh followed its commitment towards the international community and thus passed the Rights and Protection of Persons with Disabilities Act 2013 to ensure the rights and the dignity of a person with disabilities.<sup>136</sup> Here disabilities include mental illness leading to disabilities also referred as psychosocial patients.<sup>137</sup> However, the right to one's personal liberty with mental disabilities is not directly mention under the RPPDA but the Act gives the right to disable person to be fully alive and developed in full extend.<sup>138</sup> Moreover, it ensures the highest quality of health care to the disable persons<sup>139</sup> with a safe and healthy environment and protecting them from any kind of oppression.<sup>140</sup> Therefore, it can be said that the RPPDA respected the dignity of a person with mental disabilities. It safeguards the right to liberty of mentally disable person by protecting them from oppression.<sup>141</sup>

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<sup>132</sup> Ibid

<sup>133</sup> Ibid

<sup>134</sup> Bangladesh Legal Aid and Services Trust (BLAST) 'Current status of Rights of Persons with Disabilities in Bangladesh: Legal and Grassroots Perspectives' (2015) <<https://www.blast.org.bd/content/publications/crpd-report.pdf>> Accessed 05 May 2023

<sup>135</sup> Md Asraful Islam, 'Rights and protection of persons with disabilities in Bangladesh: A critical review' (2021) 5:1 *International Journal of Research and Innovation in Social Science* 331

<sup>136</sup> Ibid.

<sup>137</sup> The Rights and Protection of Persons with Disabilities Act 2013 (RPPD) Art 6

<sup>138</sup> Ibid, Article 16(a)

<sup>139</sup> Ibid, Article 16(l)

<sup>140</sup> Ibid, Article 16(k)

<sup>141</sup> UN Convention on the Rights of Persons with Disabilities, *Initial report submitted by Bangladesh under article 35 of the Convention, due in 2010*, 30 August 2018, CRPD/C/BGD/1 para 83

### **4.3. Involuntary Admission of People with Mental Health Problems under Domestic Laws:**

Bangladesh has recently enacted the Mental Health Law 2018 by following international standards. It repealed the ancient Lunacy Act 1912 which once mostly focused on isolating and detaining mental health patients rather than ensuring their well-being.<sup>142</sup> But then again the present MHA 2018 included a provision of involuntary admission of patients with mental health disorders.<sup>143</sup> The provision discusses the procedure of how a patient, unwilling to get treatment, can be admitted to a mental health facility.<sup>144</sup> Though the provision regarding involuntary treatments are indeed necessary for psychotic patients to prevent their violent acts against themselves or others,<sup>145</sup> yet the provision has many loopholes which do not fulfill the criteria mentioned under international laws and left a huge scope to deprive one of their right to liberty.

#### **4.3.1. Procedure under Mental Health Act 2018-**

The MHA 2018 does not provide any specific definition of an 'Involuntary Patient' under its definition clause.<sup>146</sup> Thus an explanation of Article 14 defines an involuntary patient as someone who is unwilling to receive treatment despite of the need for it in the opinion of a psychiatrist.<sup>147</sup> However, the provision explained that a mental health institution can admit an individual without their consent, whenever a medical officer or psychiatrist or Mental Health Review and Monitoring Committee (MHRMC) consider the nature and severity of the patient's illness in concern to the tendency of suicide or harming others and consider the risk of the patient's wellbeing and safety along with the safety of the public.<sup>148</sup> To begin with the consent or an application by a guardian or relatives or a police officer, a patient can be taken into emergency admission for 72 hours by the recommendation of the medical officer.<sup>149</sup> Later, by the recommendation of a psychiatrist, the patient can be admitted for the treatment or assessment up to 28 days. Further, the MHRMC can

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<sup>142</sup> Newly enacted mental health law in Bangladesh

<sup>143</sup> MHA 2018, s 14

<sup>144</sup> Ibid

<sup>145</sup> Hans Joachim Salize, 'Compulsory admission and involuntary treatment of mentally ill patients-legislation and practice in EU-member states' (2002) Central Institute of Mental Health Research Project Final Report, Mannheim, Germany.

<sup>146</sup> Newly enacted mental health law in Bangladesh.

<sup>147</sup> MHA 2018, Article 14

<sup>148</sup> MHA 2018, Article 14(4)

<sup>149</sup> Ibid, Article 14(2)(a)

recommend to keep the patient 180 days<sup>150</sup> and can extend the period even after the expiry of the time limit, considering the importance of the patient's treatment.<sup>151</sup>

#### **4.4. Non-compliance with International Standards:**

Bangladesh has tried to enact the Mental Health Act 2018 in compatible with international standards by following CRPD Conventions and other international documents. But the law still does not meet the requirement of such standards. Such non conformities are pointed below-

##### **A. Informed Consent-**

The international standards mostly emphasize on an informed consent from patients, and only allow an involuntary admission as a last resort when the patient with an imminent violent nature, is incapable of giving concept. But the present MHA neither highlight the importance to a patient's informed consent nor it put the involuntary admission as a last resort for a patient's treatment. The international documents have recommended to follow the least restrictive alternative during an individual's treatment which is remains absent in the MHA 2018.

##### **B. Review by an Independent Body-**

Although the Act provides for the establishment of the MHRMC to review the rationality of treatment of each mental health patient<sup>152</sup> and required to review the voluntarily admitted patient (adult) in every 15 days, children in every 7 days<sup>153</sup> and the non-protesting patient in every 28 days.<sup>154</sup> But the act did not provide any provision to periodically review the cases of involuntary admitted patient. Moreover, the Act did not mention any such provision to discharge the involuntary patient as soon as he becomes capable of giving his consent for his treatment which the international recommended. Whereas in India, for example the Mental Health Act, 2017 follows such standards and shall start continue to remain as an independent patient or provide the right to leave the mental health hospital.<sup>155</sup>

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<sup>150</sup> Ibid, Article 14(2)(d)

<sup>151</sup> Ibid, Article 14(2)(e)

<sup>152</sup> Ibid, Article 5

<sup>153</sup> Ibid, Article 12(5)

<sup>154</sup> Ibid, Article 13(3)

<sup>155</sup> Mental Health Act 2017, s 89(5)

### C. Appointment of a Supportive Decision Maker-

Mental Health Act 2018 not only failed to put any requirement to appoint a supportive decision maker on behalf of the patient who are unlikely to give consent for their admission and treatment but also did not provide any obligation to the MHRMC to scrutinize the decision of the guardian, relative or the local police officer who have given the power to provide consent on behalf of a patient. There no such procedures, in accordance with law are mentioned to appoint a decision maker on behalf of the mental health patient. Unlikely of our Act, Indian Mental Health Act 2017 has a detailed provision to appoint a representative<sup>156</sup> and provide support to the mental health patient for making admission and treatment decisions.<sup>157</sup> Even though the Indian Mental Health Act had amended their legislation and replaced their provision of ‘involuntary admission’ into the ‘supported admission’.<sup>158</sup>

The country recently adopted the National Mental Health Policy 2022 which aims to bring a regulatory framework for mental health care and care givers.<sup>159</sup> But unfortunately the policy is also silent in regarding to ensure the right to liberty and safety during a patient’s commitment under a mental health institution. Although it mentions to respect the human right of and dignity of a person with mental health conditions<sup>160</sup> but it did not further provide any comprehensive list of the rights. Neither it provided any amplification concerning the admission procedure in the specialized mental health hospital.

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<sup>156</sup> Mental Health Act 2017, chapter IV

<sup>157</sup> Ibid, s 17(c)

<sup>158</sup> Sangeeta Dey, ‘Comparing legislation for involuntary admission and treatment of mental illness in four South Asian countries’ (2019) 13(67) *Int J Ment Health Syst*

<sup>159</sup> Eshrat Sharmin, ‘Contextualising mental health in Bangladesh: The youth perspective’ *The Daily Star* (Dhaka 19 July 2022) <<https://www.thedailystar.net/opinion/views/news/contextualising-mental-health-bangladesh-the-youth-perspective-3073396>> Accessed 8 May 2023

<sup>160</sup> National Mental Health Policy 2022

## Chapter 5

### Conclusion

#### Findings of the Study:

1. The concept of involuntary admission to treat a mental health patient can be harmful for an individual as it opens up a wide range of scope to deprive them to enjoy their personal liberty. The right to liberty of people with mental health conditions are always been protected by the international laws, and thus involuntary admissions are highly discouraged. Yet in some cases the treatment is necessary and hence a full phrase guideline for an involuntary admission has been provided by the international standards to ensure the dignity of the patients.
2. Bangladesh had enacted the Mental Health Act 2018 which includes a provision of involuntary admission of a patient who are incapable of giving consent for their treatment. The government had attempted to make the national laws complying with the international standards provided by UN and WHO yet the Act does not meet the requirements of international laws regarding the admission of an involuntary patient.
3. The procedure of involuntary admission of a mental health patient is loosely described under the Act which left a wide range of space to use the provision maliciously and thus cannot ensure one's right to liberty.
4. The Act does to provide any mechanism to address the accountability of those who cause violation of human rights to the persons with mental health conditions.
5. Although the Act requires to form a Mental Health Review and Monitoring Committee which will oversee the proper treatment of patient in accordance with the laws yet such committee is mostly absence for monitoring the infringement of human rights for those who are receiving treatment for mental illnesses. However, it failed to provide any obligation towards the Review committee to periodically review the cases of involuntary patient and did not ensure the right to discharge them as soon as the retention for an emergency is no longer needed.
6. The government undertook The National Mental Health Policy 2022 for giving more elaborative structure of Mental Health Act, 2018 and to ensure the enforcement of the Act

in regarding mental health care but the Policy did not mention any procedural details about the admission of the involuntary patient.

7. The mental health Act and Policy, both might recognize the human rights of an individuals with mental health conditions but it did not provide any such comprehensive list of rights and no remedies are addressed in violation of the rights.
8. The laws and the policy are positive step to protect the rights of people with mental health conditions but the implementations are yet to improve. It required strong implementation, monitoring and assessment of process.

### **Recommendation:**

Mental Health Problems are still remaining as a stigma in our society. Hence, in this stage ensuring the rights of people who are suffering with severe mental health conditions are difficult until the government takes some steps toward the real progress in this field. To ensure the right to liberty with a dignified life of an individual with mental health problems, the laws and policies which need some amendments and proper implementations. Here are some recommendations discussed below to ensure their right to liberty during involuntary admission and treatment:

1. To meet the requirement of international standards the Act need to emphasize on the principle of least restrictive alternative for the appropriate treatment of mental health patient. The practice of community base treatment and social rehabilitation need to be give more importance in the legislation, rather than inpatient treatment. The involuntary admission of a patient need to keep as a last resort for a person's treatment and if suitable, the community care treatment or rehabilitation will be tried before.
2. The laws need amendment regarding the right to informed consent and should give importance in the first sense. Nevertheless, if the patient is unable to give the consent, then the law should require to appoint a supportive decision-maker (family, friends or any other authority) to decide on behalf of the patient for his or her best interest. Such appointment must be conducted formally in accordance with law. The government should create a special court or tribunals where a specialized trained judge can address the mental health related concerns to avoid unnecessary delay in case of emergency patient.



3. The laws should address the liability of a supportive decision maker, if he or she later intentionally took any harmful decision for the patient. The Mental Health Review and Monitoring Committee need to give the responsibility to review and scrutinize every decision taken by supportive decision maker for an individual's admission and treatment.
4. The laws and the policies need to put strict obligations towards the Mental Health Review and Monitoring Committee to periodically review the cases of the involuntary patient. The review of a case should not always be composing of same person and thus the decision of the later member shall not unduly influence by the previous one.
5. If the review body default to perform their responsibility to protect the rights of a patient than the laws should put the member of the defaulting body accountable.
6. The National Mental Health Policy 2022 need to address more detailed clarification about the admission procedure of an involuntary patient. Moreover, it requires a comprehensive outline and methodology to ensure the human rights of people with mental health conditions.
7. The mental health professionals need to be trained on the basis of ensuring patients' human right and how to restrict the intervention on patients' human right. Therefore, it need a strong acknowledgment in laws and the policies.

### **Conclusion:**

Mental health is an important part to consider from childhood through adulthood, at every phase of life. Human right violation of people with mental health conditions are not unusual and they often face discrimination on their daily subsists. Everyone is equal before the law and entitled to the same protection and benefits of the law without any discrimination. Many international human right instruments have ensured the rights of people with mental health conditions and mentioned a number of obligation to its state parties to comply. Bangladesh has also tried to adopt its legal framework in accordance with such international standards but in some cases it failed to reach its goal. Involuntary admission is a common practice to cure patient who are unable to provide their consent for their own beneficial treatment. Many countries adopted the practice following the outline of the UN and WHO principle. Bangladesh has also enacted its laws following the guidelines yet there remain some loopholes. So it can be said that, the existing laws of Bangladesh

are not effective enough to ensure the right to liberty of an individual by involuntary admission in a mental health hospital. Moreover, the policy documents and legislations are promising but lack of implementation. Thus Bangladesh needs more effective enforcement mechanisms to ensure the right to liberty of people with mental health condition.

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